

Report and Recommendation following the hearing of a Notice of Requirement under the Resource Management Act 1991



Proposal

To designate land at 372 Glenbrook Beach Road to enable the construction, operation and maintenance of infrastructure for wastewater treatment purposes, including a wastewater treatment plant, and the provision of an odour buffer area around the wastewater treatment plant.

The Commissioners recommend that the Notice of Requirement is **WITHDRAWN**. The reasons are set out below.

Site address:	372 Glenbrook Beach Road, Glenbrook
Requiring Authority:	Watercare Services Limited
Hearing Commenced:	7 February 2024 at 9:30am
Hearing Panel:	Kitt Littlejohn (Chairperson) Mark Farnsworth Helen Mellsop
Appearances:	<p><u>For the Requiring Authority:</u></p> <p>Padraig McNamara & Warren Bangma (Legal Counsel) Dave Chambers (Corporate) Priyan Perera (WW Network and Project Description) Kevan Brian (WWTP Design) Anshita Jerath (Stakeholder Engagement) Garrett Hall (Alternative Sites) Nicholas Keenan (Stormwater and Flooding) Mathew Noonan (Air Quality) Mathew Cottle (Acoustic) Alasdair McGeachie (Traffic) Tom Lines (Landscape and Visual) Karen Bell (Planning)</p> <p><u>Submitter Tabled Statements of Evidence</u></p> <p>The Ministry of Education Amanda Gasson John and Rachael Keir</p>

	<p><u>Submitters</u></p> <p><i>John and Bernice Ramsey</i> represented by Lachlan Muldowney (Counsel) & Chris Dawson (Planner)</p> <p><i>Pulin Investments Limited</i> represented by James Hook (Planner)</p> <p>David Slack</p> <p>Margaret Slack</p> <p>Peter Wrightson</p> <p>Jacqueline Sibbald</p> <p><i>The Onehunga Enhancement Society</i> represented by Stephen Lasham</p> <p>Dominic Moynihan</p> <p>Shelly Moynihan</p> <p><i>David Jackson</i> with David French, appearing as a witness</p> <p>Olivia Jackson</p> <p>Rose McLaughlan & Greg McLaughlan</p> <p><i>Monique Hubers</i> represented by Rose McLaughlan</p> <p>Nicky Hartley</p> <p><i>John Nicolson</i> represented by Rose McLaughlan</p> <p>Paula Hull</p> <p>John and Rachael Keir</p> <p>Charlotte Gasson with Lizzie Gasson appearing as witness (MS-Teams)</p> <p>Tessa Gasson</p> <p>Mark Gasson</p> <p><i>Stop Polluting the Manukau Harbour Inc</i> represented by Mark Gasson (Chair) and Dr Grant Hewison (Planner)</p> <p>Alan McArdle</p>
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	<p>Kathryn Anderson & John Anderson</p> <p><i>Glenbrook Beach Residents & Ratepayers Association</i> represented by Robyn Deuchar & Ian Smith</p> <p>Nigel Pemberton</p> <p>Debbie Tapper</p> <p>Chris Tapper represented by Debbie Tapper</p> <p>Ross Tucker</p> <p><i>Kahawai Point Developments Limited</i> represented by Bernie Chote (Director) & Ian Smallburn (Planner)</p> <p><i>Manukau Harbour Restoration Society, Selwyn St Properties & scan Ltd & Jackson Family</i> represented by Jim Jackson</p> <p>Susan Hale</p> <p><u>For the Council:</u></p> <p>Craig Cairncross, Team Leader Jimmy Zhang, Reporting Planner Martin Peake, Transport Andrew Gordon, Noise Consultant Paul Crimmins, Air Discharge Specialist (MS-Teams) Stephen Brown, Amenity values/Landscape Character Bevan Donovan, Hearing Advisor</p>
Hearing adjourned	Monday, 12 February 2024
Commissioner's site visit	Tuesday, 13 February 2024
Hearing Closed:	28 February 2024

INTRODUCTION

Notice of requirement

1. Watercare Services Limited (**Watercare**) is a requiring authority under the Resource Management Act 1991 for its network utility operations of, inter alia, undertaking a sewerage system, including the operation, maintenance, replacement, upgrading and

improvement of infrastructure related to these operations in the Auckland region.¹ Under s.168(2),² Watercare has given notice to the Auckland Council (**Council**) of its requirement for a designation in the Auckland Unitary Plan (Operative in Part) (**AUP**) for a project or work, referred to as the Southeast Wastewater Treatment Plant (**WWTP**). The location of the proposed designation is 372 Glenbrook Beach Road, Glenbrook (**site**). The NoR was served on the Council on 1 September 2023.

2. At the request of Watercare, the NoR was publicly notified on 13 October 2023. Submissions closed on 13 November 2023 with a total of 296 submissions being received. Seven submissions were received after the closing date for submissions.³
3. Consideration of the NoR and the submissions received in relation to it was delegated to Independent Hearing Commissioners Kitt Littlejohn (chair), Mark Farnsworth, and Helen Mellsop (**Panel**), who were appointed and act under delegated authority from the Council under ss.34 and 34A.
4. This report assesses the NoR in accordance with s.171. It addresses the issues raised in the submissions and contains the Panel's recommendation to Watercare under s.171(2).

Materials exchanged pre-hearing

5. Prior to the hearing the following materials were provided to the Commissioners and reviewed:
 - (a) A copy of Watercare's application for the NoR, including its supporting assessment of environmental effects and other statutory matters;
 - (b) Further information provided by Watercare in response to requests from Council officers under s.169;
 - (c) A copy of all submissions made on the NoR;
 - (d) A report under s.42A by Jimmy Zhang, a planner employed by the Council in relation to the NoR and submissions received on it (**s.42A Report**);
 - (e) Technical specialist reviews prepared by the Council officers and independent consultants listed above (included with the s.42A Report);
 - (f) Briefs of evidence in support of the NoR and in response to matters raised in the

¹ The Resource Management (Approval of Watercare Services Limited as a Requiring Authority) Notice 2012.

² Unless otherwise specified, references to sections and sub-sections are references to sections and sub-sections in the Resource Management Act 1991.

³ Section 42A Report at [4].

s.42A Report and submissions from Watercare by the witnesses listed above;⁴

(g) Briefs of expert evidence from submitters as listed above.⁵

Hearing Procedure

6. The hearing of the NoR took place over four days from 7 to 12 February 2024 and was conducted in the Stevenson Room, Franklin: The Centre, 12 Massey Avenue, Pukekohe, Auckland. There were appearances at the hearing by Watercare, submitters and Council officers, as listed above.
7. Mr Zhang advised⁶ the Panel at the start of the hearing that a decision was required as to whether to extend the closing date for submissions made on the NoR that were received late. Under s.37A the Panel must take into account:
 - the interests of any persons who, in the Panel's opinion, may be directly affected by the extension or waiver; and
 - the interests of the community in achieving adequate assessment of the effects of the proposal; and
 - the duty under s.21 to avoid unreasonable delay.
8. Mr Zhang recommended⁷ under s.37 and s.37A, that the late submissions on the NoR be accepted. His reasons for this recommendation were:
 - the submissions are within scope;
 - the matters raised in the submissions are similar to other submissions that were received during the submission period and therefore do not disadvantage other directly affected parties;
 - he did not consider that the waiver would directly affect the interests of any person; and
 - he considered that including the late submissions would not cause any unreasonable delay.

⁴ The evidence comprised non-expert corporate evidence, and expert technical and evaluative evidence from a range of qualified and experienced persons.

⁵ A number of submitters also helpfully provided the briefs of non-expert evidence they intended to call in advance of the hearing.

⁶ Section 42A Report at [294].

⁷ Ibid at [295].

9. In the absence of any opposition to the acceptance of the submissions by Watercare, the Panel resolved the closing date for late submissions be extended and the submissions received. In doing so, we adopt the reasons advanced by Mr Zhang.
10. The application materials and s.42A Report were taken “as read” at the hearing and not formally presented by their authors.
11. Watercare then presented its case for the Project. Counsel presented detailed legal submissions and then called their witnesses in support. Briefs of pre-exchanged evidence were taken “as read” at the hearing, but witnesses were given the opportunity to summarise and/or highlight aspects of their written briefs. Several of Watercare’s witnesses also presented rebuttal statements of evidence responding to the expert evidence that had been provided by submitters.
12. Submitters then presented their cases either in support or opposition to the NoR.
13. An inspection of the Project site and surrounding area was undertaken by the Commissioners on 9 February 2024.
14. At the conclusion of hearing from Watercare and submitters, Mr Jimmy Zhang and several of the reporting specialists for the Council summarised their assessments and provided responses or further comments on matters that had arisen during the hearing relevant to their areas of expertise.
15. Counsel for Watercare then presented preliminary reply submissions. These were made partly in writing and partly orally at the end of the hearing, and then supplemented with a full written reply, including detailed annexures. This material was received by the Panel on 20 February 2024.
16. The hearing was adjourned on 12 February 2024 and then subsequently closed on 28 February 2024 after receipt of Watercare’s final reply submissions.

Consideration of evidence

17. The evidence we have received and considered is referred to as necessary to explain the points being made in our report below. We have not summarised all the evidence provided,⁸ other than where reference is made to specific evidence as part of our discussion below. An ‘evidence index’ has been prepared to assist with navigation of the evidence file, and we have used this index in our referencing of the evidence throughout this report.

⁸ There is no similar requirement as exists in s.113 for hearings related to resource consent applications.

18. We have reviewed, and considered, all of the submissions made on the NoR, the relief sought and evidence submitted. However, we do not intend to address individually the issues raised and the relief sought by submitters.

STATUTORY FRAMEWORK

19. The statutory framework for our consideration of the NoR is set out in s.171, which 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.

20. Section 171(1) is subject to Part 2 of the RMA, the components of which are well known. Reference to Part 2 in considering a requirement is not subject to the same approach as

has developed from caselaw in respect of s.104 and resource consent applications. In the context of considering designations, Part 2 has an overriding effect over the assessment of effects and the matters listed in s.171(1)(a) to (d).⁹ In considering the NoR and making a recommendation on it, this directive requires us to be satisfied that it achieves the sustainable management purpose of the RMA and that the matters in ss.6, 7 and 8 have been given the appropriate consideration and recognition. As the Environment Court has expressed it, in relation to a designation:¹⁰

“...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”.

21. We return to Part 2 in relation to the NoR later in this report.
22. The directive to the territorial authority considering a requirement is set out in s.171(1). When considering a requirement and any submissions received it is to “*consider the effects on the environment of allowing the requirement, having particular regard to*” the matters listed in subsections (a) to (d). Notably, effects on the environment of allowing the requirement are not simply a matter to have regard to (as they are in the context of considering a resource consent application under s.104); they must all be considered. Furthermore, “particular regard” must be given to the matters in s.171(1). “Having particular regard to” conveys a stronger direction¹¹; it requires the matter to be considered separately and specifically from other relevant considerations.
23. After considering the matters in s.171, we must make a recommendation to the requiring authority under s.171(2), 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:*
 - (d) *withdraw the requirement.*
24. Reasons must be given for the recommendation under s.171(3).
25. To restate the obvious, the Panel’s role under s.171(2) is to make a recommendation on the notice of requirement to the requiring authority, rather than to make a decision. Ultimately, it is Watercare who will make the decision on whether to accept that recommendation, or not. That decision must be made in accordance with s.172 as follows:

⁹ *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991; *City Rail Link Ltd v Auckland Council* [2017] NZEnvC 204.

¹⁰ *Estate of P.A. Moran and Others v Transit NZ W55/99* [1999] NZEnvC 513, at [114].

¹¹ *McGuire v Hastings DC* [2002] 2 NZLR 577; (2001) 8 ELRNZ 14; [2001] NZRMA 557 (PC) and *Environmental Defence Soc Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 595

- (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.*
26. Notwithstanding the abovementioned decision-making powers, all parties to the NoR retain appeal rights to the Environment Court under s.174 in respect of the eventual decision by the requiring authority.
27. We consider the NoR using the framework of s.171.

SECTION 171A – TRADE COMPETITION

28. No aspect of the requirement or any submissions concerned trade competition or the effects of trade competition.

SECTION 171(1) - THE NOTICE OF REQUIREMENT

29. Mr Priyan Perera¹² provided a detailed description of Watercare's existing wastewater services in Southeast Auckland and the proposed WWTP. The s.42A Report also provides a summary overview of the NoR.¹³
30. Watercare is seeking a new designation in the AUP for a wastewater treatment complex at 372 Glenbrook Beach Road, Glenbrook. The purpose of the designation is the 'construction, operation and maintenance of infrastructure for wastewater treatment purposes, including a wastewater treatment plant, and the provision of an odour buffer area around the wastewater treatment plant'.
31. Watercare has identified the need for a new sub-regional wastewater treatment plant to manage future growth in the southwest part of the Auckland region (including Waiuku, Clarks Beach, Glenbrook Beach and Kingseat), given the capacity constraints of the three small existing wastewater treatment plants at Clarks Beach, Waiuku and Kingseat. The NoR is part of a programme of works required to ensure growth that is provided for through the AUP (i.e., via land use zoning and activities) is adequately supported by infrastructure. The Project is expected to service a long-term population equivalent of 60,000 in

¹² EV2.

¹³ Ibid at [2].

southwest Auckland. The development of the WWTP will be staged to provide capacity in line with population growth.

32. Watercare advises that the construction of the WWTP will allow for the eventual decommissioning of the three existing treatment plants at Clarks Beach, Kingseat and Waiuku and their associated discharge points.
33. Under s.171(1)(c), the objectives of the requiring authority for which the designation is sought are specifically relevant and we return to them in the context of that provision later in this report. The objectives were set out in Watercare's Assessment of Environmental Effects (**AEE**)¹⁴ and in the evidence of Mr Perera¹⁵ and Mr Hall as follows:¹⁶

To provide for the treatment of wastewater in southwest Auckland in a manner that:

- a. Responds to planned growth*
 - b. Protects public health*
 - c. Provides for flexible implementation including potential wastewater reuse in the future*
 - d. Keeps the overall costs of service to customers at sustainable levels*
 - e. Helps Watercare achieve its targets for reducing carbon emissions*
 - f. Has regard to mana whenua's cultural and spiritual values.*
34. Watercare proposes to use management plans to avoid, remedy or mitigate the majority of anticipated environmental effects, and these have been offered as conditions to attach to the designation. If confirmed, the management plans would provide the framework to guide the final design of the site and the plant facilities and to manage any adverse effects of the construction activities associated with the implementation of the Project. The following management plans have been offered:
- Construction Management Plan (**CMP**).
 - Construction Noise Management Plan (**CNMP**).
 - Construction Traffic Management Plan (**CTMP**).
 - Landscape Management Plan (**LMP**).
 - Flood Hazard Report.

¹⁴ Stantec - SOUTHWEST WWTP NOTICE OF REQUIREMENT, May 2023 at [1.3].

¹⁵ EV2 at [9].

¹⁶ EV4 at [6.1].

- Operational Lighting Plan.
35. Watercare acknowledged that the NoR process is primarily about authorising the land use activities and associated work required to bring the WWTP into operation and for its long term operation and maintenance. A management plan approach is seen as appropriate in this regard given that detailed designs and implementation criteria will occur at the Outline Plan of Works (**OPW**) stage. Mr Zhang noted¹⁷ that the use of management plans enables some fine-tuning of controls set in conditions. This ability to fine-tune is preferred to an approach of setting absolutes, given that detailed designs (and operating protocols) are still to be confirmed and a degree of flexibility is appropriate.
36. In order to operate the WWTP will require a discharge to air consent. In order to be constructed, it may also require regional consents and consents under certain national environmental standards. These approvals will need to be obtained by Watercare as separate consenting exercises in the future prior to construction and operation.

SECTION 171(1) – SUBMISSIONS RECEIVED

37. Watercare requested public notification of the NoR.¹⁸ The NoR was fully notified on 13 October 2023 with a closing date for submissions of 13 November 2023.
38. A total of 296 submissions¹⁹ were received. In summary:
- 7 submissions were in support;
 - 288 were in opposition; and
 - 1 was neutral.
39. A total of 7 submissions were received after the closing date for submissions.
40. A summary of the key issues raised in submissions on the NoR can be found at section 3.2.3 of the s.42A Report.²⁰ Mr Zhang grouped the submissions into the following themes based on the relief sought:
- Support for the NoR;
 - Opposition to the NoR;
 - Alternative sites;
 - Extent of the NoR and community use;
 - Effects on landscape and amenity values;
 - Lighting effects;

¹⁷ Section 42A Report at [48].

¹⁸ Section 149ZCB(2)(b).

¹⁹ Individual submissions can be found at the following link: <https://www.aucklandcouncil.govt.nz/have-your-say/hearings/findhearing/Pages/Hearing-documents.aspx?HearingId=690>

²⁰ Section 42A Report at [301 – 305].

- Air Quality - odour effects;
- Construction effects;
- Effects on Maori culture and values;
- Ecology effects;
- Transport effects;
- Noise effects; and
- All other matters.

41. We agree with this summary of the issues raised in the submissions. We record that we have reviewed all of the submissions received.

Criticisms of the engagement process

42. The Panel heard from various submitters who expressed concern about the adequacy and extent of consultation and engagement undertaken by Watercare for the NoR. These concerns ranged from the level of information received, and that they were not specifically engaged with, or notified, about the NoR.

43. General stakeholder engagement was explained in the evidence²¹ of Anshita Jerath on behalf of Watercare. The key points of her evidence²² were:

- There has been extensive consultation and engagement with the public and stakeholders. Consultation commenced in June 2021;
- The site, at 372 Glenbrook, was identified in April 2023 and engagement has been on-going; and
- Watercare is committed to continuing communication with interested parties during the detailed design, pre-construction and construction phases.

44. Ms Jerath advised that in her opinion: *“the consultation that has been carried for this project has been comprehensive”*.²³

45. Notwithstanding the above, we did hear some specific cases, outlining where engagement was considered to be less than adequate. For example:

- Olivia Jackson was very direct:²⁴

I acknowledge that consultation for a NoR is not required, however it may be considered ‘best practice’. But Watercare did decide to enter into consultation /

²¹ EV53.

²² Ibid at [3.1 – 3.4].

²³ Ibid at [3.2].

²⁴ EV21 at [56].

engagement, and it was a farce where they strong armed the community at every step of the way”.

- Monique and Mike Huber noted:²⁵

I am very disappointed that Watercare took our presence at the meeting as an indication of support. Bully boy syndrome. We were told that it was simply to share information with us, that is the only reason we signed the register. No one who attended that meeting wanted their information to be shared with the public.

- Rose McLaughlan told us:²⁶

Watercare did not purchase the land until 20 April 2023. And it was not until late April that they had meetings with immediately affected neighbours. It was not until May that they started to hold meetings with the wider community.

46. In justifying Watercare’s approach, Counsel for Watercare noted in their closing legal submissions:²⁷

Good practice did not require Watercare to reconsult after abandoning Site B, as it had already consulted on the shortlisted sites including Site T.

47. In Watercare’s closing legal submissions the importance of key stakeholders and the local community being informed about the proposed construction activities and timeframes was accepted.²⁸ Mr Dawson’s proposed changes to Conditions 14 -17 in this regard were consequently adopted.²⁹

48. Overall, the Panel acknowledges that there are a large number of parties who are dissatisfied with Watercare’s engagement process. The fact that the RMA³⁰ does not require consultation is no answer to this criticism. Watercare chose to consult and in doing so ought to conduct itself in a manner that follows best practice. We do not go so far as to find that has not occurred here. But we expect Watercare to review the feedback provided on the process it followed from those who participated and review its approach to community engagement accordingly.

SECTION 171(1) – EFFECTS ON THE ENVIRONMENT OF ALLOWING THE REQUIREMENT

49. We now set out our assessment of the existing environment, site and locality and our findings on the evidence we heard as to the effects on that environment of allowing the requirement. Before we do so, we make some brief comments about the ‘permitted

²⁵ EV22 at [1].

²⁶ EV24 at [4].

²⁷ EV59 at [2.9].

²⁸ *ibid* at [8.2].

²⁹ EV14 at [52].

³⁰ RMA s.36A.

baseline' and written approvals.

Effects that may be disregarded – permitted baseline assessment

50. The Environment Court in *Beadle v Minister of Corrections*³¹ accepted that the obligation to apply permitted baseline comparisons extended to notices of requirement. In *Nelson Intermediate School v Transit NZ*³², the Court accepted that the permitted baseline must define the “environment” under s.5(2)(b) and (c) and for the purposes of s.171(1). When considering the adverse environmental effects of allowing a requirement, the effects may be considered against those that could be generated from activities that are permitted by a district plan, or have already been consented to on the subject land, and disregarded.
51. Section 7.3.2.1 of the AEE notes that in terms of scale, form and characteristics the proposed WWTP is not dissimilar to permitted development that could be reasonably anticipated in the zone. The AEE notes:

The permitted activities that could foreseeably be located on the site that also have large buildings include plant nurseries and market gardens with tall glasshouses and shade houses. The individual buildings for these activities are permitted to be 200m2 and up to 15m high and can locate as close as 12m from the boundary to neighbouring sites.

These activities have characteristics comparable to the WWTP in that they often involve multiple large structures, water tanks, traffic generation and there is the potential for odour and noise associated with generators and ventilation systems to control temperature and humidity at all times and in some cases 24/7 activity.

52. In the s.42A Report Mr Zhang correctly records that application of the permitted baseline is at the discretion of the decision maker, depending on its merits and the circumstances of the NoR being considered. Whilst he acknowledges the existence of the building height, setback and building area standards referred to in the AEE he does not consider that the permitted baseline approach should be applied “*as it will offer relatively limited assistance in the context of this Project*”.

Panel finding

53. We find against applying the permitted baseline to our consideration of the effects on the environment of allowing the requirement. While some of the activities associated with the construction and operation of the WWTP could no doubt occur as of right on the site and in the locality (e.g., traffic and construction activity), we consider the potential for built form associated with permitted rural activity establishing on the site of any comparable scale or nature to that proposed by the WWTP to be a fanciful proposition.

³¹ Decision no. A074/02.

³² (2004) 10 ELRNZ 369.

Written approvals

54. Any effect on a person who has given written approval to the NoR may be disregarded if it is appropriate to do so.
55. No written approvals were obtained by Watercare.

Section 171(1B)

56. Section 171(1B) enables us to include in our assessment of effects under s.171(1) to be 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.
57. No positive effects arising from offsetting or compensation proposed by Watercare were brought to our attention.

Existing environment, site and locality

58. Section 5 of the AEE provides a description of the site and the existing environment. Mr Zhang concurred with the description, noting:³³
 - The site for the NoR is located at 372 Glenbrook Beach Road, Glenbrook. The site is located approximately halfway up the Glenbrook peninsula and is accessed by a single driveway on Glenbrook Beach Road, opposite 381-389 Glenbrook Beach Road.
 - The site is predominately zoned Rural – Mixed Rural Zone with a smaller part of the land adjoining the coast being zoned Rural – Rural Coastal Zone. Outside of the area subject to the NoR is the Coastal – General Coastal Marine Zone.
 - The bulk of the site is currently used for market gardening and there are associated farming sheds.
 - Two constructed ponds are also located onsite for the purposes of irrigation.
 - Natural features on the site include two watercourses, three natural inland wetlands and areas of salt marsh adjacent to the Coastal Marine Area (**CMA**).
 - The site has a gently undulating topography with the highest point being situated near its centre. The site slopes downward in a northeast direction towards the Taihiki River.

³³ *ibid* at [18].

- Land uses immediately around the site include horticulture, farming and rural lifestyle blocks. Dwellings are present on adjoining sites and in adjacent sites across Glenbrook Beach Road.
 - The surrounding environment is rural in nature and is predominately zoned Rural – Mixed Rural Zone with the Rural – Rural Coastal Zone adjoining the eastern coast of the peninsula. The northern end of the peninsula contains an urban node consisting of sites zoned Residential – Single House Zone, Business – Neighbourhood Centre Zone and the Future Urban Zone. At 80 McLarin Road, Glenbrook, proposed Private Plan Change 91, which was the subject of a recent hearing, aims to rezone the site from Future Urban zone to Residential – Mixed Housing Suburban zone.
59. In overall terms, the NoR raised a number of issues and a range of effects and impacts for those persons (including businesses, residents, community groups etc) and the environment in this area of Glenbrook.
60. We set out our consideration of the evidence as to the effects³⁴ of allowing the requirement and our resultant findings below. At the outset, we record that two of the primary concerns of submitters in opposition to the NoR were:
- the impact the proposed WWTP will have on the rural character and amenity of the area, and in particular their enjoyment of living and operating in a rural environment; and
 - the designated site was going to occupy ‘highly productive land’ as defined by the National Policy Statement on Highly Productive Land (**NPS-HPL**).

Construction related effects

61. In addressing construction effects, the s.42A Report notes:³⁵

Construction effects are addressed in the AEE, the Indicative Design Report and in several of the technical reports supporting the NoR. The construction phase for Stage1 of the Project is forecasted to be two to three years in duration and is understood to include the provision of internal access roads and other core essential services require to operate the plant.

62. By and large Mr Zhang agreed³⁶ with Watercare that the effects on the environment from construction activities are able to be managed through management plans including:
- Construction Management Plan (**CMP**);

³⁴ As that term is defined in s.3.

³⁵ Section 42A Report at [126].

³⁶ Section 42A Report at [134].

- Construction Noise Management Plan (**CNMP**); and
- Construction Traffic Management Plan (**CTMP**).

63. Mr Zhang recommended additional provisions, namely:

- conditions relating to dust and archaeology;
- Chapter E11 (Land disturbance – Regional) of the AUP; and
- additional noise criteria.

64. Construction effects³⁷, in particular traffic/transport impacts, were a major concern of submitters. For example:

- John and Bernice Ramsey recorded:³⁸

Bernice and I are also very concerned about other impacts which will arise during the construction phase. The farm is reliant on a water supply which runs along Glenbrook beach Road. Any disruption to the piped supply will seriously impact our horticultural operations. Digging up Glenbrook Beach Road needs to be controlled to ensure the water supply is not affected.

We are also heavily reliant on good transport access to and from the farm along Glenbrook Beach Road. Again, any disruption to this will impact our farming operations. Conditions must control these potential affects.

- Paula Hull noted her concerns:³⁹

The thought of possibly going through Watercare's construction process again fills me with dread and fear. Our lives and those of our wonderful community will be impacted more than anyone realises who hasn't experienced this before. We have, and we are now extremely cynical that Watercare will be able to manage this process with any degree of care or respect for the local residents both during the construction process and in the running of the plant.

- Debbie Tapper in addressing construction effects notes:

Now Watercare has painted a great picture that this won't cause too much issue. I feel this has blatantly been misrepresented by Watercare. I want to clarify that for you. They will be digging a trench around 6mtrs deep to lay this pipeline they will be pulling up the road making access to our property for up to 3-5 years a heartache. They will require us to park across the road for approximately 3-4 weeks. How do we do this with cabins that need cleaning, repainting or fixing. Do we park our work

³⁷ Construction noise is discussed in paragraphs 127-137 below.

³⁸ EV13 at [13 – 16].

³⁹ EV25 at [4].

vehicles our personal cars, our caravan down there too, if we can't access our property. Who will guarantee their safety.

65. Mr Alasdair McGeachie in his brief of evidence on behalf of Watercare on traffic effects observed:⁴⁰

The effects of the project on the roading network will be greatest during the construction phase, at times when daily and peak hour traffic generation is at its highest. However, in my opinion even during those times the additional vehicle movements to and from the site will have only a modest impact on the road network, with acceptable levels of service being maintained. Traffic effects on the roading network during construction will be further managed through a comprehensive Construction Traffic Management Plan.

Once construction is complete and the WWTP is operational, daily traffic volumes from the WWTP will be very low, in the region of ten movements per day generated by operations and maintenance staff.

66. Ms Bell noted:⁴¹

The initial build will create effects during construction that will need to be mitigated through the implementation of a construction traffic management plan and provision of a right turn bay in the legal road (if approved by Auckland Transport).

67. Christopher Dawson, in his brief of evidence, considered construction effects on the Ramsey's property noting the following need to be considered:⁴²

- *Transport congestion and access constraints along Glenbrook Beach Road;*
- *School bus and pedestrian safety and inconvenience.*
- *Water supply interruptions due to construction along Glenbrook Beach Road.*
- *Dust and airborne contaminants impacting horticultural activities; and*
- *Noise and vibration effects on deer health.*

Mr Dawson proffered the view that these concerns have now largely been addressed via the extra conditions added to the CTMP through the s.42A Report.⁴³

⁴⁰ EV8 at [4.4].

⁴¹ EV10 at [4.7].

⁴² EV14 at [50].

⁴³ See EV48 Martin Peake.

Panel findings

68. The Panel finds that construction of the WWTP will result in commonplace construction related effects that will potentially impact on neighbouring landowners and users of Glenbrook Beach Road. At times there would be unavoidable inconveniences and disruption, although these adverse effects would be temporary for the period of construction only. We agree with Mr Zhang that construction effects can be mitigated and managed (with specified limits and regular monitoring) to a generally acceptable and reasonable level of inconvenience through the various construction management plans proposed by Watercare.

Effects on Māori cultural values

69. Mr Otene Reweti⁴⁴ in his brief of evidence⁴⁵ on mana whenua and engagement provided a summary overview of Watercare's engagement. Key points included:

- Watercare consults with mana whenua on all projects that have the potential to affect man whenua through the Mana Whenua Kaitiaki Forum.
- Ngāti te Ata and Ngāti Tamaoho gave feedback during the site selection process in 2021 and 2022. This feedback was taken into account in the site selection process.
- Ngāti te Ata and Ngāti Tamaoho continue to be actively engaged with Watercare. As a result of this engagement Watercare has made changes to the project.
- Te Akitai registered their interest in the project after a site visit to 372 Glenbrook Beach Road but no concerns were raised.

70. Mr Zhang in his s.42A Report noted⁴⁶ the key mana whenua concerns with the site and how the development of the NoR and the site design/layout has taken into account their concerns.

71. Mr Zhang also noted:

Ngāti Te Ata notes its support in principle of a 'single modern best practice technology plant to service the southwest'. Ngāti Te Ata prefers that such a plant is located on Watercare's existing Waiuku site.⁴⁷

Ngāti Te Ata requests that the WWTP and associated pipeline infrastructure are futureproofed to account for existing and future development in Clarks Beach,

⁴⁴ Pou Hononga (Relationship Advisor) at Watercare.

⁴⁵ EV54.

⁴⁶ Section 42A Report at [3.4.7].

⁴⁷ Ibid at [379].

*Kingseat, Glenbrook Beach, Glenbrook and Waiuku.*⁴⁸

*Ngāti Te Ata requests that Auckland Council and Watercare formally acknowledge that any Ngāti Te Ata support for the WWTP does not signal a change of stance in its opposition to any wastewater discharge into the Manukau Harbour.*⁴⁹

*Ngāti Te Ata have requested that conditions be imposed to recognise the key cultural importance of the area.*⁵⁰

Ngāti Tamaoho requests the following relief:

- *Consultation with Mana Whenua in relation to the archaeological sites that have been identified by the Taihiki Watermain Crossing archaeological report; and*
- *Involvement of Mana Whenua in the design process.*⁵¹

72. Mr Zhang recommended⁵² amendments to the conditions to accommodate the requests of Ngāti Te Ata and Ngāti Tamaoho.

Panel findings

73. The Panel accepts that Watercare has robust processes for engaging with mana whenua. The Panel notes that Mr Zhang's recommended amendments to conditions were adopted by Watercare.⁵³

Stormwater and flooding related effects

74. As part of their application Watercare provided a Stormwater and Flooding Assessment.⁵⁴ The assessment notes:

The assessment of the potential flooding and stormwater impacts of the activities authorised under the proposed designation was based on an indicative design and desktop information available from AC GIS (GeoMaps), GD01 and GD05 and the relevant provisions of the AUP-OP, and information obtained from two visits to the WWTP site.

75. Nicholas Keenan addressed stormwater and flooding aspects of the NoR for Watercare. In summary he was of the opinion that:⁵⁵

⁴⁸ Ibid at [383].

⁴⁹ Section 42A Report at [385].

⁵⁰ Ibid at [387].

⁵¹ Ibid at [389].

⁵² Ibid at [393].

⁵³ EV59 Attachment 1 – Conditions.

⁵⁴ AEE Appendix I Stormwater and Flooding Assessment prepared by Loudene Marais.

⁵⁵ EV6 at [4.1 – 4.3].

- The proposed location for the WWTP footprint within the site is high on the ground and not at risk of flooding from upstream catchments or downstream coastal areas.
 - All stormwater and flooding effects from construction can be appropriately managed by applying Auckland Council Guideline GD05 (erosion and sediment control) and measures outlined in the Construction Management Plan.
 - In terms of operational effects the site has more than enough land available to manage stormwater effects by the provision of a stormwater treatment pond/wetland designed to comply with Auckland Council's Guidance Document GD01. The site has sufficient hydraulic fall to provide effective drainage.
 - The risk of the WWTP creating flood hazard effects on other properties through the discharge of stormwater, loss of flood plain or diversion of overland flow paths will be addressed through a Hazard Report that is to be submitted to Auckland Council as part of the first Outline Plan.
76. The s.42A Report records⁵⁶ that Mr Trent Sunich, Auckland Council's stormwater consultant, undertook an assessment of the stormwater and flooding effects of the Project, including a review of the AEE and associated assessment, and the submissions received on the NoR.
77. Mr Sunich's assessment focused on the flood risk associated with the proposed WWTP. He noted the assessment of the effects of stormwater discharges from the creation of impervious surfaces at the site will be addressed at a later date as a regional consenting matter in accordance with the applicable rules in the AUP such as Chapter E8 Stormwater discharge and diversion. Notwithstanding this, Mr Sunich generally considered that the indicative stormwater management design is fit for purpose.
78. Mr Sunich concluded that at the NoR stage, the assessment undertaken is appropriate noting:
- Overall it is concluded that the potential flood hazard effects in relation to the 1% AEP rainfall event are understood and there is a provision for mitigation as is outlined in the Flooding Assessment and through the performance-based requirements stipulated in the draft NoR conditions.*
79. In his Memorandum⁵⁷ to Council Mr Sunich addressed the submitters⁵⁸ concerns in Section 4 of his memorandum and Mr Keenan in his evidence also addressed the stormwater and flooding issues raised by submitters. Mr Keenan records a number of submissions (e.g, submissions: 35, 44, 244 & 231) raised issues regarding the potential

⁵⁶ Section 42A Report at [282 – 287].

⁵⁷ Memorandum (technical specialist report to contribute towards Council's section 42A hearing report – Attachment 3G), 4 December 2023.

⁵⁸ For example: Shelley Moynihan (36); Jacqueline Lee Sibbald (44); Ian Smith (220) & John & Bernice Ramsey (223).

for the flooding of Glenbrook Beach Road opposite the site due to the filling up of Pond 1. The existing dam crest levels and activities on the site do not appear to impact Glenbrook Beach Road because the dam crest level at Pond 1 is significantly lower than the road and upstream properties.

80. The main issue causing flooding upstream of the road appears to be connected to the limited capacity of drainage within the road reserve. Watercare intend to remove Pond 1 entirely which will reduce flood risk at the road. In the event that Pond 1 is not removed, other flood mitigation works would be identified through the Flood Hazard Report.
81. Mr Keenan also noted that the proposed NoR conditions required preparation of a Flood Hazard Report as part of the detailed design of the WWTP to be submitted to Auckland Council with the first Outline Plan.

Panel Finding

82. On the evidence, the Panel finds that:
 - (a) Stormwater and flooding have been appropriately addressed;
 - (b) Due consideration has been given to the issues raised in submissions;
 - (c) Flooding issues will be addressed in the Flood Hazard Report; and
 - (d) Stormwater matters will be addressed during a separate consenting phase.

Archaeological and historic heritage effects

83. One submitter raised concerns about potential adverse effects of the WWTP on archaeological values and features and on historic heritage.⁵⁹ The evidence from Dr Matthew Campbell, Watercare's heritage specialist, was that no archaeological evidence had been identified in either published resources or during site investigations. However, he noted that there was potential for unrecorded archaeology to be present on site.⁶⁰ He recommended that standard accidental discovery protocol conditions be included in the designation, and that Watercare apply to Heritage New Zealand Pouhere Taonga for an authority to modify or destroy any unrecorded sites once the final design of the WWTP is known.
84. Council's specialist reviewer, Mica Plowman, agreed that the WWTP would not have effects on any known archaeological or other historic heritage values.⁶¹ She noted there was potential for sub-surface remains of an early 20th century structure on the site, and recommended a designation condition requiring archaeological assessment and reporting

⁵⁹ EV30 at [101-105].

⁶⁰ Evidence of Dr Matthew Laurence Campbell (Archaeology), dated 19 January 2024.

⁶¹ Section 42A report at [226].

if any such remains were exposed.⁶² This recommended condition was accepted by Watercare, with minor changes.

Panel Finding

85. We agree with the conclusion of Mr Zhang in his s.42A Report that adverse effects on archaeology and historic heritage can be adequately avoided, remedied or mitigated through appropriate designation conditions.⁶³

Effects on landscape, natural character, rural character and amenity values

86. The extent of potential adverse effects on landscape character and visual amenity values was a key point of contention between Watercare's expert witness (Tom Lines of Boffa Miskell), Council's expert reviewer (Stephen Brown) and submitters during the hearing.

87. Mr Lines concluded in his evidence that adverse effects on landscape character and on the natural character of the on-site wetlands and the Taihiki River would be low in extent.⁶⁴ He considered that although the WWTP would be large in scale and 'not typically rural' in character, its location in the centre of the site, the range of scales of buildings and structures, the use of generally recessive external materials and the proposed mitigation planting would adequately mitigate adverse effects on the rural landscape character.

88. In terms of adverse visual effects on neighbours and members of the public, Mr Lines concluded that these would be between very low and moderate-high in extent during Stages 1 and 2 (first 30 years), reducing to neutral or low-moderate over that time as planting matured.⁶⁵ Ms Bell's conclusion in her planning evidence on behalf of Watercare was that these were not significant adverse effects on the environment.⁶⁶

89. By the close of the hearing, there were a number of proposed changes to the planting mitigation strategy, compared with that in the notified NoR. These included:

- Removal of the western irrigation pond to allow continuous screen planting along Glenbrook Beach Road;
- Removal of all proposed exotic shelter tree planting, with only indigenous species proposed;
- Inclusion of a greater number of taller growing indigenous species in the mitigation planting mix; and

⁶² Ibid at [225].

⁶³ Ibid at [234].

⁶⁴ EV9 at [4.4].

⁶⁵ Ibid.

⁶⁶ EV10 at [8.37].

- Earlier establishment of mitigation planting along Glenbrook Beach Road and to the north of the WWTP, with this planting to be implemented in the first planting season following approval of the Landscape Management Plan, rather than after the start of construction.
90. Council's landscape reviewer, Mr Stephen Brown, agreed with Mr Lines that impacts on the natural character values of the river and on the values of the wider landscape would not be 'significant'. However, he considered that effects on amenity values, including appreciation of the locality's pleasantness, aesthetic coherence and sense of place, remained of concern. Taking into account the offered changes to the planting mitigation strategy and designation conditions, Mr Brown still identified up to a high level of adverse visual amenity effect on a number of neighbours and on people using Glenbrook Beach Road. His conclusion was that the proposed WWTP would not 'fit into' its rural and coastal setting and would not be consistent with relevant provisions of the Mixed Rural and Rural – Coastal Marine Zones which address rural character and amenity values.⁶⁷ He recommended either a more comprehensive mitigation planting scheme and/or architectural measures to make the proposed plant appear more recessive and 'rural' in character.
91. A number of submitters raised concerns about the effects of the WWTP on landscape and visual amenity values, and these concerns were reinforced in presentations at the hearing. The key issue for these submitters was the loss of rural character and amenity as result of the visibility, height, bulk and industrial character of the WWTP. Some directly affected neighbours sought additional mitigation planting or earth bunds combined with planting, and others were concerned that any removal of shelter belts on the adjoining property to the south (338 Glenbrook Beach Road) would open up public and private views of the plant. Representative comments included those of:
- Jaqueline Sibbald⁶⁸
'Planting a large industrial style wastewater treatment plant into the middle of a beautiful rural area and then trying to soften its appearance over some 5 to 25 years is a pretty harsh imposition on the local community. Particularly those of us that may well not live to see the ultimate softening.'
 - Olivia Jackson⁶⁹
'What is proposed to be built is an industrial installation of a significant scale in a visibly prominent part of the site. . . . I will not see the plant from my property but I will see it multiple times per day when I am passing it on the road. The Boffa Miskell report states that it will take approximately 10 years before mitigation planting will

⁶⁷ EV50.

⁶⁸ EV36 at [10].

⁶⁹ EV21 at [40-44].

begin to 'visually soften and partially screen' the site. The report states that even at Stage 3, some 30 years away that the site will not be screened entirely. This is unacceptable.'

- Susan Hale⁷⁰

'In the morning when I drive out our driveway at the road I'm met with a beautiful view over the lake and across the countryside. If its early I can see the sunrise. It's an exhale moment that sets me up for the day. That's priceless! Planting trees may mitigate one problem but it creates others.'

92. The proposed WWTP would be located within a productive rural landscape, which has a high level of pleasantness, cohesion and tranquillity, and a strong connection to the Taihiki River, all of which are derived from its relatively intact rural coastal location, setting and land use. The WWTP would eventually cover 6ha of the site and include a range of buildings, including gantries of up to 14m in height on its highest and most visible point. Some of these structures would still require non-recessive finishes for safety reasons. Our visit to the Pukekohe WWTP confirmed our understanding from the evidence that the facility would be distinctly industrial, rather than rural in character, and in that sense would be out of character. Allowing the requirement would therefore not maintain local rural amenity and character.
93. We accept that proposed mitigation planting along Glenbrook Beach Road, if established 1-3 years prior to construction of the Stage 1 WWTP, would potentially largely screen the built parts of the WWTP from the adjacent stretch of road within the short to medium term. However, current views from the road over the open rolling agricultural land, which views contribute significantly to the overall rural character of the locality in our finding, would be obscured and glimpse views of the plant would be available at the entry and from higher parts of Glenbrook Beach Road to the south.
94. Mitigation planting would be less effective for adjoining neighbours to the north, particularly those at 454, 450 and 424 Glenbrook Beach Road and 36 and 62A Dunsmuir Road, with the WWTP remaining prominent and visually intrusive for up to 20 years. Mitigation planting proposed for 424 Glenbrook Road could impact significantly on the amenity of this property, in terms of views and shading, and has not been agreed with the property owners.

Panel finding

95. We prefer the evidence of Mr Stephen Brown and consider that adverse visual amenity effects and impacts on rural character cannot be satisfactorily addressed by the mitigation planting strategy and proposed conditions. Our finding is that the WWTP would detract

⁷⁰ EV40 at [3].

from the rural character and visual amenity values of the local landscape setting and that these adverse effects would be significant. The WWTP would introduce built form of an industrial scale and character into this pleasant rural landscape, which would be very difficult to mitigate to an acceptable level within a reasonable timeframe. The mitigation itself would detract from the rural amenity values that the site presently contributes to.

Lighting effects

96. Several submitters raised the issue of potential light spill from the WWTP at night time and adverse effects on the generally dark nature of the landscape.
97. Proposed conditions of the designation include the requirement to prepare an Operational Lighting Plan for Council certification. This plan is to demonstrate how lighting will manage sky glow, glare and light spill effects on neighbouring properties. Taking into account this condition, the landscape assessment included in the notified NoR⁷¹ stated that:

From properties to the north:

Impacts related to the use of lighting around the site are anticipated to last for short durations intermittently when the plant is required to be accessed in low light conditions. These lights will be a new component in the typically unlit rural landscape. However, use of lighting is not unusual as it is recognised that there are times when agricultural crops, found widely in the immediate area, are harvested at night time for prolonged periods under artificial lighting.

From elevated properties accessed from Glenbrook Beach Road:

The lit elements of the site will stand out in the generally unlit landscape, but only for intermittent short bursts when access in low light conditions is required.

98. In reviewing the landscape assessment, Mr Stephen Brown did not raise any specific concerns about lighting effects.

Panel finding

99. Taking into account the intermittent nature of lighting requirements at a WWTP, we agree with Mr Zhang's conclusion in the s.42A Report that any lighting effects from the ongoing operation of the plant would likely be adequately managed to an acceptable level by the proposed Operational Lighting Plan.

⁷¹ Boffa Miskell, Landscape, Visual and Natural Character Effects Assessment, pages 34 & 36.

Air Quality - odour effects

100. The primary discharge to air from the proposed WWTP is odour, with the potential for adverse odour amenity effects on surrounding areas. These potential effects were a significant concern for submitters living in proximity to the site.
101. The evidence of Mr Noonan⁷² was that the odour buffer around the plant would allow any odour to be dispersed and diluted such that there would be no adverse amenity effect outside the site. Standard odour mitigation measures would be implemented. Mr Noonan told us that the required buffer from potentially odorous processes was at least 200m to the site boundaries and at least 300m to existing neighbouring dwellings. The proposed WWTP can achieve these distances, with the closest dwellings being 320m (375 Glenbrook Beach Road) and 345m (393a Glenbrook Beach Road) from the facility.
102. Mr Noonan considered that even if higher odour emissions occurred during abnormal operating conditions, the risk of adverse odours at these dwellings would be low. He took into account prevailing wind directions in the area at times of poor atmospheric dispersion conditions (i.e., low wind speeds). In support of this opinion⁷³, he stated that there had been no complaints about odour from the comparable plant at the Pukekohe WWTP since it was upgraded in 2019-2022.
103. Watercare has volunteered a designation condition relating to odour as follows:
- 10. Beyond the boundary of the site, there shall be no odour caused by discharges from the wastewater treatment activities, which in the opinion of an enforcement officer, is the cause of a noxious, dangerous, offensive or objectionable effect.*
- Advice Note: An odour management plan will be required as part of the discharge permit required under the regional plan rules of Chapter E14 of the AUP for the WWTP. The odour management plan will include requirements in relation to recording and responding to complaints from the community and a requirement to report the complaints to Auckland Council within a specific timeframe of its receipt.*
104. Council's air discharge specialist, Ms Rachel Terlinden, reviewed⁷⁴ the assessment of odour effects. She identified the following processes as being most likely to result in odour discharges:
- Inlet pump stations and works facility;
 - Emergency storage tanks (if wastewater is anaerobic).
 - Sludge storage ponds; and

⁷² EV5 at [5.9 – 5.12].

⁷³ Ibid at [8.22].

⁷⁴ Section 42A Report, Attachment 3F Air Discharge pp 240 -251.

- Dewatering facility and dewatered sludge storage tanks.
105. Ms Terlinden advised us that standard odour mitigation measures could be incorporated into the WWTP design including enclosure and extraction of air from the process sources identified above, and subsequent use of biofilters, which are anticipated to have about 95% efficiency. Her memo aligned with Mr Noonan's evidence in that she concluded there would be only low levels of odour emitted and that this would generally only be detected within approximately 30-50m of any tanks. She agreed that the proposed odour buffer is adequate for dispersion and dilution of odour.
106. Submitters were concerned that offensive and unpleasant odours would be detectable outside the site and would affect both their amenities and the safety and saleability of food produced on neighbouring land. For example:
- Kathryn & John Anderson told⁷⁵ us:
BECA used, and Watercare approved, a 200m "odour buffer" zone. In the report, it advised that if there was to be an issue with odour, that people are used to odours in the country – is this a respectful comment?
 - Nicky Hartley⁷⁶:
We have been told it won't smell but I have my doubts on that too and when we find out that it does, it's too late. I realise that we are going to hear from experts (paid for by the council) that says all of these concerns are nothing but again none of them are going to live here.
107. A particular concern was potential odour when biofilters require maintenance. David Jackson⁷⁷ and Mark Gasson⁷⁸ pointed out that there is a dwelling at 407 Glenbrook Beach Road that was not identified in Mr Noonan's report and is the closest dwelling to the plant footprint.
108. Several submitters were also concerned that the odour condition proposed by Watercare requires assessment by an enforcement officer rather than relying on the experience of those affected or on the opinion of a qualified third party. Submitters sought a detailed Odour Management Plan condition as part of the designation, including a process for community reporting.
109. Both Mr Noonan and Ms Terlinden considered it was more appropriate to impose specific conditions at the time of the air discharge resource consent, following detailed design of

⁷⁵ EV46 at [3].

⁷⁶ EV41.

⁷⁷ EV20.

⁷⁸ EV43 at [53].

the WWTP. Watercare added the advice note in paragraph 75 above to clarify this outcome.

110. In response to the submissions, Mr Noonan said that biofilters within the plant are sufficiently separated from nearly all dwellings and that higher odour emissions during biofilter media replacement (every 5-10 years) or during breakthrough of partially treated air would be well dispersed. He said that higher odour emissions could be avoided through biofilter design and through appropriate maintenance and monitoring procedures. In relation to the additional dwelling at 407 Glenbrook Beach Road, Mr Noonan assessed this as being 316m from the plant boundary and therefore outside the minimum 300m separation distance. During questioning, he confirmed that odours emitted by the WWTP would be unlikely to be absorbed by fruit or vegetables grown on the designation site or on adjoining land.

Panel Finding

111. After consideration of the expert evidence and the submissions, we find that potential adverse amenity effects from odour emissions can be effectively managed through WWTP design and the defined 200m and 300m odour buffers. An air discharge consent would be required prior to the operation of any future plant and details of odour mitigation measures and an Odour Management Plan would form part of that consent. Nevertheless, we consider that proposed Condition 10 to the designation is a valuable 'back-up' that provides some level of comfort to potentially affected parties. The proposed monitoring and complaints reporting required in proposed Conditions 45 to 47 also provide a mechanism for community input and for monitoring of compliance with Condition 10.

Ecological effects

112. Ecological concerns were referenced by a number of submitters. For example:

- Debbie Tapper told us:

NZ Dabchick. A species that is endemic to New Zealand and was considered endangered to a long period of time. It is slowly increased its numbers to around 2000 but is still a near threatened species. It lives in farm dams, ponds formed for stock water, including the one situated at 372 Glenbrook Beach Road. I'm sure that they will not be seen again here in this area once the plant is up and running due to the noise factor.

113. The ecological features of the site were comprehensively described in Watercare's Ecology Assessment prepared by Boffa Miskell.⁷⁹ This assessment confirmed the site contains the following features:

⁷⁹ AEE, Appendix F Ecology Assessment 29 August 2023.

- Two watercourses;
 - Three natural wetlands which meet the definition of a natural inland wetland under the National Policy Statement on Freshwater Management (**NPS-FM**);
 - Two artificial irrigation ponds; and
 - Salt marsh.
114. The s.42A Report notes⁸⁰ that two marine SEAs extend into the site (*SEA-M2-31* and *SEA-M2-31w1*) at its coastal edge.
115. The s.42A Report provides a useful summary of the key findings of the Ecology Assessment:
- The dominant land use on the site is market gardening with highly cultivated and exposed soils.
 - Salt marsh habitats around the coastal periphery of the site are of high value. The habitats are currently fenced to allow for natural regeneration.
 - Vegetation within the site is consistent with what is expected in the surrounding rural land uses (i.e., pasture, crops, hedgerows and shelterbelts). Indigenous vegetation is very limited on the site and is predominantly located around the wetlands and in the salt marsh.
 - Some coastal birds which use the site intermittently for roosting may be discouraged from doing so during the construction period.
 - The site has been assessed as a very low-quality habitat for bats and as flythrough routes given the lack of mature trees on site or in the immediate surround environs.
 - The site has been assessed as being a very poor habitat for indigenous lizards
 - As noted above, three natural inland wetlands were identified on the site. All three meet the definition of a natural inland wetland under the NPS-FM⁸¹.
 - The proposed WWTP will avoid the two watercourses on the site.

⁸⁰ Section 42A Report at [201].

⁸¹ The National Environmental Standards for Freshwater sets out regulations regarding activities near natural inland wetlands. The indicative layout of the proposed WWTP puts it within 100m of wetland 3. Consenting requirements may be triggered depending on the confirmed design.

- Construction earthwork's⁸² are expected to occur at least 100m away from the coastal marine area.
 - The smaller manmade pond (nearest to Glenbrook Beach Road) may be removed.
116. The s.42A Report records⁸³ a significant number of submissions raise concerns around the quality of the treated wastewater discharge and associated environmental effects on the Manukau Harbour. Submitters either seek withdrawal of the NoR or a change in the discharge location (i.e. to the Tasman Sea or to land) to avoid effects on the harbour. For example:
- Jim Jackson provided⁸⁴ a representation statement on behalf of the Manukau Harbour Restoration Society;
 - Chris Tapper shared⁸⁵ his concern over the impact wastewater could potentially have on the Manukau Harbour; and
 - Monique and Mike Huber also expressed⁸⁶ concern over the potential pollution of the Manukau Harbour.
117. Mr Jason Smith, on behalf of Council, assessed the ecological concerns raised in submissions noting:
- *Several submissions have been received in relation to the restoring natural wetlands lost or modified during the construction of the existing irrigation ponds on site. Whilst the restoration of natural wetlands, both in terms of extent and values, is supported from an ecological perspective, I am not aware of a mechanism to link this to the proposed NoR/Designation unless the applicant offers it as an undertaking.*
 - *Kahawai Point Development Limited raised two submission points that seek to further enhance ecological values of the site by the planting of native species and undertaking pest control. From an ecological perspective, these measures would assist in improving the ecological values of the site and are therefore supported, noting as I have done above that they would not be required to address any specific impact, effect or concern.*
118. Mr Smith did not recommend any specific management measures in relation to ecological matters as he has concluded that the application has sufficiently addressed the potential

⁸² Construction of the WWTP has the potential to mobilise sediments into the marine environment. Erosion and sediment management will however ensure that sediment intrusions to these downstream habitats will be minimised.

⁸³ Section 42A Report at [394].

⁸⁴ EV38.

⁸⁵ EV32.

⁸⁶ EV22.

ecological effects associated with the NoR, with future consenting processes being able to be relied upon if the need arises.

Panel finding

119. The Panel finds that the ecological effects of the NoR have been adequately assessed and will be appropriately addressed by the proposed Conditions.
120. With respect to the ecological concerns raised with the discharge of treated wastewater to the Manukau Harbour from the WWTP (if established), this discharge is already lawfully authorised by a discharge permit held by Watercare, and we have no jurisdiction to interfere with that permit.

Operational traffic effects

121. The principal traffic generation effects of concern to submitters related to the construction phase of the project and number of submitters⁸⁷ referenced their concern that there would be on-going traffic impacts associated with the daily operation of the plant.
122. In terms of operational traffic effects, the Applicant's AEE records:⁸⁸

The traffic during the operation phase will involve a small number of vehicles accessing the site daily- understood to be 10 or less vehicles travelling to and from the site on a daily basis. The volume of traffic generated by the site is expected to be consistent with that generated by the surrounding properties.

123. Mr Zhang, in the Section 42A made a similar observation:⁸⁹

When the proposed WWTP is operational, the Transportation Report considers that traffic volumes to and from the site will be low and indiscernible with respect to the background traffic on Glenbrook Beach Road.

124. Mr Mark Gasson (for Stop Polluting Manukau Harbour Incorporated) in his section on 'long term operations',⁹⁰ questioned the daily truck movements (noted above) given the advice that trucks will be moving dewatered sludge from the site which appears to be additional to the occasional truck movements to deliver supplies and equipment to the site.
125. Mr Alasdair Mcgeachie in his rebuttal evidence for the applicant noted⁹¹ in addressing Mr Gasson's concerns:

I have been advised by Mr Brian that once the WWTP is operational a dewatered biosolids "cake" would typically be removed from the site five days per week, generating two truck movements per day at stage 2. In the future at stage 3, this

⁸⁷ For example: EV30 & EV31.

⁸⁸ AEE at [6.7].

⁸⁹ Section 42A Report at [166].

⁹⁰ EV30 at [88 – 96].

⁹¹ EV8A at [3.16].

could potentially double to four truck movements per day. Grit and screenings would need to be removed from site in a separate skip, which might generate an additional two to four truck movements per week. These are not significant numbers and do not change my view on the traffic effects from the long operation of the WWTP.

Panel Finding

126. In the absence of evidence which challenged the observation of the AEE and s.42A Report we find that the volume of traffic generated by the operating WWTP is expected to be low and generally consistent with that arising from the current use of surrounding properties.

Construction and operational noise effects

127. The proposed WWTP will generate noise during its operation and also during the construction process. Evidence on the predicted noise effects was provided by Mr Cottle of Marshall Day Acoustics.⁹² In relation to operational noise, Mr Cottle told us that a 'noise budget' approach had been used to predict the operational noise budget for the WWTP. This basically involved 'working back' from the closest residential dwellings to ensure that day-time and night-time limits for operational noise in the AUP (at E25.6.3(1)) were complied with. Noise mitigation measures for the plant, including such aspects as enclosure of noise generating processes, would then be designed to achieve the defined noise budget. Mr Cottle was confident that it was feasible to treat the noise sources acoustically to achieve the defined noise budget, and this was confirmed by Council's noise specialist Mr Gordon.⁹³
128. The AUP night-time operational noise limit for sensitive receivers is 45dB L_{Aeq}. Mr Cottle's evidence was that this would fit into the range of existing night-time ambient noise (28-51dB L_{Aeq}) but would be above the average of 39 dB L_{Aeq}. Noise would be audible at some dwellings for some of the time and would have moderate effects in the context of the existing ambient noise environment as a worst case. He explained that 'moderate' means some audibility outside and potential audibility inside when windows are ajar for ventilation.
129. In response to recommendations from Mr Gordon in his specialist review of the acoustic report,⁹⁴ Watercare offered a revised noise management Condition 39 that set a lower 40 dB L_{Aeq} night-time noise limit for Stages 1 and 2 of the WWTP, with the 45 dB L_{Aeq} limit applying at Stage 3. The evidence of Mr Cottle was that this change would mitigate potential adverse effects on amenity at the nearest dwellings during Stages 1 and 2, and would provide some 'headroom' when designing Stage 3 of the plant. Mr Gordon

⁹² EV7.

⁹³ EV49 at [1].

⁹⁴ Section 42A Report, p42.

confirmed that a 5 dB L_{Aeq} reduction in noise level would be subjectively noticeable compared with the permitted zone noise level.⁹⁵

130. In response to questions from the Panel, Mr Cottle provided some examples of noise sources comparable to the proposed 40 and 45 dB L_{Aeq} night-time limits:
- A fridge operating on hard flooring is likely to produce noise in the range of 30-40dB; and
 - Outside, wind induced noise on foliage could produce noise in the range of 40-45dB.
131. In relation to construction noise, Mr Cottle stated that the project would readily comply with the limits set out in NZS 6803:1999 (70 dB L_{Aeq} / 85 dB L_{AFmax} for day-time work hours), and that there would be no adverse noise effects during day-time activities. However, large early morning concrete pours would be required 3-5 times over a 9-month period during Stage 1 construction⁹⁶, and noise from these activities would only marginally comply with the night-time noise limit at the closest receivers (45dB L_{Aeq} for 375 Glenbrook Beach Road). At the hearing Mr Gordon told us that the applicable AUP construction noise limit during night-time hours is actually 40 rather than 45dB L_{Aeq} ⁹⁷. His evidence was that this is intentionally lower than the 45 dB L_{Aeq} limit in NZS 6803:1999.
132. Construction activities would not be able to comply with the AUP construction noise standard during the 3-5 early morning concrete pours required for construction of Stage 1. Mr Cottle maintained that the exceedance would not cause adverse effects on amenity or disturb people's sleep. He recommended that this component of the construction be managed through the project's CNMP, including through notifying residents in advance of each concrete pour, ensuring that the best practicable option for noise mitigation/management is implemented, and undertaking noise monitoring.⁹⁸
133. In closing submissions, Counsel for Watercare argued that it was open to the Panel to include the higher NZS 6803:1999 limit rather than the permitted activity standard from E25.6.7 (40dB L_{Aeq}) in the designation conditions.⁹⁹
134. Many of the submitters raised concerns about operational and/or construction noise from the WWTP. Particular issues included:
- the audibility of constant operational noise from nearby residences, exacerbated by the fact that the local area is accustomed to a quiet rural environment, particularly at night;

⁹⁵ EV49, at [5].

⁹⁶ EV59 at [6.9(e)].

⁹⁸ EV 49 at [9].

⁹⁹ EV7 at [9.4].

- the effect of construction noise on residential amenity, particularly for works outside normal working hours. This included the noise from early morning concrete pours, and engine braking noise from concrete trucks;¹⁰⁰ and
 - the effect of construction noise and vibration on the health of deer farmed at the Ramsey's property at 338 Glenbrook Beach Road.¹⁰¹
135. In response to the last point, Watercare included clauses in proposed Condition 43 of the designation requiring the Construction Noise Management Plan to:
- Describe how the effect of construction noise on farmed deer at 338 Glenbrook Beach Road from mid-February to mid-May in any calendar year is to be remedied or mitigated; and
 - Require consultation with affected properties prior to construction to develop proposed noise management measures.
136. In his planning evidence on behalf of the Ramseys, Mr Dawson said that these conditions largely addressed the submitter's concerns about noise and vibration effects on deer health.¹⁰²
137. Other submitters remained concerned about operational and construction noise, even with the lower night-time operational noise limit during Stages 1 and 2 and the amended provisions of the Construction Noise Management Plan.¹⁰³

Panel Findings

138. The Panel has carefully considered the evidence provided by the relevant experts for Watercare and the Council, and the concerns raised in submissions and at the hearing. In terms of operational noise, we are satisfied that subject to the proposed conditions, the WWTP would meet both day-time and night-time AUP noise standards during Stages 1 and 2. The operational noise of the WWTP would not result in adverse effects on residential amenity during these stages.
139. The expert evidence we heard also led us to conclude that, while the AUP night-time noise limit of 45 dB L_{Aeq} could be complied with during Stage 3, there was potential for constant operational noise to be audible outside some dwellings, and inside these dwellings if windows were open. In order to manage these potential effects, Watercare proposed an amendment to Condition 39A of the designation. This included requirements as part of the Outline Plan of Works for Stage 3 for:

¹⁰⁰ EV30 at [63].

¹⁰¹ EV13 at [12].

¹⁰² EV14 at [51].

¹⁰³ For example, EV30, EV27, EV17A, EV28, EV21, EV22.

- monitoring of Stage 1 and 2 operational noise;
 - the submission of an acoustic design report showing that it is impracticable to design and operate the WWTP at Stage 3 so that the night-time noise complies with the 40 dB/LAeq limit; and
 - the submission and Council certification of an operational noise management plan for Stage 3 that includes identification of the most affected properties, measures to be used to mitigate effects, a complaints management system for noise complaints, and details of noise monitoring and reporting to be undertaken in the event of any complaints received.
140. While this condition may not ensure that all noise effects on nearby residents during Stage 3 are avoided, we consider it provides an appropriate process to minimise night-time noise nuisance and a clear process for recording and responding to noise complaints.
141. In relation to construction noise, the Panel finds that adverse amenity effects during construction working hours would be adequately managed by the proposed designation conditions.
142. However, we do not accept the advice of Watercare’s Counsel in closing submissions that the night-time construction noise limit should be that in NZS 6803:1999 (45dB LAeq) rather than the AUP standard in E25.6.7 (40dB LAeq). The evidence of Mr Gordon was that this AUP standard has been intentionally drafted to reduce potential night-time noise nuisance from construction activities, and we prefer his evidence as to the appropriate night-time limit.
143. As a consequence, we find that the early morning concrete pours during Stage 1 construction would exceed the appropriate limit and that they are likely to result in intermittent noise nuisance for some nearby residents. Given that these effects would only occur 3-5 times during construction and that advance notice would be given to residents, we find that the adverse effects would not be significant.

Positive Effects

144. The Panel accepts that a new WWTP in the area will result in a range of positive effects on the environment. The positive effects were set out in Ms Bell’s evidence namely:¹⁰⁴
- *A WWTP would support residential growth anticipated in the Southwest Growth Area under the AUP(OP), and enable it to take place. Social and economic benefits will result from wastewater treatment enabled and will support the development of residential and business zoned land served by the plant without any additional*

¹⁰⁴ EV10 at [7.1 – 7.5].

challenges (including in particular those associated with on-site wastewater treatment or limited capacity in public wastewater networks).

- *A new WWTP would allow Watercare to decommission some of the existing WWTPs all of which have their own adverse effects (mainly from the discharges and associated consented overflows that are associated with their operation). This allows the positive effects associated with the higher quality treatment that will be delivered by the new plant and the improved discharge location (in the Waiuku Channel adjacent to the Clark's Beach Golf Course) to be fully realised.*
- *The provision of a new WWTP designed to meet the future needs of planned growth avoids the reliance on underperforming existing infrastructure or private wastewater schemes. These private wastewater schemes (often due to a lack of proper maintenance on an ongoing basis) have a greater tendency to generate adverse effects on water quality in streams and coastal waters that can harm human health and the environment. In addition, this project has a longer-term future potential positive effect of enabling the reuse of treated water.”*

145. Watercare’s Closing Legal Submissions advocated:¹⁰⁵

The positive effects of the proposal summarised in paragraph 7.1 of Watercare’s opening submissions were not rebutted during the hearing. Positive effects are acknowledged in the s 42A report as being significant and long term.

146. We accept this submission and note that submitters were in general agreement that there would be real benefits stemming from a new WWTP in the southwest growth area.

147. We received no evidence on the positive effects of locating the WWTP at the Glenbrook Beach Road site specifically. By reference to the Project objectives, we speculate that they might include enabling Watercare to keep ‘the overall costs of service to customers at sustainable levels’ and help it to ‘achieve its targets for reducing carbon emissions’, both of which outcomes would likely contribute to sustainable management (per s.5) and to achieving relevant Part 2 matters (i.e., s.7(i)).¹⁰⁶ But we are uncertain as to whether those positive effects would arise only from a WWTP located at 372 Glenbrook Beach Road, or whether they could be achieved, to a greater or lesser extent, at another location. In the absence of more detailed evidence on this issue, we are reluctant to make any definitive findings.

148. Overall, we find that a new WWTP in the southwest growth area will have positive effects for people and communities living within that area.

¹⁰⁵ EV59 at [2.7].

¹⁰⁶ In this case, by reducing the generation of greenhouse gases during construction activities, thus assisting to reduce climate change and its consequences.

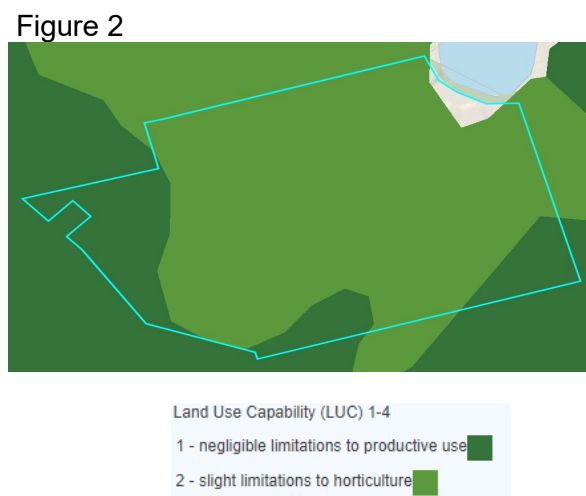
SECTION 171(1)(a) - RELEVANT STATUTORY PROVISIONS

Introduction

149. Section 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 Glenbrook area.
150. The analysis within the s.42A Report¹⁰⁷ and the application¹⁰⁸ and evidence¹⁰⁹ of Watercare contained a comprehensive review of the framework established by these documents including the statutory provisions as they relate to the site. We set out our findings in relation to them below.

The National Policy Statement for Highly Productive Land 2022

151. The NPS-HPL came into force on 17 October 2022 and requires the protection of highly productive land that is zoned either general rural or rural production, is predominantly LUC 1, 2 or 3 land, and forms a large and geographically cohesive area (clause 3.4(1)). The NPS-HPL requires regional councils to map highly productive land in the regional policy statement. This mapping has yet to be completed by Auckland Council. Until such time as that occurs, the definition of highly productive land includes land that is zoned general rural or rural production and is classified LUC 1 – 3 land.
152. Figure 2¹¹⁰ depicts the LUC classes on the site.



¹⁰⁷ Section 42A Report at [443 – 520].

¹⁰⁸ AEE at section 4.

¹⁰⁹ EV10 at Section 8.

¹¹⁰ Section 42A Report at [447].

153. Due to the existence of LUC 1 and LUC 2 land on the site the Panel must have particular regard to the relevant provisions of the NPS-HPL.
154. The NPS-HPL is in four parts: Preliminary provisions; Objective and Policies; Implementation; Timing. The most important aspects of the NPS-HPL for our task under s.171(1)(a) is its single objective - to protect highly productive land for use in land based primary production both now and for future generations, and the following of its policies:

Policy 1: Highly productive land is recognised as a resource with finite characteristics and long-term values for land-based primary production.

Policy 4: The use of highly productive land for land-based primary production is prioritised and supported.

Policy 8: Highly productive land is protected from inappropriate use and development.

155. Parts 3 and 4 of the NPS-HPL are not directly relevant to our consideration of the NoR. Part 3 commences with the explanation and direction that (emphasis added): “This Part sets out a non-exhaustive list of things that local authorities must do to give effect to the objective and policies of this National Policy Statement, but nothing in this Part limits the general obligation under the Act to give effect to that objective and those policies”. Part 4 speaks directly to local and territorial authorities and spells out what they must do to give effect to the NPS-HPL and when.
156. Unlike other national policy statements, there is nothing that speaks directly to panels of delegated commissioners considering resource consents and notices of requirement, providing them with specific directions as to how to apply the NPS.¹¹¹ We find that our task therefore is simply to have particular regard to the relevant objective and policies of the NPS-HPL when considering the NoR.
157. One provision in Part 3 is significant to our application of the objective, however, because it provides guidance on the scope of Policy 8 in particular. We refer here to clause 3.9(1), which confirms the policy requirement on territorial authorities to avoid inappropriate use or development of highly productive land that is not land-based primary production, but then explains (by way of exclusion) those activities that will not be inappropriate and breach this direction if allowed to occur. These include the following exception in clause 3.9(2)(h), namely, if:
- (h) it is for an activity by a requiring authority in relation to a designation or notice of requirement under the Act:*
158. Under clause 3.9(2)(j) as well, there is another exception from the requirements of clause 3.9(1), namely for use or development associated with the maintenance, operation,

¹¹¹ See for example Policy 6 of the NPS – Urban Development.

upgrade, or expansion of specified infrastructure where there is a functional or operational need for the infrastructure to be on highly productive land.

159. We heard lengthy submissions on the application of both these exemptions to clause 3.9(1) and its broad 'source policy', Policy 8, aimed at persuading us that the proposed WWTP could either take advantage of one (or both) of them, and thus be treated as a not inappropriate use of highly productive land (thus not infringing the avoidance direction);¹¹² or, conversely, could not take advantage of either of the exemptions, was an inappropriate use of highly productive land, and thus ought to be avoided at this location.¹¹³

160. Mr Zhang, the Reporting Officer, opined:¹¹⁴

It is my view that the NoR falls within the exceptions listed above in clauses 3.9(2)(h) and 3.9(2)(j), and also that the use and development of the proposed WWTP will meet the requirements set out under subclause (3) of Clause 3.9. Therefore, the NoR is considered to be consistent with the NPS-HPL.

161. In the end, we are unable to disagree with the submission for Watercare that the exemption in clause 3.9(2)(h) applies to the NoR.¹¹⁵ This means that in having regard to Policy 8 of the NPS-HPL we are not required to recommend that the NoR be withdrawn to protect the highly productive land at the site, because the NoR is defined by the NPS-HPL as a use or development of that land which is not inappropriate.

162. Notwithstanding that conclusion, Watercare accepted (and we agree) that clause 3.9(3) applies¹¹⁶ and measures must still be taken to ensure that use or development of highly productive land (relevantly) minimizes or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in the district.

163. In its closing submissions Watercare confirmed that after development of the WWTP at the site, approximately 25-29ha would remain available for productive purposes. This retained productive land is a function of the 56ha site area, less the land required for the WWTP (being estimated as 6ha), less areas of the site not suitable for production. However, we received no specific evidence that the productive land requirement for the proposed WWTP itself had been minimised. We speculate that the area required is a direct function of the design volume of wastewater to be treated and the treatment technology proposed and is thus likely to require the same amount of land wherever it is located.

¹¹² Submissions and evidence by Watercare.

¹¹³ Detailed arguments by: Kathryn & John Anderson (EV46, p4), Olivia Jackson (EV21, at [16]), Susan Hale John and Rachael Keir (EV45, at [11 -12]).

¹¹⁴ Section 42A Report at [457].

¹¹⁵ Closing submissions, at [11.2].

¹¹⁶ Ibid, at [16.4].

164. In reviewing Mr Hall's evidence on the assessment of alternative sites,¹¹⁷ including both the assessment of the long-list sites¹¹⁸ and the assessment of short-list sites,¹¹⁹ while the presence of highly productive land is a criterion in the shortlisting criteria, there is no in depth discussion of the underlying land use capability of the sites considered and the requirement to minimise any actual or potential cumulative loss of highly productive land in the district.
165. Shortlist Option Z, which is already designated for a WWTP and would therefore not add to a cumulative loss of highly productive land in the district if used for the Project, was not selected; instead, Option T, which would use highly productive land, was.
166. This fact was picked up by submitters. Mr David Slack, in his representation statement, observed:¹²⁰

Of the seven short listed sites, only site Z complies with the legislation aimed at protecting highly productive land. 372 Glenbrook Beach Road, site T, selected as the site for the Southwest Wastewater Treatment Plant, is amongst the most highly productive land in Franklin.

167. Mr Slack also noted:¹²¹

Of the seven shortlisted sites, S and T are the most sensitive for their local communities given they are centrally located in a long established food producing district, but it appears sensitivity of local industry has been given no weighting.

168. Mr David Jackson also commented:¹²²

Eroding more NPS-HPL land for what as an argument is essentially "we have been doing a bad job and this is the easiest way out" I am sure is not what the objective of the infrastructure carve-out clause in the NPS-HPL. With elite soils and access to a bore scheme for large volumes of horticultural water, and great growing climate the peninsula is proven top tier horticultural land. There is a reason the site is bordered by award winning orchards, and the NPS-HPL is supposed to protect this.

169. For Watercare, Ms Bell told us:¹²³

In my opinion, the proposal satisfies the requirements of clause 3.9(3) of the NPS-HPL. The proposed WWTP operations will be confined to a 6 hectare footprint (even at Stage 3, once the plant is servicing a PE of 60,000), and the use of the remainder of site as odour buffer area will ensure that the potential loss of the availability and productive capacity of highly productive land is minimised.

¹¹⁷ EV4 G Hall

¹¹⁸ EV4 at [12]

¹¹⁹ Ibid at [13]

¹²⁰ EV16 at [20].

¹²¹ Ibid at [11].

¹²² EV20 at pages 2- 3.

¹²³ EV10 at [8.6].

170. Mr James Hook, Planner for Pulin Investments Limited, in support of the designation opined:¹²⁴

I do consider there is a duty under clause 3.9(3) of the NPS-HPL to ensure that the loss of productive capacity of the highly productive land on the site is minimised. In respect of that clause, I note WSL's intention to make land outside the 6ha footprint of the plant that is not required for landscaping available for productive use. I consider that to be consistent with the outcomes sought by the NPS-HPL.

Panel findings

171. We have no direct evidence that Watercare has met the requirements of clause 3.9(3)(a) of the NPS-HPL, in terms of the LUC class and area of the site required to be used for the Project. We do not know whether the same treatment capacity could be achieved using a smaller WWTP footprint, or whether it could be located elsewhere on the site to minimise further the loss of the highly productive land on the site.
172. Further, and of more particular concern given the district wide focus of this provision, the fact that there is a site option available to Watercare for the Project that avoids completely any further loss of highly productive land in the district leads us to the conclusion that Watercare has not met this requirement of the NPS-HPL. In this regard, we agree with Dr Hewison that:¹²⁵

Selection of site T does not meet the overriding objective of the NPS-HPL that highly productive land is to be protected for use in land-based primary production, both now and for future generations, when site Z is a feasible option.

173. We acknowledge that Watercare ultimately based its decision to select Option T on other factors, principally to achieve its aspiration of reducing capital carbon emissions from the development of new infrastructure. While that too is a laudable objective, it is not an outcome directed by a national policy statement under the RMA, whereas minimising the cumulative loss of highly productive land is (i.e., under the NPS-HPL). If Watercare had no other adequate existing option for the Project, our finding as to its failure to meet clause 3.9(3)(a) of the NPS:HPL would have been different. But that is not the case.
174. Having particular regard to the NPS-HPL, the Panel finds that it is required to “take measures” to minimise the loss of highly productive land that the NoR would contribute to, in circumstances where it does not have to. Logically, the only obvious measure to achieve that direction is to recommend withdrawal of the NoR.

¹²⁴ EV15 at [13].

¹²⁵ EV29 at [44].

National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB)

175. Section 7.1.4 of the AEE addresses the NPS-IB. An assessment of the NoR against the relevant objectives and policies of the NPS-IB is provided in Section A.4 of Appendix A to the AEE.
176. The purpose of the NPS-IB is to protect and maintain indigenous biodiversity across Aotearoa New Zealand by setting clear and consistent criteria for identifying and managing indigenous biodiversity across different districts and regions.
177. With respect to indigenous vegetation, the AEE notes that the site has been modified by farming activities and that there are relatively few areas of indigenous vegetation left intact. Indigenous vegetation is stated to be located close to the streams and around the wetlands. The AEE confirms that works will avoid these natural features and the proposed mitigation planting will introduce additional indigenous vegetation to the site.
178. The AEE notes that construction works will avoid the SEAs (in the adjacent coastal marine area) and the saltmarshes located in it, and that erosion and sediment controls will be implemented through the CMP to ensure that sediment intrusion into these downstream habitats will be minimised.
179. The Ecology Assessment (Appendix F to the AEE) notes that the habitat quality for indigenous lizards in the site was poor, but the assessment did note that there are records of at-risk indigenous lizards being present in the wider ecological district (within 20km of the site)
180. With respect to indigenous birds, the Ecology Assessment provides the following assessment:
- A desktop assessment of potential bird species likely to be present was undertaken. It is clear that the site's proximity to the Manukau Harbour and its flat topography would be a clear drawcard for both indigenous and migratory birds. It was noted however that the current land use with periodic cultivation, planting out and harvesting of crops make this less favourable compared to pastoral grasslands close by.*
181. The effects of the proposed WWTP on existing habitats on the site likely to be used by migratory species has also been assessed by the Ecology Assessment:
- There are also areas important to migratory species that use the ponds and wetlands. The effects on these area from allowing the NoR will be negligible as the vegetation, ponds and wetlands will not be disturbed.*
182. Ecological effects arising from the Project have been considered earlier in this report. There is agreement as to the description of the current ecological values, the magnitude of any potential effects on those values and the overall level of effects.

Panel finding

183. The Panel finds that the NoR is consistent with the NPS-IB.

New Zealand Coastal Policy Statement 2010 (NZCPS)

184. The NZCPS contains objectives and policies relating to the coastal environment. The site is within the coastal environment and a small portion extends into the CMA although this area would not be affected by the Project.

185. An assessment of the NoR against the NZCPS is included in Section 7.1.5 of the AEE and discussed further in Section 9 of the Stormwater and Flooding Report (Appendix I to the AEE). An assessment of the NoR against the relevant objectives and policies of the NZCPS is provided in Section A.5 of Appendix A to the AEE. Watercare's assessment of the NoR against the relevant objectives and policies of the NZCPS was not contested.

85. The AEE notes that the potential effects of the works are limited to the following:

- *Visual effects as a result of any changes close to the coastal environment as seen from the land to the north, the Taihiki River itself, and land to the east of that; and*
- *Changes to the nature of the runoff from the land that enters into the coastal waters.*

186. Landscape and visual effects arising from the proposed WWTP are discussed earlier in this report.

187. The AEE:

- confirms that construction earthworks will be located at least 100m away from the CMA; and
- states that after construction of the WWTP, there is likely to be a reduction in the amount of sediment which potentially makes its way to the Taihiki River due to a change of land use from market gardening.

Panel finding

188. The Panel finds that the NoR is generally consistent with the NZCPS.

National Policy Statement on Urban Development 2020 (NPS-UD)

189. Section 7.1.3 of the AEE addresses the NPS-UD and section A.3 of Appendix A to the AEE provides an assessment of the NoR against the relevant objectives and policies of the NPS-UD.

190. The purpose of the NPS-UD is to ensure that New Zealand's towns and cities are well-functioning urban environments and to enable more growth in locations within its urban environments that have good access to existing services, public transport networks and infrastructure.

Panel finding

191. We have carefully read the objectives and policies of the NPS-UD and find that it is of limited, if any, relevance to the NoR. While, if implemented, the NoR would provide infrastructure to support urban environments in the southwest growth area, there is nothing in this policy statement that provides direct weight to the Project *per se* and the NoR at this location.

National Policy Statement on Freshwater Management 2020 (NPS-FM)

192. The NPS-FM is addressed in Section 7.1.2 of the AEE. Section A.2 of Appendix A to the AEE also provides an assessment of the NoR against the relevant objectives and policies of the NPS-FM.
193. The NPS-FM sets out the statutory framework for the management of freshwater. It requires that natural and physical resources are managed in a way that prioritises the health and well-being of water bodies and freshwater ecosystems, followed by the health needs of people and then the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.
194. The NPS-FM provides direction for local and regional authorities about how they must carry out their responsibilities and functions in managing freshwater. Auckland Council has not yet notified a plan change to the AUP to implement the NPS-FM.
195. The AEE has taken the NPS-FM into consideration, noting that there are natural wetlands present on the site and identified watercourses which are expected to fall under the definition of 'river' in the RMA. In terms of potential effects, the AEE states:

... direct impact on the wetlands and streams by development and use of the site for the proposed public work as provided for through this NoR, is expected to be avoided and indirect impacts are expected to be managed through the implementation of erosion and sediment controls required to be in place under the conditions of this designation and expected to be required through a regional consent. The NoR is therefore consistent with the NPS -FM.

Panel finding

196. We agree with this assessment and consider that the NoR is not in conflict with the NPS-FM.

AUP - Chapter B Regional Policy Statement (RPS)

197. The RPS sets the strategic direction for managing the use and development of natural and physical resources throughout Auckland.
198. The following RPS provisions are considered relevant to the NoR:
- Chapter B2 Urban growth and form
 - Chapter B3 Infrastructure
 - Chapter B7 Natural resources
 - Chapter B8 Coastal environment
 - Chapter B9 Rural environment
 - Chapter B10 Environmental risk
199. The NoR was considered in relation to all of these provisions in Section 7.2.1 of the AEE and in more detail in Section A.6 of Appendix A to the AEE, or by way of response to further information request.
200. As infrastructure intended to assist in the growth of Auckland's urban environment, the WWTP is supported by Chapters B2 and B3. The design of the Project on the site can also be undertaken in a way that will generally achieve the objectives and policies in Chapters B7, B8 and B10.
201. However, based on our findings in relation to potential adverse rural landscape character and amenity effects, we find that the NoR would conflict with rural activity objective B9.2.1(3) which seeks to achieve rural production and other activities that support rural communities while maintaining the character, amenity, and landscape values of rural areas.

Panel findings

202. The provisions of the RPS are at a relatively high level of abstraction and for this reason we are reluctant to place too much weight on them in the course of our evaluation of the NoR under s.171(1). Overall, though, we find that the NoR supports some of the objectives and policies of the RPS, but also frustrates the attainment of others.

AUP – Overlays and Regional Plan

203. The AUP overlays that apply to the site are the High-Use Aquifer Management Area Overlay – Glenbrook Kaawa Aquifer and the Significant Ecological Areas Overlay – Marine 2. As well, the following regional plan chapters are also engaged by the activities proposed by the NoR:

- Chapter E1 Water quality and integrated management
- Chapter E3 Lakes, rivers, streams and wetlands
- Chapter E11 Land disturbance – Regional
- Chapter E12 Land disturbance – District
- Chapter E14 Air Quality
- Chapter E15 Vegetation management and biodiversity
- Chapter E18 Natural character of the coastal environment
- Chapter E19 Natural features and natural landscapes in the coastal environment
- Chapter E26 Infrastructure
- Chapter E36 Natural hazards and flooding
- Chapter E40 Temporary activities

Panel Findings

204. As a designation in a district plan is still subject to regional rules, to the extent that approvals would be required in order to implement the NoR, these provisions in the AUP will require direct assessment in the future. That said, we accept the advice of Mr Zhang that there are no aspects of the NoR as proposed that are in conflict with the relevant regional plan provisions.

AUP - District Plan

205. The site is predominately zoned Rural – Mixed Rural Zone with a smaller part of the land adjoining the coast being zoned Rural – Rural Coastal Zone. AUP Chapter H19 Rural zones includes numerous objectives and policies for the management of land zoned in this manner. As a non-rural activity, it is not anticipated that the WWTP proposed by the NoR would find support for its location in the rural environment. When having particular regard to these AUP provisions we therefore need to keep this in mind.

206. Other district plan level provisions in the AUP we find to be of relevance to the proposal are Auckland-wide chapters E24 Lighting, E25 Noise and vibration, and E27 Transport.

Panel Findings

207. Key relevant policy themes arising from the general and specific rural objectives and policies that apply include:

- (a) Elite soil is protected, and prime soil is managed, for potential rural production (H19.2.1(3));
 - (b) Activities based on use of the land resource are recognised as a primary function of rural areas (H19.2.2(1));
 - (c) Avoid land-use activities and development not based on, or related to, rural production from locating on elite soil and avoid where practicable such activities and development from locating on prime soil (H19.2.2(3));
 - (d) Acknowledge that, in some circumstances, the effective operation, maintenance, upgrading and development of infrastructure may place constraints on productive land and other rural activities (H19.2.2(5)(d));
 - (e) Maintain or enhance the character and amenity values of rural areas while accommodating the localised character of different parts of these areas and the dynamic nature of rural production activities (H19.2.3(1));
 - (f) Effects of rural activities are managed to achieve a character, scale, intensity and location that is in keeping with rural character and amenity values, including recognising that rural areas are a predominantly working rural environment, have fewer buildings of an urban scale, nature and design, and a general absence of infrastructure of an urban type and scale (H19.2.2(1));
 - (g) Rural character and amenity values of the Mixed rural zone are maintained while anticipating a mix of rural production, non-residential and rural lifestyle activities (H19.4.2(3)); and
 - (h) Recognise that rural production, rural industries and rural commercial services are significant elements of, and primary contributors to, rural character and amenity values (H19.4.3(1)).
208. Putting the provisions aimed at ensuring continuity and enablement of rural land use activities to one side and focussing on provisions concerned with how activities are to be managed, it is clear to us from the evidence that the use of the land for a WWTP would not maintain a core policy outcome for rural areas generally, and the Mixed rural zone in particular, namely the maintenance of rural character and amenity. This is because of the nature, scale and location of the built elements of the WWTP, and our findings that the mitigation strategy of planting to screen views of these elements is unlikely to be successful in a reasonable timeframe.
209. With respect to the Auckland-wide provisions, based on our findings above in the effects evidence in relation to lighting, noise and vibration and transport, we are satisfied that the Project would generally achieve the policy outcomes envisaged by the AUP at this location if implemented in accordance with the proposed conditions.

SECTION 171(1)(b) – CONSIDERATION OF ALTERNATIVES

210. Under s.171(1)(b), we are required to have particular regard to whether adequate consideration has been given to alternative sites, routes or methods of undertaking the work if:
- (a) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
 - (b) it is likely the work will have a significant adverse effect on the environment.
211. At the date the NoR was lodged, Watercare had purchased the site and therefore had an interest in the land sufficient for undertaking the work. However, that was not the case when Beca was engaged, in 2021, “to undertake an options assessment to identify the preferred site for a new WWTP in the Southwest Growth Area”.¹²⁶ The conclusion of that detailed assessment process was a report titled: “Southwest Wastewater Treatment Plant – Assessment of Alternative Sites”, dated 7 December 2022,¹²⁷ the Executive Summary of which confirmed that its purpose was to support a notice of requirement for a designation in accordance with s.171(1)(b).
212. Following Watercare’s acquisition of the 372 Glenbrook Beach Road site in April 2023,¹²⁸ the need for such an assessment to satisfy s.171(1)(b)(i) fell away. However, its relevance in terms of s.171(1)(b)(ii) remained an issue due to differences of opinion (raised in submissions) about the scale of the adverse effects of the proposed NoR.
213. At the hearing, the evidence of the independent expert witnesses called on behalf of Watercare was that the NoR would not result in significant adverse effects on the environment, with Watercare thus submitting¹²⁹ that alternatives are not required to be considered under s.171(1)(b). However, it also cautiously argued, via Ms Bell, that:¹³⁰
- If section 171(1)(b) of the RMA does apply, I consider that Watercare, through the process described in Mr Hall's evidence¹³¹, has given adequate consideration to alternative sites, routes or methods of undertaking the work*
214. For reasons outlined earlier, based on our findings as to the effects on the environment of the NoR, we consider that it has the potential to generate significant adverse effects on rural landscape character and amenity values. As such, we consider that an assessment of alternatives under s.171(1)(b) is required, and we have thus paid careful attention to the evidence about this assessment to determine its adequacy as a matter of law. In that

¹²⁶ EV4 Hall at [4.3].

¹²⁷ EV4 Hall at [5.5].

¹²⁸ P Perera, questions from Panel.

¹²⁹ Opening Legal Submissions, at [5.3]

¹³⁰ Ibid at [8.37]

¹³¹ Mr Hall’s brief of evidence deals with the assessment of alternatives EV4.

regard, Watercare is not required to demonstrate to us that it has considered all possible alternatives, or that it has selected the best of all of the available alternatives. It is well-settled that such considerations would be straying into matters of policy which fall outside our jurisdiction in considering the NoR.¹³² Rather, its obligation is to undertake an 'adequate' assessment. In terms of what is "adequate", as stated by the Environment Court:¹³³ *The word 'adequate' is a perfectly simple word and we have no doubt has been deliberately used in this context. It does not mean 'meticulous'. It does not mean 'exhaustive'. It means 'sufficient' or 'satisfactory'.* It is not for us to substitute our own choice for that of Watercare; but our enquiry can consider whether Watercare has acted arbitrarily or given only cursory consideration to alternatives.¹³⁴

215. The s.42A Report provides a summary of the process undertaken for the assessment of alternatives as recorded in section 7.3.1 of the AEE. Mr Zhang noted:¹³⁵

Section 171(1)(b) does not require a requiring authority to fully evaluate every non-suppositious alternative with potentially reduced environmental effects. The enquiry is into whether the requiring authority has acted arbitrarily or given only cursory consideration to the alternatives.

216. Mr Zhang offered us the following opinion:

It is my opinion that a realistic and adequate consideration of alternative sites has been provided. In my view, the application has provided detailed documentation of the assessment process to demonstrate that sufficient investigations of several alternatives were made, and each alternative was carefully assessed as evidenced by the documents lodged.

217. Watercare's approach to site selection and the assessment of alternatives was a key matter of concern for many submitters. For example:

- John and Bernice Ramsey noted¹³⁶:

Overall, we do not see why Watercare cannot simply expand and renew their existing site at Waiuku to deal with growth. It seems unnecessary that we would lose this productive farmland for industrial purposes, when there is a perfectly good and approved site just down the road.

¹³² *Beda Family Trust v Transit NZ* ENVCA139/2004 at 57; *Waimarie District Council v Christchurch City Council* at 24-25.

¹³³ *Te Runanga o Ātiawa ki Whakarongotai Incorporated v Kapiti District Council*.

¹³⁴ *Waimarie District Council v Christchurch City Council* PTC30/82, 13 July 1982.

¹³⁵ Section 42A Report at [525].

¹³⁶ EV13 at [16].

- David Slack records¹³⁷:

In assessing alternatives, Watercare have ignored the option of upgrading the existing wastewater plants. I note that the Auckland Future Development Strategy 2023 – 2053 Principle 3[b] says “Make best use of existing infrastructure”.

- Monique and Mike Huber noted:

I object to the class of land being used for a WWTP, that is tragic. Its quality growing land in a peaceful rural setting. I believe the best choice is for the plant to be upgraded at Waiuku (current site) and to remain there because it is already industrial and will have the least impact on the community.

218. A counter view was offered by James Hook¹³⁸ for Pulin Investments Limited:

Pulin is amenable to WSL’s proposal to establish the proposed WWTP in Glenbrook Beach Road and to install a pipeline between Kingseat and Clarks Beach to extend wastewater services to Kingseat, where a population approx. 5000 people can be accommodated under current zoning.

219. A number of submitters also reference the NPS-HPL in this context. For example:

- David Jackson offered the perspective:

Eroding more NPS-HPL land for what as an argument is essentially "we have been doing a bad job and this is the easiest way out" I am sure is not what the objective of the infrastructure carve-out clause in the NPS-HPL. With elite soils and access to a bore scheme for large volumes of horticultural water, and great growing climate the peninsula is proven top tier horticultural land. There is a reason the site is bordered by award winning orchards, and the NPS-HPL is supposed to protect this.

- David Slack noted:¹³⁹

372 Glenbrook Beach Road, site T, selected as the site for the Southwest Wastewater Treatment Plant, is amongst the most highly productive land in the Franklin district.

¹³⁷ EV16 at [27].

¹³⁸ EV15 at [2].

¹³⁹ EV16 at [20].

220. Mr Dawson observed:¹⁴⁰

A comparison of the MCA scoring between the proposed site (Option T) and Option Z is set out at paragraph 17.4 of Mr Hall's evidence. While it shows Option T scoring higher than Z, the criteria ignores the fact that Option T requires a new designation, whereas Option Z is already designated for WWTP purposes. I consider this factor highly relevant to any assessment, and warranting significant weighting, yet it does not appear to have been a consideration in the alternatives assessment.

221. Appendix C of the AEE addresses the assessment of alternatives. The potential loss of highly productive land (land use Capability Class 1, 2 & 3) was one (of six) criterion under "natural environment".¹⁴¹ The assessment records:

From a productive land perspective, there were no key differentiators between the sites B, C, S, T, X and W, which all received a score of 5. However, as site Z is the existing WWTP site, it would not result in the loss of highly productive land and has been scored 9.

222. Another criterion of relevance in the alternatives assessment exercise was capital carbon emissions and Watercare's objective of trying to reduce them over time in its development of new infrastructure. In this regard, the initial alternatives assessment records:

With regard to Site Z, it was noted that given it is an existing WWTP site there is greater certainty around timing and operation as it is an existing designated site. Site Z was also considered favourable as it is close to the Waiuku Kaawa aquifer, and some existing and future growth areas. However, given that Site Z requires the longest pipe length it scored lowest in regard to wastewater conveyance, construction risk, hydraulic considerations, and capital greenhouse gas emissions (35.37 M kg/CO₂). Site Z was identified as a low-risk option due to the fact it is an existing designated site and was taken forward as an emerging preferred option on that basis.

223. In his evidence, Mr Perera noted:¹⁴²

...under Watercare's 40/20/20 Vision it is seeking to achieve a 40% reduction in construction carbon across its capital works programme....While Site T was not the best option for achieving carbon reduction targets in the updated shortlist of four sites set out in the Addendum to BECA's options assessment report (site C was the best), site T scored better than site S, and much better than site Z due to shorter pipelines being required.

¹⁴⁰ EV13 at [29].

¹⁴¹ AEE Appendix C Table 2 page 15.

¹⁴² EV2 at [9.2(e)].

224. However, Watercare’s approach to carbon was questioned with Mr David Jackson observing:¹⁴³

Yesterday Priyan spoke about conveyancing embodied carbon issues with the Waiuku site, I hope the commissioners consider this with a grain of salt in light of the enormous open trenching project Watercare intend to embark on in the roadway, when there are unexplored innovative low-cost solutions available, such as putting the pipes in the harbor bed that are common overseas and avoid alignment issues.”

225. We were provided with a copy of Watercare’s “Climate Change Summary 2023” in which its 2020 adoption of its ‘40/20/20 Vision’ was summarised.¹⁴⁴ This is an aspirational yet laudable vision that is the outcome of a corporate commitment, rather than a statutory direction.
226. One other criterion utilised in the alternatives assessment exercise was “ease of site acquisition”. Given that Watercare is a requiring authority and is able to compulsorily acquire any land for public works under the Public Works Act 1981, we queried whether this was a relevant criterion to be factored into an options assessment. We questioned Mr Hall to this end and he assured us that such a factor was commonly included in options assessments for new infrastructure.¹⁴⁵

Panel finding

227. We accept s.171(1)(b) does not require a requiring authority to fully evaluate every non-suppositious alternative with potentially fewer adverse environmental effects. However, nor should we accept uncritically the process by which the alternatives evaluation has been conducted, if we are genuinely confused as to the way in which the preferred location took on that status through the alternatives assessment process. We find that this is the position in which we find ourselves after reviewing this aspect of the Project in detail. In this regard, we consider that adequacy is not only about the number of possible options identified and considered, but also about the manner in which the options identified were considered, including the criteria that were used for comparing them and the respective weightings applied to them to derive indicators of preference.
228. After carefully reviewing the options assessment process undertaken and the evidence about that process from those who conducted it, we have come to the view that the assessment of alternative sites undertaken by Watercare for the Project was not adequate and that failings in the use and misuse of certain criteria have resulted in an illogical, arbitrary and ultimately self-fulfilling outcome. In particular, we find that:

¹⁴³ EV20 at [2.1].

¹⁴⁴ Included with Closing Submissions dated 19 February 2024

¹⁴⁵ G Hall, questions from Panel.

- (a) Site Z was the only site at which the Project could be undertaken and achieve compliance with the NPS-HPL and that factor has been mis-weighted in the entire exercise;
 - (b) Site Z was the only site where effects on the environment of the construction of the Project and its effects on rural character and amenity would, at worst, be neutral and thus achieve the envisaged district level policy outcomes, and this factor has also been substantially mis-weighted; and
 - (c) Use of the criterion “ease of acquisition” was inappropriate; at best, options should have been scored as “already owned by Watercare” or “able to be acquired by Watercare”.
229. On this third criticism, we heard evidence that finding a site for the proposed WWTP was driven to a large extent by a deadline to secure and develop a new site to avoid Watercare’s long-term harbour discharge permit lapsing.¹⁴⁶ We were concerned to hear this. More relevantly, we consider it inappropriate for this seemingly self-created circumstance to underpin an options evaluation criterion such as “ease of acquisition”, and for the weight given to it to be compared on the same linear scale to a site that does not need to be acquired at all. In the result, we find that this aspect of the exercise has considerably distorted the preference “outcome” score, in circumstances where no urgency existed to acquire a new site at all.
230. We also wish to comment on the inclusion of the options evaluation criterion “helps Watercare achieve a reduction in capital carbon emissions”, because ultimately it appeared to us from the evidence of Watercare that this was the single most determinative factor that led to the preference of a site other than Site Z.
231. We do not criticise Watercare for having carbon reduction as a corporate goal, or for making that objective one of its specific objectives for the NoR. As observed earlier in this report, s.7(i) requires all persons exercising functions and powers under the RMA to have particular regard to the effects of climate change. However, we have some discomfort that within the frame of a statute aimed at the sustainable management of natural and physical resources generally, it has been allowed to outweigh multiple other equally important factors such as minimising loss of highly productive land, and maintaining rural character and amenity.
232. Overall, we find that the assessment of alternatives exercise was flawed in a number of key respects and was thus inadequate.

¹⁴⁶ For example, see EV2 at [6.7]; EV4 at [4.12].

SECTION 171(1)(c) – NECESSITY OF WORK AND DESIGNATION TO ACHIEVE OBJECTIVES

233. Section 171(1)(c) requires consideration as to whether the work and the designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.

234. The objectives of Watercare in respect of the Project have been stated earlier, but we set them out again for this discussion:

To provide for the treatment of wastewater in southwest Auckland in a manner that:

- a. Responds to planned growth*
- b. Protects public health*
- c. Provides for flexible implementation including potential wastewater reuse in the future*
- d. Keeps the overall costs of service to customers at sustainable levels*
- e. Helps Watercare achieve its targets for reducing carbon emissions*
- f. Has regard to mana whenua’s cultural and spiritual values.*

235. “Reasonable necessity” under s.171(1)(c) requires that something less than absolute necessity, or being essential, is contemplated. Is the Project, being the construction of a new WWTP for the southwest growth area, and the designation of the site for that purpose, reasonably necessary to achieve these objectives?

236. The AEE answers this question in the affirmative, albeit in a slightly circular way, by noting that the Project is reasonably necessary to achieve all these objectives because, in essence, it does so.¹⁴⁷

237. Mr Zhang’s commentary¹⁴⁸ on s.171(1)(c) echoes the AEE:

The threshold of “necessary” has been described as falling between expedient or desirable on the one hand, and essential on the other. To elevate the threshold test to the “best” site or option would depart from the everyday usage of the phrase “reasonably necessary” and significantly limit the capacity of requiring authorities to achieve the sustainable management purpose.

238. Submitters addressed whether the use of the site at 372 Glenbrook Beach Road for a WWTP is “reasonably necessary” to achieve the Project’s objectives. For example:

¹⁴⁷ AEE at [7.3.2].

¹⁴⁸ Section 42A Report at [528].

- Mr Hook opined¹⁴⁹ in support of the designation:

I accept the necessity of the designation to achieve WSL’s objectives for the site, and the consequential benefits (positive effects) of the WWTP in facilitating sub-regional development while protecting environmental values and the health and safety of people and communities.

- John Ramsey raised the question:¹⁵⁰

The Panel must have particular regard to whether the work and designation are reasonably necessary for achieving the objectives. Given there is an existing designation in place located at Option Z and that this option would be available to achieve the objective without considering other options, this question remains live.

239. The question raised by Ramsey was a common theme in many of the submissions in opposition to the NoR.

Panel finding

240. We accept the general proposition that a new, modern WWTP in the southwest growth area is reasonably necessary to achieve several components of the Project objective, and that a designation is an appropriate planning technique to provide for its construction and operation (as opposed to relying on resource consents).
241. However, we have struggled with the idea that a designation at this particular site is reasonably necessary to achieve the Project objectives. This is because Watercare already holds a designation for a WWTP in the relevant growth area (i.e., the Waiuku WWTP designation site) and the location and scope of this designation appears to be adequate to achieve the Project objectives. We heard no evidence that the Waiuku WWTP site and designation was deficient to enable the Project objectives to be achieved; indeed, Watercare holds a discharge permit which refers to that site and designation as the location for an upgraded WWTP for the growth area, and it continued to assess its use for the Project throughout the alternatives assessment process.
242. How can a new designation be “reasonably necessary” when an existing designation enabling the same work is already held by the requiring authority on an existing site in the same area? This question brings us back to one of the determinative criteria used to assess alternative sites and favour the choice of new Site T over existing Site Z: capital carbon emissions due to length of pipelines required based on final WWTP location. One of the components of the Project objective is that it: “*Helps Watercare achieve its targets for reducing carbon emissions*”. Is the NoR “reasonably necessary” to achieve that specific aspect of the Project objective?

¹⁴⁹ EV15 at [31].

¹⁵⁰ EV14 at [30].

243. By a narrow margin, on the evidence we have been provided, we are prepared to find that it probably is. However, in the scheme of s.171, we do not consider that too much weight should be given to this finding, because it is Watercare, as requiring authority, who itself crafts the content of the project objective and in this sense has an ability to dictate attainment of this sub-section. This is not a criticism of Watercare: it is a peculiarity of the legislation.
244. We find that the NoR is “reasonably necessary” for Watercare to achieve the Project objectives.

SECTION 171(1)(d) – ANY OTHER MATTER

245. Section 171(1)(d) requires us to have particular regard to any other matter we consider reasonably necessary in order to make a recommendation on the NoR. We adopt the approach that any “matters” to be considered must be related to the issues contemplated by the purpose of the RMA, which touch and concern the NoR and the submissions to be considered.
246. In Section 13 of the s.42A Report, Mr Zhang identifies various plans and strategies and discusses aspects of them that the NoR could be seen to be indirectly relevant to. We have reviewed these documents but do not think it reasonably necessary for us to have particular regard to them in order to make a recommendation on the NoR.
247. One ‘other’ matter, not identified by Mr Zhang, that we find it necessary to have particular regard to, is the fact that Watercare already owns designated land that is apparently suitable for a new WWTP for the southwest growth area. This factor is significant in our finding, as this ownership effectively enables the Project objective to be mostly achieved, and the provisions of the NPS-HPL to be better achieved, when compared to the site over which Watercare has sought a new designation.

PART 2 EVALUATION

248. As noted earlier, with respect to the NoR, it is settled that an evaluation against Part 2 is mandatory, given the phrasing of s.171. In that regard, we note that Mr Zhang undertook a detailed Part 2 analysis in the s.42A Report,¹⁵¹ as did Ms Bell in her evidence.¹⁵²
249. With respect to s.5 we find as follows:
- The Project will enable some people and communities to provide for their social, economic and cultural wellbeing and for their health and safety through the provision of infrastructure, but will disenable other people and communities from

¹⁵¹ Section 42A Report, Part 15.

¹⁵² EV10, at [8.43] et seq

providing for their social, economic and cultural wellbeing and for their health and safety.

- The Project would provide infrastructure that would meet the reasonably foreseeable needs of some future generations, but would utilise natural resources in a way that would not meet the reasonably foreseeable needs of other future generations.
- The Project will avoid, remedy, or mitigate some of its adverse effects on the environment during construction and operation, but would not avoid, remedy or mitigate other adverse effects.

250. With respect to s.6, no specific matters are offended by the Project.

251. Several s.7 matters are also raised by the Project. We find that development of the Project at the site would not be an efficient use and development of natural and physical resources (s.7(b)), would not maintain or enhance amenity values (s.7(c)), and would not maintain or enhance the quality of the environment (s.7(f)). However, it does have regard to the effects of climate change (s.7(i)).

252. Section 8 matters are neutral in our view.

253. Overall, we find that the Project fails to achieve the purpose of the RMA.

EXERCISE OF DISCRETION

254. We have considered the NoR and the submissions made in accordance with the statutory requirements of ss.171.

255. Our discretion in relation to the NoR must be exercised so as to achieve the statutory purpose of the RMA. Based on our findings above, we are not satisfied that recommending to Watercare that it approve the NoR will promote the sustainable management of natural and physical resources.

256. The foundation of this conclusion rests on the fact that Watercare already has an apparently suitable site for the Project, development for which will better achieve a number of important national and regional policy outcomes than the site it has issued the NoR in relation to. That existing site can also be developed in a way that will have fewer effects on the environment, including the people and communities of the Glenbrook Beach area.

257. For the avoidance of doubt, we record that but for the existence of this site, we would have recommended to Watercare that it confirm the NoR as, despite its effects, there would have been little basis for us to recommend otherwise for an important piece of community infrastructure such as this.

RECOMMENDATION

258. Based on our findings above, and the reasons supporting our discretion to do so, under s.171(2) we recommend to Watercare that it **WITHDRAW** the NoR.

Dated 20 May 2024



K R M Littlejohn
Chairperson



M Farnsworth MNZM
Commissioner



H Mellsop
Commissioner