

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

RECOMMENDATION

The Commissioners recommend that the notices of requirement as modified by the Requiring Authority at the hearing BE CONFIRMED subject to conditions.

PROPOSAL

Notices of Requirement (**NoR**) sought by the Supporting Growth Alliance (**SGA or Requiring Authority**) on behalf of Auckland Transport (NoRs 1 and 3-7) and New Zealand Transport Agency Waka Kotahi (**NZTA Waka Kotahi**) (NoRs 2 and 8) sought for the route protection of the Pukekohe Transport Network project (**Pukekohe Transport Network or Project**), in the following locations:

Notices of requirement lodged by Auckland Transport for:

NoR 1 - Drury West Arterial: a designation for a new transport corridor with active mode facilities in Drury West, extending south from the intersection of State Highway 22 (SH 22) and Jesmond Road to the edge of the Future Urban Zone near Runciman Road, Drury.

NoR 3 – Paerata Connections: two new transport corridors including active mode facilities. One between the two extents of Sim Road, Paerata across the North Island Main Trunk Rail Line (NIMT). The second between Paerata Rail Station and Sim Road, Paerata.

NoR 4 – Pukekohe North-East Arterial: a new transport corridor including active mode facilities between SH 22, Paerata on the northwest and Pukekohe East Road, Pukekohe in the southeast.

NoR 5 – Pukekohe South-East Arterial: upgrade part of Pukekohe East Road and Golding Road, and a new connection from Golding Road to Svendsen Road, Pukekohe across Station Road and the NIMT - including active mode facilities.

NoR 6 – Pukekohe South-West Upgrade: upgrade of specific intersections and the regrade of specific driveways on Nelson Street, Ward Street, West Street and Helvetia Road for active mode facilities.

NoR 7 – Pukekohe North-West Upgrade: upgrade Helvetia Road, Pukekohe in the south-west and a new corridor from Helvetia Road to SH22 Paerata in the north-east including active mode facilities.

Notice of requirement lodged by NZTA Waka Kotahi for:

NoR 2 – Pukekohe Link: for a new state highway including a shared path from Great South Road, Drury in the northeast, connecting SH 22 in the west, and the area in the vicinity of Sim Road/Cape Hill Road, Pukekohe in the south.

NoR 8 (Auckland Council) – Mill Road and Pukekohe East Road Upgrade: for an upgrade of Mill Road (Bombay) in the east for additional vehicle lanes and a shared path and an upgrade of Pukekohe East Road, Pukekohe in the west for a shared path.

NoR 8 (Waikato District Council) – Mill Road and Pukekohe East Road Upgrade: for an upgrade of Mill Road (Bombay) in the east for additional vehicle lanes, a shared path and an upgrade of Pukekohe East Road, Pukekohe.

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INTRODUCTION AND PROCEDURAL MATTERS

1. This recommendation on the NoRs is made on behalf of the Auckland Council (**Council**) and Waikato District Council (**WDC**) by Independent Hearing Commissioners Mr Dave Serjeant, Mr Nigel Mark-Brown and Mr Basil Morrison appointed and acting under delegated authority from each Council under sections 34 and 34A of the Resource Management Act 1991 (**RMA**).
2. Pursuant to section 168 of the RMA, the Requiring Authority gave notice to the Councils to designate the sites described above. At the request of the Requiring Authority, the NoRs were publicly notified on 13 October 2023. Submissions closed on 13 November 2023. There were a total of 140 submissions recorded within the submission period. The total number of submissions accounts for several submitters lodging the same or similar submission on more than one NoR. Further it is noted that, individually, the number of submissions ranged from eight submissions for each of NoRs 1 and 3, to 32 submissions for NoR 2.
3. The NoRs were referred to the Commissioners for a hearing and recommendation. Application materials, the Councils' section 42A reports, and both expert and lay evidence had been produced for pre-reading pursuant to an agreed timetable. The hearing took place on Monday 11th to Thursday 14th and Monday and Tuesday 18th and 19th March 2024. There were appearances at the hearing by and on behalf of the parties and submitters listed in the table in **Appendix A**.
4. Prior to the commencement of the hearing we issued Direction #2 that provided for the receipt of late submissions, not otherwise covered by section 37(4) of the RMA. Haribhai Master (1975) Trust Submitter (NoR 8AC 18) lodged a submission on 21 December 2023, in respect of NoR 8. Mr Peter Gorton and Ms Louise Ward (NoR 2 33) lodged a submission on 22 December 2023, in respect of NoR 2. The Council recommended that both late submissions be accepted. The Requiring Authority also advised that it supported the Council's recommendation to accept the submissions. We therefore confirm their receipt as late submissions.
5. We were also advised by Mr Donovan of parties that had indicated their intention to attend the hearing to present their submissions but had since decided that such attendance was unnecessary and provided a tabled written response instead. These submitters were:
 - a) The Telecommunication Companies (NoR 1 1, NoR 2 5, NoR 3 1, NoR 4 2, NoR 5 6, NoR 6 5, NoR 7 6 and NoR 8 6);
 - b) Ministry of Education (NoR 1 6, NoR 2 27, NoR 3 5, NoR 4 9, NoR 5 18, NoR 6 11, NoR 7 13 and NoR 8AC 14);
 - c) Heritage New Zealand Pouhere Taonga (NoR 4 5, NoR 6 8, NoR 8AC 11 and NoR 8WDC 11);
 - d) Pukekohe Industrial Park and Storage Limited (NoR 4 4); and
 - e) David and Susan Carpenter (NoR 2 13).

6. During the hearing, Shao Jie Zheng (NoR 5 12) and Chris Feng (NoR 5 4) also decided appearance was unnecessary due to an agreement that the submitter had reached with the Requiring Authority and a joint legal memorandum was tabled for our consideration.
7. Each of the late submissions and tabled submissions are addressed below.
8. Expert conferencing was conducted in relation to the extent of NoR 5 over Enviro NZ's land as well as Pukekohe Mega Trustees Limited and Wrightson Way Limited's land (**PMC land**). The conferencing was facilitated by Mr Greg Hill, Independent Hearing Commissioner and Mediator and we are grateful to Mr Hill for undertaking this task which produced a very useful outcome that we refer to below.
9. During the hearing we took the opportunity to acquaint ourselves with each of the NoR routes and the existing environments through which they passed. We identified submitter's land along each route, particularly those submitters who had attended the hearing.

STATUTORY ASSESSMENT FRAMEWORK

10. The Requiring Authority summarised the key statutory requirements and legal principles relevant to our decision-making function on the Projects as follows:¹
 - a) *Section 171(1) sets out the matters that must be considered by a territorial authority in making a recommendation on a NoR for a new designation. In particular, section 171(1) requires the Panel to, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to the matters identified in section 171(a)-(d):*
 - (i) *When considering the effects of allowing a requirement, section 171(1)(a) of the RMA requires that particular regard be had to any relevant provisions of a national policy statement, a New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement and a plan or proposed plan;*
 - (ii) *Under section 171(1)(b) of the RMA, the Panel must have particular regard to whether adequate consideration has been given to alternative sites, routes and methods of undertaking the work;*
 - (iii) *Section 171(1)(c) requires the Panel to have particular regard to whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought. The assessment is focussed on whether the means proposed are necessary to achieve the Project Objectives; and*
 - (iv) *Section 171(1)(d) requires the Panel to have regard to any other matters it considers reasonably necessary to make its recommendations.*
11. We observe that, as with the requirements for the consideration of resource consents (s.104 RMA) and Councils' obligations in preparing policy statements and plan changes

¹ Garvan Opening Submissions at [9.2]

(s.30 and 31), the primary requirement in the chapeau of the clause is to consider “...*the effects on the environment of allowing the requirement...*”, with this consideration being informed by the matters to which particular regard is to be had.

SUMMARY OF OUR APPROACH

12. The approach we have taken in this recommendation is:

- a) To record the key submissions and evidence given by the Requiring Authority in relation to the existing environment, the Project Objectives, and the need for the Project;
- b) To then review two of the key statutory requirements relevant to the NoRs. These are that “*adequate consideration has been given to alternative sites, routes and methods*” (section 171(1)(b)) of undertaking the Project and that the Project is “*reasonably necessary*” (section 171(1)(c)) to achieve the Project Objectives. These are strategic matters and we review the Requiring Authority’s submissions and evidence on them. We note that we received very little in the way of legal submissions and expert evidence on these key requirements from submitters. However, where substantive submissions or evidence was given we address that content;
- c) Our consideration of the evidence and matters in contention is organised largely on a topic area or effects basis. However, the submission by Enviro NZ included legal submissions relating to the statutory framework we have set out above, a significant amount of evidence on several topics and joint witness statements from expert conferencing. Consequently, we address the Enviro NZ submission in an integrated manner before moving on to address effects on the environment more generally as raised by other submitters and the Councils.

This recommendation does not recognise every submission by name or every matter specifically raised by every submitter. However, we have read all submissions and where a specific submission is not recognised we have addressed the general concern raised therein in a collective way;

- d) The Requiring Authority gave comprehensive evidence on the actual and potential effects on the environment. For each effects topic area, we summarise this evidence and the submissions and evidence from submitters where it was identified as a matter of concern. For each such submission we provide discussion and findings on the site-specific matters and *effects on the environment* (section 171(1)). We note that for some effects topic areas, apart from the Council review, there was little in the way of expert evidence from submitters and the effects were not the subject of submissions;
- e) Returning to the strategic matters and the matter of the lapse period, we then discuss and make findings overall on the Project;
- f) The penultimate section addresses the *relevant provisions* in the policy and planning documents at national, regional and district level, for both the Council and WDC, reviewing the evidence from the Requiring Authority and Councils (section 171(1)(a)); and

- g) Finally, we provide a part 2 RMA assessment and our recommendation.

PROJECT INFORMATION

Engagement

13. Ms McKenzie provided us with a summary of the engagement programme, example documentation and feedback recorded by the SGA. It is clear to us that the engagement programme was both extensive in its reach within the community and intensive where necessary to respond to suggestions, questions and concerns of the Local Board, Waikato District Council, business, network utilities, community and education service providers and the public in general. The ongoing commitment to resolving matters where possible has been evident in the agreements reached on revised boundary outcomes and other accommodations in the lead up to and during the hearing.

The Existing Environment

14. The existing environment for the NoRs is diverse including existing urban land within Pukekohe, Future Urban Zone land scheduled for release as anticipated in the FULSS, and land that will remain rural beyond the current planning horizon. As a consequence, the owners of land subject to the NoRs have a wide range of expectations for their land and have responded to the perceived effect of the NoR accordingly. The section 42A Hearing Reports (**Hearing Reports**) for the eight NoRs described the features of the environments that provide the basis for the assessment of environmental effects and we summarise these as follows:
- a) NoR 1 is wholly located within the FUZ and the Drury-Opaheke Structure Plan, crossing SH22 and the NIMT. The proposed designation boundary also crosses a number of overland flow paths, floodplains and flood prone areas.
 - b) NoR 2 has FUZ in the north and south, where residential land use is determined in the north by the Drury – Opaheke Structure Plan that applies in the case of the South Drury Connection segment and in the south by the Pukekohe – Paerata Structure Plan in the case of the Paerata Arterial Segment. In between there is rural land where current land use is unlikely to change within the planning horizon. NoR 2 is located on land subject to the High Use Aquifer Management Area Overlay. NoR 2 also traverses a large number of flood plains, flood prone areas, and overland flow paths that are also identified as permanent streams. Sections of the streams are currently piped under the rail corridor and roads.
 - c) The two sections of NoR 3, the Sim Road Connection Segment and the Paerata Rail Station Connection Segment, traverse the FUZ and sections of the existing Rural – Mixed Rural Zone (**R-MRZ**) and the Residential – Mixed Housing Urban Zone (**R-MHUZ**) within Paerata Rise. The proposed designation boundary also crosses a number of overland flow paths, floodplains and flood prone areas.
 - d) NoR 4 is located on land zoned primarily in the FUZ or the R-MRZ, with very small areas of Rural – Countryside Living Zone (**R-CLZ**) and Residential – Mixed Housing Suburban Zone (**R-MHSZ**). It includes part of Cape Horn Road, a section of unformed road between the NIMT and Paerata Road (SH22) and a section of Paerata Road south of the Mission Bush Branch rail overbridge. NoR 4 interfaces

with unnamed tributaries of both Whangapouri Creek and Oira Creek. The rural land is mainly pastoral land with a small pocket of rural residential development. The southern portion of NoR 4 skirts around the western end of the Pukekohe East Tuff Ring. A small part of the SEA_T_4375 is within the designation boundary and the alignment is adjacent to three other SEAs.

- e) The land through which NoR 5 passes has a wide range of existing urban zonings as well as FUZ land as the alignment heads east towards Golding Road. This includes land zoned Business-Light Industry Zone (**B-LIZ**) between Manukau Road and the NIMT where the Pukekohe Mega Centre (**PMC**) and Enviro NZ sites are situated. Further east, the proposed designation boundary extends into a small section of the Pukekohe East Tuff Ring and a single notable tree is located very close to the designation boundary along Mill Road. The proposed designation boundary also crosses several overland flow paths, floodplains and flood prone areas and an unnamed stream at Golding Road.
- f) NoR 6 has an entirely urban context, passing through R-MHS along Helvetia, Ward and Nelson Streets and then B-LIZ zoning towards Manukau Road. It is anticipated that the R-MHS zone will be subject to residential intensification in response to the NPS-UD. The current land use for the industrial zoned land along Nelson Street is a range of light industry shops and businesses. The designation also touches on Nehru Hall, a scheduled historic place at 59 Ward Street.
- g) NoR 7 provides a new arterial alignment around the northwest sector of Pukekohe between Helvetia Road and SH 22. The land use is characterised by largely flat arable land with scattered developments proximate to the urban edge. A band of existing commercial / agricultural activities and structures (including produce storage, a distribution facility and glasshouses) are located to the north of the alignment. The NoR crosses the Whangapouri Stream.
- h) NoR 8 straddles Pukekohe East Road and Mill Road. The Mill Road section lies in part within Waikato District. Whether in Auckland or Waikato, the predominant land use is rural. At the eastern end Business-Neighbourhood Centre Zone land is situated at Bombay around the State Highway One interchange. There are several areas with natural or historic heritage values along the route, but only the Pukekohe East Tuff Ring and a scheduled totara tree (within Waikato District) are directly affected by it. The land will remain in rural use for the current planning horizon, except for a portion of the Pukekohe East Road section at the Pukekohe end of the NoR.155 Mill Road flowing the Open Space – Conservation zoned land located on the northern side of NoR 8. The current road is a two-lane carriageway.

Project Objectives

15. The Project Objectives are set out in the application AEE and in the evidence of Messrs Lovell and Rama.² Ms Garvan listed the Project Objectives, which were common to all the NoRs, submitting that:

² AEE at Sections 3.2 and 6; Lovell EiC at [45] – [47]; and Rama EiC at [25] – [27]

“...the Project Objectives are to provide for new or upgraded transport corridors and associated facilities that:

- a) Improve connectivity;*
- b) Are safe;*
- c) Provide resilience in the transport network;*
- d) Integrate with, and support, planned urban growth;*
- e) Integrate with, and support, the existing and future transport network; and*
- f) Improve travel choice and contribute to mode shift.”*

16. We have summarised the route description for each NoR at the beginning of this recommendation. From this description, and the summary of the existing environment in the section above, it is apparent that the NoRs traverse a range of different environments. These environments include:

- a) rural environments, which will remain rural during the proposed lapse period, for example parts of NoR 2, 4 and 8;
- b) currently rural environments zoned FUZ, some of which are anticipated to urbanise during the proposed lapse period, for example NoR 1, the northern and southern ends of NoR 2, parts of NoR 3, 4, and 5 and all of NoR 7; and
- c) existing urban environments, such as parts of NoR 5 and 8 and all of NoR 6.

17. The evidence from Mr Murray addressed, amongst other matters, the benefits of the Pukekohe Transport Network for the future transport environment and the planned urban growth. In considering the relationship between transport and the urban environment over time, Mr Murray noted:³

A key element of the transport assessment is the definition of the ‘existing/likely future environment’, against which the effects of the Project(s) are assessed. This is a complex issue as the Project is planned to support medium-longer-term urban re-development and transformation of travel choices. As such, the future environment will differ from the existing environment and there is overlap between the effect of land use changes (subject to separate approval processes), and the effects of supporting transport projects.

18. We had some discussion during the hearing with Requiring Authority witnesses, including Mr Lovell, Mr Murray and Ms Hicks about the how the individual NoRs contributed to the overall Pukekohe Transport Network and its benefits for future growth. We understand from the evidence and that discussion that the existing and future land use influences the extent to which the Project Objectives are relevant to each NoR. For example, the connectivity objective is clearly addressed around the northeastern edge of Pukekohe by NoR 4, network resilience is a key objective of NoR 2, and while NoR 6 is

³ Murray EiC at [40]

not proposed to be enhanced as an arterial through-route, it does improve travel choice and contribute to mode shift within that part of the urban area. Having said that, we acknowledge the Requiring Authority evidence that all NoRs address each of the Project Objectives to some extent.

The Need for the NoRs

19. Ms Hicks described the need for the NoRs as follows:⁴

Auckland Council's Future Urban Land Supply Strategy 2017 (FULSS) identified 1,704 ha of Future Urban Zoned (FUZ) land in the Pukekohe-Paerata area, with growth over the next 25 years anticipated to result in a total of over 14,000 new dwellings. With the addition of Drury West, growth across the areas amounts to 21,000 additional households, 9,000 new jobs and 55,000 more people at full build-out post 2048.

Auckland Council recently updated the FULSS with the Auckland Future Development Strategy 2023 - 2053 (FDS). While there is no material change on the full build out within the FUZ of the project area, Auckland Council proposes new development timing in the FUZ in Pukekohe, Paerata and Drury West FUZ to around 10 – 15 years later than originally set out in the FULSS.

20. Ms Hicks also advised that parts of the project area are under accelerating development pressure, so whilst the FDS strategy is long term, and the Requiring Authority is designating on that basis, the need for infrastructure could occur sooner. Therefore, parts of the Pukekohe Transport Network would likely be implemented sooner, before the proposed 20-year lapse date. Ms Hicks provided information on committed, lodged and 'pipeline' development within the area serviced by the Pukekohe Transport Network and noted that as part of giving effect to the National Policy Statement on Urban Development 2020 (NPSUD) and the Medium Density Residential Standards (MDRS), Proposed Plan Change 78 by Council has identified that much of the residential zoned land in Pukekohe is to be rezoned to R-MHUZ, and that residential zoned land close to the Pukekohe Train Station is to be rezoned to Residential – Terrace Housing and Apartment Building.
21. In relation to growth in Waikato District and NoR8, Ms Hicks observed that significant growth and development pressure is also experienced in the Waikato District. The Pukekohe Transport Network (specifically Mill Road and Pukekohe East Road) are key transport routes for those travelling between Pukekohe and northern Waikato, including the areas of Tuakau and Pōkeno.

Amendments to the Designation Boundaries Since NoRs Lodged

22. The Requiring Authority amended the designation boundaries in response to several submissions prior to and during the hearing. The latter changes relate to the submissions of Shao Jie Zheng (NoR5 12) and Chris Feng (NoR5 4) at Golding Road. Both submissions related to the extent of the designation boundary over their land and during the hearing an alternative acceptable to all parties was reached and recorded in

⁴ Hicks EIC at [35]

the joint memorandum provided to us.⁵ We note that this amendment also has some beneficial effect on the property at 107 Golding Road, on which received a submission from DH and IM Mills Properties (NoR5 5).

23. Plans depicting all of the above amendments were appended to the Requiring Authorities closing submissions.

STRATEGIC MATTERS

Whether Adequate Consideration Has Been Given to Alternative Sites, Routes and Methods

24. The Requiring Authority's approach to identifying the Project routes is detailed in the application documents with each NoR being the subject of a separate Assessment of Alternatives Report (**AAR**).⁶ Each AAR commences with the development of initial alternatives and a corridor assessment which advances through a route refinement assessment to an emerging network, taking into account the other NoRs.
25. In her evidence in chief, Ms Hicks detailed the steps in each alternatives assessment as follows:⁷
- a) Potential routes and mode options were generated which aimed to conceptualise a range of geographical alignments within the study area;
 - b) Options were assessed through a MCA that was consistent across the stages of options assessment;
 - c) Sufficient information was provided on each option for evaluators to make consistently informed decisions and collective agreement was reached on how each option would be assessed through the workshop process;
 - d) The criteria were developed to be specific and relevant to the Project and were informed by guidance material;
 - e) Measures and information sources were identified for each criteria so the scoring process could be replicated;
 - f) Experts were chosen based on their expertise being appropriate and relevant to the criteria they were assessing;
 - g) The process was run in a collaborative and communicative way allowing all views to be expressed and tested; and
 - h) The process has been documented and reported in a clear, logical and methodical manner than enables replication.

⁵ Joint Memorandum of Counsel between Auckland Transport, Shao Jie Zheng and Chris Feng dated 18 March 2024

⁶ See *Pukekohe Transport Network Assessment of Alternatives Report* September 2023 Te Tupu Ngatahi Supporting Growth

⁷ Garvan Opening Submissions at [9.14]

26. We note that Figure 5-1 of the AEE provides further appreciation of the extent of the alternatives assessment for each NoR.

27. Addressing the alternatives assessment in her summary statement, Ms Hicks stated:⁸

A broad range of possible alternative sites, routes and methods for undertaking the Projects were assessed. Route options were considered using a multi-criteria analysis (MCA) and expert judgement. The assessment process was iterative and included feedback from partners (including Mana whenua), stakeholders, and the public. I note also that the Councils' Reporting Officer considers the information supplied demonstrates that there has been adequate consideration given to alternative sites, routes, or methods of undertaking the work for all NoRs.

28. We have examined the s.42A reports and accept Ms Hicks statement on the reports conclusions on alternatives assessment.

29. Ms Garvan submitted that we should be guided in our decision by principles cited by the Board of Inquiry in the Upper North Island Grid Update Project.⁹ These are as follows:

- (a) *The focus is on the process, not the outcome: whether the Requiring Authorities have made sufficient investigations of alternatives to satisfy themselves of the alternative proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate consideration does not mean exhaustive or meticulous consideration;*
- (b) *The question is not whether the best route, site or method has been chosen, nor whether there are more appropriate routes, sites or methods;*
- (c) *The fact that there may be routes, sites or methods which may be considered by some (including submitters) to be more suitable is irrelevant;*
- (d) *The RMA does not entrust to the decision maker the policy function of deciding the most suitable site, route or method; the executive responsibility for selecting that site route or method remains with the Requiring Authorities;*
- (e) *The RMA does not require every alternative, however speculative, to have been fully considered. Notable in this context is the fact that many of the Projects involve alterations or widening of existing corridors and have the express purpose of connecting key destinations and integrating with future urban growth. This, along with existing land use and environmental constraints has limited the alignment options readily available; and*
- (f) *The Requiring Authorities are not required to eliminate speculative or suppositious options.*

30. The submissions we received on the assessment of alternatives tended to be at a site-specific level, and how a route could have been varied to avoid affecting that site, rather than a principled analysis of why the assessment was inadequate or that a practicable

⁸ Hicks Summary at [4]

⁹ Garvan Opening Submissions at [9.10]

alternative had been overlooked. With the exception of Enviro NZ, we did not receive any substantive submissions or expert evidence on alternatives. We return to draw a conclusion on this matter at paragraph [351].

Whether the Project is Reasonably Necessary to Achieve the Objectives

31. Ms Garvan made the following submissions on what is required of the Panel in this aspect of the recommendation:¹⁰
32. *Section 171(1)(c) requires the Panel to have particular regard to whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.*
33. *The High Court has described the threshold of "necessary" as falling somewhere between expedient or desirable on the one hand and essential on the other, with the use of "reasonably" qualifying it to allow some tolerance.¹¹ This definition allowed the Court to apply a threshold assessment that is proportionate to the circumstances of the case to assess whether the proposed work is clearly justified.*
34. *What is required is an assessment of whether the work and the designation proposed are reasonably necessary to achieve the requiring authority's objectives, not whether the objectives themselves are necessary.¹² When assessing reasonable necessity, the Panel cannot cast judgment on the merits of a requiring authority's objectives.¹³*
35. These submissions relied on established law in the cases footnoted below.
36. We have set out the Project Objectives in the section with that title above. Section 6 of the AEE set out in tabulated form how each NoR met the Project Objectives. The Requiring Authority and the Hearing Reports all conclude that the proposed designations are reasonably necessary for achieving the Project Objectives.¹⁴
37. As with the assessment of alternatives, submissions on this matter were limited. Enviro NZ, presented a substantive challenge to whether the designation and works were reasonably necessary. We address that matter within the Enviro NZ submission immediately following. The Haribhai Master 1975 Trust also presented submissions on whether NoR 8 was reasonably necessary as it related to its property at Bombay. We address this submission in the context of the Trust's concerns about property access. We draw a conclusion on the NoRs being 'reasonably necessary' at paragraph {355}.

ENVIRO NZ

38. As noted, Enviro NZ was a submission on which we received a significant amount of evidence, including the joint witness statement from expert conferencing, and legal submissions which addressed the matters to which we must have particular regard in making our recommendation. We therefore consider this submission in an integrated

¹⁰ Garvan Opening Submissions at [9.20]

¹¹ Queenstown Airport Corporation Limited v Queenstown Lakes District Council [2013] NZHC 2347 at [93] – [96].

¹² Bungalo Holdings Ltd v North Shore City Council EC Auckland A052/01, 7 June 2001 at [66]

¹³ New Zealand Transport Agency v Waikato Regional Council [2023] NZEnvC 055 at [76]

¹⁴ See Hearing Report sections as relevant to each NoR.

manner. The matters raised in the Enviro NZ submission also provide a broad basis to consider the range of submission points made by many of the submitters.

39. We consider that the matters raised by the Enviro NZ submission can be addressed in terms of the following questions:
- a) Does the NoR 5 alignment appropriately acknowledge the social and economic values of the existing land use activities affected by the alignment?
 - b) Was the route refinement process adequate in its consideration of alternative construction methodologies for crossing the NIMT, in particular narrower road cross-sections and the use of an underpass?
 - c) Is it reasonably necessary for the NoR extent to include all of the Enviro NZ site?
40. The relevant facts and submissions presented to us relevant to these questions are contained in the following sections.

Enviro NZ Site and NoR 5

41. Enviro NZ owns and operates the Pukekohe Transfer Station Resource Recovery Centre (**PRTS**) at 10 Austen Place (the site, for the purposes of this section). The site is located in the southern Pukekohe light industry zone area and is bordered to the east by the NIMT and to the south by a paper road and beyond that the PMC, a large format retail area.
42. Auckland Transport proposes to designate the entire 8154m² site as part of NoR 5, the Pukekohe South-East Arterial component of the Project. More specifically, this section comprises the construction, operation and maintenance of a new transport connection between the Svendsen Road/Crosbie Road intersection and Golding Road east across the NIMT.
43. The Requiring Authority concept design was described by Mr Busnardo in his evidence in chief.¹⁵ The design is for a new arterial road, a bridge over the NIMT rail line and Station Road to the east, embankments for the approach roads on each side of the bridge, and realignment of an artificial channel that is part of the Council's stormwater infrastructure which is situated within the paper road. The embankment through the site is required for the road to go over the rail line at an appropriate vertical clearance to be consistent with the design guidelines, with the 1V:3H required for the embankment comprising most of the footprint of the concept design. The realigned stormwater channel to the north across the site takes up much of the balance. The concept design also includes construction occurring on the paper road that lies between the Enviro NZ site and the PMC site to the south.

NoR 5 Corridor Assessment

44. Drawing on the AAR for NoR 5 and evidence from Mr Murray, Ms Hicks provided a succinct description of the corridor assessment for the western segment NoR 5 (the Pukekohe South-East Corridor Assessment). She noted that there are currently very

¹⁵ Busnardo EiC at [92]

limited crossings over the rail corridor in Pukekohe leading to congestion and reliance on the East Street/Massey Avenue and Station Road to Manukau Road connection via a substandard rail underpass at Subway Road. The Pukekohe South East Arterial is required to connect the existing urban areas in Pukekohe with the FUZ around Golding Road, providing a new east west connection. For this purpose, a bridge (or potentially an underpass) is required to cross the NIMT and to connect the existing urban area with the FUZ which means that the already built-up area is impacted by the Project.

45. Four options were initially looked at during the corridor assessment to cross the NIMT. The options were contained within a relatively narrow band as options further north would not provide a locational alternative to Massey Avenue/East Street and options further south were considered too rural in their alignment. There are a number of land use constraints located in this area, in addition to the Enviro NZ site. On the eastern side of the NIMT, these comprise the Franklin Trotting Club which, together with the Golding Meadows FUZ land, was at the time of the corridor assessment the subject of a private plan change to rezone from FUZ to active urban zones (the plan change is now operative), and the Franklin A&P Showgrounds and Pukekohe Park – both major recreational facilities, which have policy protection from development in the AUP. On the western side of the NIMT is the PMC, as noted above.
46. It is apparent from the AAR that there was no easy option through this corridor, but that the preferred alignment (SE2B) was clearly superior.¹⁶ The AAR summarised this preference by noting that it *“Avoids the Auckland Trotting Club/Golding Road active development and Franklin A&P showgrounds and provides the most direct east-west connection for freight and general traffic”*. This option was the subject of further refinement and we address this in relation to the options discussed during expert conferencing below.
47. Mr Williams was critical of the findings of the corridor and subsequent route refinement assessment. His submissions on this matter drew on the content of the Enviro NZ submission as lodged but was not supported by evidence. Nevertheless, the submission identified a number of inconsistencies between the scoring of both assessments and the narrative summary that confirmed a preference for both SE2B and PSEA_S3_02 (being the SE2B refinement). We note at this point that our review of the AAR confirms that these inconsistencies exist. However, we make two general observations on the scoring of alternatives:
 - a) The scoring between the four corridor alternatives clearly identified SE2B as preferable; and
 - b) There was little separating the scoring for the route refinement options.
48. Ms Hicks advised in her rebuttal evidence that the *“options assessment did not stop at the MCA assessment and carries on through the development of an option”*. We consider that this is a logical approach to options development that has been refined by Supporting Growth Alliance over many Notices of Requirement, particularly where the

¹⁶ Pukekohe Transport Network Assessment of Alternatives Report September 2023 Table 4-24: Pukekohe Local – South-East corridor option MCA scoring

boundaries of a notified Notice of Requirement provides for alternative development options within it.

Enviro NZ Site Operations and Future

49. Mr Dolan gave evidence on the Enviro NZ operations at PRTS, the key points of which are as follows:
- a) PRTS is the only refuse transfer station in Pukekohe, servicing the town and the wider South Auckland area;
 - b) The site has been operating since 2005;
 - c) Site development cost in 2005 was approximately \$700,000 and further \$80,000 was recently spent on bunkers for recyclables. Other expenditure on stormwater management and site services was evident during our site visit.
 - d) The site is currently consented for an annual capacity of 36,000 tonnes of waste, with the annual tonnage in 2023 being 23,700 tonnes. The site currently receives waste from commercial operators and has a public 'drop-off' facility. Waste tonnages are expected to grow with increases in population, the details of which we have recorded above.
50. Mr Dolan provided a plan for further development of the site prepared in 2006, featuring additional enclosed transfer and sorting space and an upgraded yard area. In terms of the site's adequacy for the expansion required, Mr Dolan stated:¹⁷
- As it stands, activities on the site are constrained spatially, and simply put we effectively "need every inch". That will certainly be the case to accommodate changes in waste management, and the prospect of growth in the level of activity and volume of waste needing to be handled at the site...*
51. In relation to the future of Enviro NZ on the site, Mr Dolan confirmed Ms Hicks' evidence¹⁸ that in a meeting between the two parties it was agreed that further investigations into reducing the proposed designation boundary (from being over the whole site) was not appropriate because the company needed all of the site for its operations and expansion.
52. Mr Dolan also gave evidence on the planning provisions for establishing a refuse transfer facility, emphasising the need for separation of such facilities from residential activities, and from existing sensitive activities such as food manufacturing and sale where these are located in industrial zones.
53. Mr Campbell provided further detail on potential alternative sites for refuse transfer stations within Pukekohe in his evidence for Enviro NZ. Mr Campbell referred us to Standard E14.6.2.4 which limited such operations as controlled activities, requiring a restricted discretionary activity application, and potentially a notified application process, for any transfer station less than 300m of any dwelling or residential zone. Mr Campbell

¹⁷ Dolan EiC at [4.4]

¹⁸ Hicks EiC at [136]

had mapped the existing and potential future industrial zoning provisions and concluded that as much as two-thirds of this zoning would not meet the 300m requirement.

Expert Conference Outcomes

54. Prior to the hearing, the parties organised expert conferencing to discuss the submission and to consider alternative routes for NoR 5 and methods for crossing the NIMT and Station Road. Traffic, engineering and planning experts (variously) participating were Mr Messrs Murray, Mason and Busnardo for the Requiring Authority, Mr Edwards for Auckland Council, Mr Hughes for Enviro NZ, Mr Church and Mr Rankin for Pukekohe Mega Trustees Limited and Wrightson Way Limited, who are owners of the PMC, and Ms Pam Butler (online) planner for KiwiRail.
55. The expert conference joint witness statement (**JWS**) contained useful agreements on design parameters, albeit no resolution of the key matter of an alternative design to that described above. Matters of agreement were that:
- a) the Crosbie Road/Svendsen Road intersection would provide a less constrained layout if it was to be moved north, and
 - b) a mid-block cross-section should have two lanes, but differences between experts remained on the cross-section width elsewhere and on the provision of transport modes.

The PMC Agreement

56. As noted in the JWS title, the statement related to both the Enviro NZ and PMC sites. Paragraph 3.1 of the JWS recorded that, prior to the conference, rebuttal evidence produced by the Requiring Authority indicated a much reduced extent of designation boundary over the PMC site. This amendment to the boundary largely, but not completely, satisfied the PMC owners, such that their presentation at the hearing was moderated. The options considered by the JWS also reflected this amendment.

Route and Design Alternatives, including the Matter of Stormwater/Flooding

57. On the matter of design, all parties agreed that there are opportunities for a refined design that would result in a reduced, or narrowed, designation on the site. The consideration of options focussed on Options C, D and E which were detailed in both the JWS and Mr Hughes evidence.¹⁹ Option C provided for the NIMT and Station Road crossing via an underpass with associated approach cuttings. Option D assumed the use of retaining walls instead of the embankments on the bridge approaches and a narrower road cross section (of 15.6m compared with the indicative Project road cross section of 24m), containing the alignment within the paper road. Option E was similar to Option D, but extended the embankment section further west over the site and had further narrowing of the cross section to 14.6m with the adoption of a bi-directional footpath/cycleway on the northern side only.

¹⁹ Hughes EiC at [9.12]

58. All parties agreed that the narrowest footprint would have these implications:²⁰
- a) Confined construction area.
 - b) Confined area for maintenance.
 - c) Temporary construction activities would need to occur within the Enviro NZ site.
 - d) The alignment could have implications regarding the alignment to the east (on the other side of the rail corridor).
 - e) Likely to be a more complex construction methodology.
 - f) Likely higher cost, for both construction and maintenance.
59. Full agreement was also recorded that the transport and engineering experts did not consider that the expert conferencing session was the appropriate forum to discuss the matter of reducing the designation to enable the Enviro NZ site to still be operationally viable, as this matter involves other disciplines (such as planning, stormwater, ecology) and other representatives for Enviro NZ to further understand the operational needs of the site.
60. It was Mr Hughes evidence that the Requiring Authority had not adequately considered the proposed arterial route or its design options in the designation process to this point.²¹ He considered there were routing and design options that had not been considered and which are adequate to meet the Project objectives and would have no, or a significantly reduced, impact on the Enviro NZ site compared to the options assessed.²²
61. Mr Hughes maintained that both Option D and E are feasible within the paper road, while also retaining the existing stream/channel as it passes along the paper road.²³ Temporary construction activities could potentially occur within the Enviro NZ site and construction access would be required through the PMC service lane. Option E would necessitate a narrower cross section but Mr Hughes considered that the narrowest feasible footprint was a reasonable trade-off to minimise the impact on the Enviro NZ site. In relation to providing for active modes on only the northern side of the alignment, Mr Hughes noted in his summary statement that the eastern end of NoR 5, west of the Crosbie Road/Svendensen Road intersection, proposed bi-directional active modes only on the northern side of the road, so it would be consistent to continue this approach across the NIMT/Station Road bridge section (instead of westbound active mode users having to cross the road at the intersection).
62. The Requiring Authority experts at conferencing disagreed with Mr Hughes for a variety of reasons including narrower designs requiring a sub-standard cross-section, the need to shift the intersection north (as agreed above) and modification of the connection to the east over the NIMT rail line, the impact of construction activities on the PMC service lane

²⁰ JWS The extent of the NOR over Enviro NZ's land as well as Pukekohe Mega Trustees Limited and Wrightson Way Limited's land – and options to minimise the extent of the designation footprint proposed over 'affected' sites. 28 and 29 February 2024, section 3.7

²¹ Hughes EiC at [2.2]

²² Hughes EiC at [2.4]

²³ Hughes Summary at [1.5]

(this point relates to the agreement reached between the Requiring Authority and the PMC owners addressed in that submission below), and impact on project viability due to increased costs of construction and maintenance.

63. In relation to the single shared path design allowing for a narrower overall cross-section, Mr Murray's evidence was that:²⁴

Shared paths are not the preferred treatment in urban contexts and providing active mode facilities only on one side of the corridor provides lower accessibility than the proposed facility on both sides.

64. Mr Busnardo's primary evidence stated that while there may be an opportunity to reduce the extent of impact on the site, the site could not be fully avoided by the design and designation extent due to the existing constraints, such as the crossing angle between the road and the NIMT, and the constructability of the road corridor and bridge.²⁵
65. Mr Busnardo's rebuttal evidence was focussed on stormwater matters.²⁶ Mr Busnardo considered that Mr Hughes had underestimated the land required for Option D as it would likely require realignment of the watercourse and an appropriate connection of the watercourse to the east across the NIMT rail line and Station Road. His view was that the retaining wall itself would encroach on the existing watercourse, a point agreed by Mr Hughes in the questioning by the Panel at the hearing.
66. Mr Busnardo explained in his rebuttal evidence that Option E had the same issues as Option D from an engineering and transport perspective. A bridge spanning over the property would still require the realignment of the artificial channel next to the structure, resulting in a similar footprint to Option D.
67. With respect to Option C, Mr Busnardo advised that it would require a more complex construction than a bridge such as construction of secant piles on each side of the road, diversion of the rail line to allow the NIMT rail line to operate during construction and a drainage system which may require a pump.
68. Mr Busnardo's engineering evidence was supported by the evidence on flooding presented by Mr Kirkman. Mr Kirkman addressed the flooding of the site in his primary evidence and returned to consider the matter in more detail in a supplementary memorandum.²⁷
69. Mr Kirkman's supplementary memorandum was in response to questions from the Panel as we sought to differentiate the existing stormwater/flooding environment and the potential effects of the Project on that environment. Mr Williams raised this very issue where he submitted:²⁸

"Finally, in no part of the NOR 5 assessment documents is there any assertion or claim that the entire Enviro NZ site would also be needed for stormwater

²⁴ Murray Rebuttal at [39]

²⁵ Busnardo EiC [94]

²⁶ Busnardo Rebuttal [23-26]

²⁷ Kirkman Memorandum 15 March 2024

²⁸ Williams Enviro NZ legal submissions at [107]

attenuation (excavation) to offset the effects of the embankment, as also explained by Mr Kirkman – the designation is not being presented as reasonably necessary for that purpose.”

70. We have reviewed the Requiring Authority evidence on the matter of stormwater for this segment of NoR 5. We note that the AAR takes the general approach of avoiding alignments within floodplains, but that this segment of the overall project is not alone in having construction within a floodplain. We note that all route refinement options were within the floodplain area.
71. The summary of findings for the corridor options stated:²⁹
- “There was limited differentiation between options. For SE2 new hardstand would require water quality, detention and attenuation via wetlands and options would pass through floodplain mostly on the western side of the railway line and would require mitigation to offset the displacement effects of the earthworks.”*
72. The general arrangement plan for NoR 5 across the Enviro NZ site depicts the embankment filling the existing drain within the paper road and an indicative new channel for the overland flow from the north being located across the site linking to the existing (southbound) network.
73. Mr Kirkman’s supplementary evidence updated his primary statement with current Auckland Council flood plain data which had been changed on the Auckland Council website between submission of the Pukekohe Flood Hazard AEE (September 2023) and the hearing. Mr Kirkman explained that the previous Council floodplain extents showed minimal 1% AEP flooding, despite the reported 29.1m³/s flow along the overland flowpath between the Enviro NZ site and the NIMT. The updated maps indicated 1% AEP flooding over most of the Enviro NZ site.
74. Mr Kirkman also drew attention to the general approach noted in the AAR of offsetting the flood volume displaced (by construction) by filling the floodplain with an equivalent volume of excavation within the floodplain. Our review of the general arrangement plans is that this approach was not detailed with the mapping of any specific flood attenuation areas (as separate from stormwater wetlands which are shown).
75. In relation to the underpass options (Options A and B), all parties to the JWC noted that an underpass option had not been investigated sufficiently to determine whether it is a viable option, but agreed that underpasses are more complicated to build (or widen and deepen in the case of Subway Road) than bridges. The parties nevertheless agreed that a bridge or underpass option would require a similar footprint. Kiwirail’s position was there is likely to be greater operational disruption on the rail line during construction of an underpass.³⁰
76. Mr Edward’s shared some of Mr Hughes opinions, supporting alternatives with a lesser footprint on the Enviro NZ site. In commenting on the width of shared and separated paths along various sections of Auckland Transport designations he concluded in his

²⁹ Pukekohe Transport Network Assessment of Alternatives Report September 2023 Table 4-25: Pukekohe Local – South-East option assessment findings summary

³⁰ JWS page 5

closing response that there are some instances where a narrower width could be sufficient. To which he added:³¹

“This includes NOR 5 on or adjacent to the Enviro NZ site where I consider the area required for the road could be reduced significantly, but that may be moot given the stormwater evidence.”

77. Ms Hicks addressed the Enviro NZ submission in both her rebuttal evidence and her supplementary evidence. She responded to Mr Hughes’ opinion that the Requiring Authority *“has not sufficiently explored (or ‘adequately considered’) either the proposed arterial route or its design options that led to the proposed designation, and importantly, it does not see the Enviro NZ site as a constraint that justifies the design departures necessary to avoid it”*.³²
78. Ms Hicks’ rebuttal response was that Mr Hughes had developed options based on his transport expertise and that his options do not reflect the inputs by other subject matter experts and therefore have not been comprehensively developed or assessed. Supported by the Requiring Authority technical experts, she maintained the view that the alignment could not be contained within the paper road *“due to the resulting alignment on the west of the Enviro NZ site at (intersection at Crosbie/Wrightson Way/Svendensen Road) and to the east across the NIMT rail corridor and Station Road, and also due to the width of the arterial, relocation of the stormwater channel and construction area required to build the bridge”*.

Enviro NZ Site/Operations Future with NoR 5

79. In terms of the submission more broadly, Ms Hicks’ evidence addressed the response made by the Requiring Authority since the lodging of the Enviro NZ submission. She had been involved in the correspondence with Enviro NZ advising that Auckland Transport was able to provide s.176/178 approval for a number of activities, including planned upgrades to support the more immediate expansion intentions. She acknowledged in her evidence that the Project (in this case NoR 5) is not likely to be built in the near future and this provides Enviro NZ with time to find a larger site to meet the forecasted population growth, referring to Mr Dolan’s and Mr Campbell’s evidence that we have recorded above.
80. Ms Hicks explained that she had met with Enviro NZ during the development of the concept design to discuss the potential impact on their site and to understand their future plans. While alternatives had been explored, it was her evidence that *“it was identified by Enviro NZ that reducing any amount of area of their site would impact their operations and that their mid to long term plans were to move from the site so they could expand.”*³³ It was therefore agreed with Enviro NZ that further investigations into reducing the proposed designation boundary were not appropriate. We note that there was no direct disagreement with this record of events and that Ms Hicks’ evidence is corroborated by Mr Dolan’s comments that the activities on the site are very constrained spatially.

³¹ Edwards Closing Response at [2.23-2.24]

³² Hughes Summary at [1.3]

³³ Hicks EiC at [136]

81. On the matter of relocation, Ms Hicks 'did not disagree' with Mr Campbell's assessment of likely consenting requirements, but considered that there is existing industrial land within the area and new business land (both Heavy and Light Industry zoned) as indicated in Auckland Council's Pukekohe-Paerata Structure Plan that would provide another suitable site. Finally she noted the mechanisms for early acquisition of the site as set out in Mr van der Ham's evidence and also compensation for relocation, business loss and costs for obtaining any required consents under the Public Works Act.

Statutory Recognition of Waste Management Activity

82. The MCA criteria explicitly assesses the size and significance of land required from private owners for the Project and the impact that the NoR will have on the use of, connectivity/ accessibility to existing urban activities including shops, services, community and cultural facilities and other 'attractors', the scale of effect on existing community facilities and open space, severance effects and employment effects. This assessment was undertaken to identify the preferred alignment through the Enviro NZ site.
83. Mr Campbell's evidence was that the PRTS is "*critical infrastructure of regional significance in supporting a well-functioning urban environment and providing for quality urban growth in this part of the Auckland Region.*"³⁴ In support of this statement, Mr Campbell provided information on waste management facilities in the Auckland region, noting that of 15 transfer stations, three were owned by Auckland Council. While acknowledging that, in strict terms of the definition, a waste transfer site per se is not included within the definition of "Infrastructure" under the RMA or the AUP-OP (in particular), Mr Campbell considered that "*there is something of a 'gap' in terms of express coverage of this type of facility under the definitions in these instruments.*"
84. Mr Campbell then turned to several references within the statutory planning framework that provided 'status' to waste management facilities, including:³⁵
- a) that the provision of waste management facilities would align with the definition of "community infrastructure" or "social infrastructure" under the NPS-UD;
 - b) that Auckland Council has existing designated sites for waste management purposes; and
 - c) several objectives and policies in the Auckland Regional Policy Statement on the role and benefits of social facilities.
85. Mr Campbell also referred to strategies prepared under other Acts that centred around the importance of waste management infrastructure and the need to reduce emissions and which he considered that we should have regard to pursuant to s.171(1)(d) RMA as follows:
- a) Rautaki Hanganga o Aotearoa 2022 – 2052 New Zealand Infrastructure Strategy;

³⁴ Campbell Summary at [1.7]

³⁵ Campbell EiC at 4.4]

- b) Ministry for the Environment. 2023. Te Rautaki Para | Waste strategy; and
 - c) Aotearoa New Zealand's First Emissions Reduction Plan 2022.
86. Mr Campbell did not identify any key provisions that constituted a statutory requirement to 'protect' the PRTS from designation, but summarised his position with the statement:

“My key point in this evidence is that giving priority to one form of infrastructure (such as roading) over another, without ensuring that both can be delivered, has the potential for significant adverse impacts on how a city or town operates, which to this point has not been factored in to the Pukekohe Transport Network designation process at least in relation to the RRC [PRTS] site.”³⁶

87. Ms Hicks addressed Mr Campbell's evidence on these matters in her rebuttal statement.³⁷ She disagreed with Mr Campbell's interpretation and suggestion that waste management facilities should be considered as either community or social infrastructure under the AUP-OP, referring us to Table J1.3.3 in which “waste management facilities” including a “refuse transfer station”, are clearly defined as industrial activities. Consequently, she considered that it was inappropriate to apply any AUP-OP objectives and policies on community or social infrastructure to waste management facilities. Further, Ms Hicks noted that the three waste management facilities owned by Auckland Council were inherited from legacy councils, subject to designations prior to the AUP-OP, and now given effect to. In her view, the existence of these designations did not reflect the current status of waste transfer stations in the AUP-OP.

Recognition of Other Activities for the NoR 5 Route Selection

88. The corollary consideration to the significance or otherwise of the Enviro NZ site in NoR 5 route selection was the recognition, statutory or otherwise, given to other activities. Mr Campbell considered that the Requiring Authority had placed greater weight on the importance of retail and recreational facilities, in particular Pukekohe Mega Centre (PMC) and Franklin A&P Showgrounds, than on the community and social benefits of the PRTS.³⁸

89. Ms Hicks addressed this aspect of the Enviro NZ submission in her primary statement and in her rebuttal statement. In her rebuttal statement, Ms Hicks referred to AUP-OP provisions Chapter H26 Special Purpose – Major Recreation Facility Zone in which Objective H26.2(1) states:

“Major recreation facilities are protected and enabled to provide for the social and economic well-being of people and communities.”

90. This objective applies to both the Showgrounds and Pukekohe Park, which is also zoned Major Recreation Facility Zone.
91. Further, specific precinct provisions for the Franklin A&P Showgrounds (I413) identify the showgrounds as a regionally and nationally important venue. We understand from the

³⁶ Campbell EiC at [4.15]

³⁷ Hicks Rebuttal at [10]

³⁸ Campbell EiC at [3.29]

precinct provisions that the precinct provides for horse racing and a range of other sporting and community activities, and ancillary activities as permitted activities. Consequently, Ms Hicks confirmed that greater weight had been placed in the route alternatives assessment on avoidance or reduced impact on the Showgrounds and Pukekohe Park.

92. No such policy recognition or protection is accorded the retail activities at the PMC site. Both the Enviro NZ operation and the PMC had been considered as business activities by the Requiring Authority and disruption to the activities and vehicle access on the PMC site was considered more important to avoid than the Enviro NZ site. This decision was subsequently reinforced with the agreement to remove the NoR completely from the PMC site following the submission process as described above.

Discussion and Findings

93. In the following sections we provide our discussion and findings on the three questions we posed at the beginning of the Enviro NZ submission consideration.

NoR and Land Use matters

94. The question we posed on the NoR and land use matters was: Does the NoR 5 alignment appropriately acknowledge the social and economic values of the existing land use activities affected by the alignment?
95. As set out at in para [82], the consideration of size and significance of the property and its socio-economic value is an explicit part of the MCA criteria and overall corridor and route refinement process. Mr Campbell's evidence was that the PRTS was "*critical infrastructure of regional significance in supporting a well-functioning urban environment*" and he provided several references within the NPS-UD, the AUP-OP and other legislation that emphasised the community and social importance of waste management facilities. He concluded his evidence on this point with the measured statement that the preferred alignment was giving priority to one form of infrastructure over another.
96. Ms Hicks disagreed with Mr Campbell's interpretation that waste management facilities should be considered as either community or social infrastructure, and relied on the clear definition of such facilities as industrial activities in the AUP nesting table, Table J1.3.3.
97. We agree with Ms Hicks that the classification in the AUP of waste management facilities as an industrial activity and that such facilities are not classified as either community activities or infrastructure in the nesting tables. However, that classification appears to have the purpose of ensuring that the environmental effects of activities are managed rather than any broader categorisation as to their community or social utility. Consequently, we also agree with Mr Campbell that the matter is not so clear cut.
98. Both the Requiring Authority and Enviro NZ referred to the existence of Council-owned waste management facilities that had been created or existing pursuant to a designation. There do not appear to be any recent examples of designations for waste management purposes. Perhaps that reflects the state of the market in waste management where, at least in the larger metropolitan areas of the country, the activity has been left to large waste management companies.

99. These companies do not have the powers to designate land for their activities (landfills and transfer stations). However, s.52 of the Waste Minimisation Act provides for a territorial authority to “*undertake, or contract for, any waste management and minimisation service, facility or activity*” and this provision makes these activities public works under the RMA, which could be the subject of a designation by a local authority.
100. Taking both the history and current statutory provisions for waste management into account, we consider that waste management facilities lie somewhere on a continuum of public/private provision and to some extent are community and social infrastructure. In characterising that continuum we observe that education and health facilities also have public/private provision. This suggests that in weighing up the priority to be given to one form of infrastructure over another, to paraphrase Mr Campbell, it is not just the function that the activity provides to the community, but the scale and significance of that provision.
101. The scale and significance of the Enviro NZ site was described by Mr Dolan in terms of the existing and future activities, and the zoning and land use provisions for relocating the activity. Mr Campbell affirmed that the planning process could be challenging in terms of both site availability and land use compatibility. We have examined this evidence and acknowledge that challenges exist. However, the NoR does not place any urgency on relocation and Mr Campbell’s evidence showed that there were zoned sites available.
102. In terms of the scale and significance of the activity, we accept that Enviro NZ currently offer the only waste transfer station in Pukekohe. However the 0.8ha site area is well short of the 2.5ha site area that Mr Dolan indicated was ideal in terms of this type of waste transfer facility. We take from this that even in the absence of the NoR, Enviro NZ may well need to relocate to an alternative site in the Pukekohe environs, and with the demand for its services described by Mr Dolan, such relocation may need to be in the not too distant future.
103. We noted the corridor constraints for this segment of NoR 5 and that this necessarily took it through a developed urban area. The scoring in the MCA analysis of the corridor options confirms that there were no ‘easy options’ for this segment.
104. Taking into account all of the evidence that has been presented we find that the preferred NoR 5 alignment has appropriately acknowledged all of the social and economic values of the existing land use activities potentially affected by the alternative alignments.

Adequacy of the Route Refinement Process

105. The question we posed on the route refinement process was whether this process was adequate in its consideration of alternative construction methodologies for crossing the NIMT, in particular, narrower road cross-sections and the use of an underpass?
106. The adequacy of the route refinement process was the subject of expert conferencing and focussed largely on the Enviro NZ site but also sought the reconsideration of the underpass option further north in the corridor at Subway Road.

107. Mr Hughes supported narrower road cross-sections which allowed the western NIMT bridge approaches to be contained wholly or largely within the paper road, thus avoiding the Enviro NZ site. This alignment, required by both Mr Hughes' Options D and E, would also have the approaches and bridge at a significant variance to the desirable 90 degree crossing of the NIMT. Mr Edwards supported the consideration of narrower road cross-sections through a constrained area.
108. The Requiring Authority witnesses opposed Mr Hughes alternatives for a range of design reasons, which we have summarised in paragraphs [62 - 67]. Key amongst those reasons was that none of the options, including the extended bridge option, Option E, proposed by Mr Hughes, were able to be achieved without encroaching on the Enviro NZ site. Other reasons were the need to maintain the standard road cross-section to meet Project objectives, the alignment over the NIMT, and the constructability of the road corridor and bridge. There was also the matter of how stormwater and flooding issues were managed, which we address in the next section. We found this evidence to be overall more comprehensive and compelling than that from Mr Hughes and further, that the assessment of alternatives was adequate.

The Extent of the NoR over the Enviro NZ Site

109. The question we posed was whether it is reasonably necessary for the NoR to extend over all of the Enviro NZ site?
110. The preferred NoR alignment, and alternatives proposed by Mr Hughes, would all require some degree of encroachment on to the NoR site, with the largest area being required for the preferred NoR. However, the NoR boundary included all of the site and it was a matter of enquiry during the hearing as to the purpose of that total inclusion. One possibility was that it was included for construction purposes, however an area for this purpose was indicated on the general arrangement plan to the south, partly over the PMC site. Through further evidence and questions to Mr Kirkman, we understand that the additional area was largely needed for flood mitigation. As a matter of general practice it is desirable for developers, including road builders, to internalise their adverse effects as much as possible. For a requiring authority this internalisation includes the acquisition of enough land to achieve mitigation whether this be for flooding, visual screening, noise attenuation or other effects.
111. Mr Williams submitted that *"in no part of the NOR 5 assessment documents is there any assertion or claim that the entire Enviro NZ site would be needed for stormwater attenuation..."*. Mr Kirkman provided some explanation in his memo, however we also reviewed the supporting documents to test Mr Williams assertions.
112. In summary, our review determined:
- a) that the general arrangement plan for NoR 5 across the Enviro NZ site depicts a new channel for the overland flow to the north of the proposed embankment, generally in a line through the northern third of the site;
 - b) that a floodplain affected all of the SE2 options such that they would require mitigation to offset the displacement effects of earthworks;

- c) that the general approach in the AAR to floodplain management was to offset the flood volume displaced with a similar volume of excavation; and
 - d) that the detail of where flood attenuation was to be located was not shown on any of the general arrangement plans.
113. We have reviewed the meeting record (24 July 2023) between the parties and note that there was no discussion on stormwater. Correspondence in the lead up to expert conferencing in March 2024 indicates that stormwater matters were then being discussed.³⁹ We consider that the flooding situation could have been made more explicit by the Requiring Authority at an earlier date. However, from our review of the NoR information above, we find that excavation for flood storage along the various NoR routes was proposed and that the extent of the designation on the Enviro NZ provided for flood storage.
114. More broadly on this matter, we refer to the evidence of Ms Hicks on meetings that were held with Enviro NZ on the extent of the designation over the site at which it was agreed that further investigations into reducing the proposed designation boundary (from being over the whole site) were not appropriate because the company needed all of the site for its operations and expansion.

Enviro NZ Submissions on 'Reasonably Necessary'

115. Mr Williams made substantial submissions on whether the designation over the total Enviro NZ site was reasonably necessary in terms of s.171(1)(c). In the lead up to these submissions Mr Williams cited an extract from the *Chen* case which provided a fulsome direction as to how the statutory tests of s.171 should be applied.
116. The citation addressed both s.171(1)(b) on the matter of the adequacy of alternatives and s.171(1)(c) on whether the designation is reasonably necessary. While these two matters to be had "particular regard to" in s.171 are separate they are also interrelated, as the Court in the *Bungalo* case,⁴⁰ observed in declining to confirm a designation over the whole of the appellant's land. The Court finding relevant to the current situation is:

[126] The City Council has omitted to make a businesslike identification and comparison of alternative methods on the site, as required by paragraph (b) of section 171(1). A result of that is that the Court is not able to make a credible decision on the question raised by paragraph (c) of that subsection. We are not able to judge whether the nature of the work makes it unreasonable to expect the City Council to use an alternative method occupying less of the site, for lack of evidence comparing the relative benefits and disbenefits of the proposal and such an alternative method.

[127] For this purpose we assume that all the relevant considerations referred to in section 171 and elsewhere in the Act are favourable to the City Council's current proposal. Even so, and accepting that paragraphs (b) and (c) of section 171(1) are criteria, not conditions, in the circumstances of this case it is our judgment that the City Council's omission leaves us without the assurance we need to have to

³⁹ Appendix D to Closing Submissions

⁴⁰ As cited to us by Ms Garvan above on the matter of project objectives.

confirm the requirement for a designation applying over the whole of the subject land.

117. Mr Williams referred to the matter of Project Objectives, submitting that *“this objectives statement is itself generic, and beyond that largely self-serving”*.⁴¹ We understand the latter reference to be to Project Objective heading which states:

“Provide for a new and upgraded transport corridor between Pukekohe East Road and Svendsen Road that:...”

118. Mr Williams submission was that, as the (western) termination point of the corridor is fixed, the objective precludes, or at least narrows, the consideration of alternatives such that what is ‘reasonably necessary’ is predetermined.⁴² Mr Williams also submitted that the various verbs in the objectives (improve, integrate, provide) do not set a measure that enables the objective to be tested or that require the desired outcome to be optimised or maximised. Consequently, the ‘reasonably necessary’ criteria could be met by an alternative with at least some achievement of the objective. Mr Williams used the example of the shared active path which demanded a narrower road cross-section in this regard, compared with the duplicate shared paths as indicated in the Requiring Authorities preferred design.
119. In the Requiring Authority closing submissions, Ms Garvan responded to both of these submission points. She submitted that the Project Objectives of NoR 5 *“were not framed to, and did not, preclude consideration of alternatives”* which was evidenced by the alternatives assessed (which we have set out in detail above). In relation to the amount of land required for the designation, Ms Garvan referred to both the geometry of the required embankment needed for a bridge with the required vertical clearance over the NIMT and the space required for flood mitigation.
120. We have set out in detail above the assessment of alternatives undertaken by the Requiring Authority at both a corridor and route refinement level and considered the additional options proposed by Mr Hughes for Enviro NZ. We have also considered the matter of how any alignment across the site would need to mitigate the effects on stormwater, as clearly indicated, albeit in a general way, by the Requiring Authority. We have no doubt that the facts of this case make it distinguishable from *Bungalo* in that the extensive consideration of alternatives gives us every assurance that the designation should be applied over the whole of the site.
121. We agree with Mr Williams that the Project Objectives are stated in a rather generic way and consider that it would be better to have objectives that provided a sharper threshold as to whether they are met or not. However, the evidence is clear that the preferred alignment better achieves the objectives than the alternatives considered and that, taking into account the stormwater mitigation requirements, all of the site is required.
122. In terms of the Project Objective heading, again we refer to the evidence on the alternatives process, which commenced with the broader consideration of corridors. We understand from the Project documentation that route selection is an iterative process of

⁴¹ Williams Submissions at [49]

⁴² Williams Submissions at [50] referred to the *Wyndley Against the Motorway Action Group v Transit*, NZEnvC A022/03 at [28]

refining options. We do not find that the process had a predetermined western connection point for NoR 5. However, NoR 5 is necessarily part of a transport network and the location of the Pukekohe South West Upgrade along Ward and Nelson Streets (NoR 6) was strongly determinative of a Svendsen Street connection. Even so, the exact alignment from Svendsen Road to the east was still to be determined and all of those options have been examined.

123. At a more prosaic level, we refer again to the communications between the parties as set out in Ms Hicks' evidence, and confirmed by Mr Dolan, that due to Enviro NZ's site requirements, it was agreed that there was no utility in considering options that only reduced, as opposed to eliminated, the designation extent over the site. We consider that the Requiring Authority is entitled to rely on those communications as confirmation that Enviro NZ accepted the extent of designation as reasonably necessary.

EFFECTS ON THE ENVIRONMENT

Mana whenua

124. Mana whenua are a partner in SGA/Te Tupu Ngātahi. Ms McKenzie described the engagement undertaken with mana whenua at each stage of the process. This began in 2018 at an Auckland programme wide level with all 19 Auckland iwi being invited to engage. For the Pukekohe Transport Network, representatives from eight iwi were invited to attend and a programme of hui/workshops was undertaken. Of these iwi, Ngāti Te Ata Waiohua, Ngāti Tamaoho and Te Ākitai Waiohua were actively involved in the development of the NoR documentation. Ngāti Te Ata Waiohua and Ngāti Tamaoho prepared Cultural Impact Assessments which have been taken into account in each NoR as relevant.
125. Proposed conditions of specific relevance to mana whenua interests include the Cultural Advisory Report (to inform the future design stages), participation in the Urban Landscape and Design Management Plan (**ULDMP**) and Historic Heritage Management Plan (**HHMP**), and a Cultural Monitoring Plan to identify monitoring during the construction phase.
126. There were no submissions received from any mana whenua group. We consider that this outcome reflects the extent of early engagement with mana whenua and the ongoing opportunities for involvement accorded by the proposed conditions.

TRANSPORT EFFECTS

Property Access

Long Term Access

127. Property access was a concern expressed by many submitters, so we provide a summary of the Project approach and required changes to access for some properties. Ms Hicks, Mr Murray and Mr Busnardo provided evidence for the Requiring Authority on various aspects of property access. The Project requires long-term designations, and the timing of their implementation is dependent on demand and when the Project will be funded. Once the timing for implementation is confirmed, a detailed design process will need to be undertaken to confirm the precise nature of future access to the affected

sites. This approach has influenced the proposed designation boundaries to ensure that flexibility to reinstate driveways has been maximised.

128. For existing properties, the overarching design philosophy for the Project has been to maintain driveway access where practicable⁴³. However, due to the high speed and strategic nature of some of the proposed corridors in the network, direct property access to the new corridors is not recommended and potential adverse effects on access to some properties is anticipated. In no case will properties be landlocked by the Project.⁴⁴ In situations where a project impacts access (such as the need for realignment or regrading), the details will be confirmed during the detailed design phase, in coordination with the landowner, as part of property discussions under the PWA.⁴⁵
129. As the area develops in Drury, Paerata and Pukekohe, current property accesses will be redirected as needed onto the collector road network, as indicated in the Drury-Opāheke and Pukekohe-Paerata Structure Plans. The collector network is expected to be confirmed by developers as they progress these connections through plan changes or resource consents. Some of these new collectors will connect to parts of the Project.
130. Some existing properties will face a minor diversion.⁴⁶ For high-speed rural roads, access or right-turning will be restricted for safety reasons. Other parts of the network are also likely to have restricted turning movements. However, this detail will be confirmed in the future design stages (for example, whether raised median or flush median will be utilised,) and will depend on a number of factors such as how the projects are staged and land use at the time.
131. During the concept design development, the Requiring Authority identified that on the Mill Road section of NoR 8 (both Council and WDC), restricting right turning movements is likely to have an adverse effect on a number of existing properties toward the eastern end of the project. Therefore, the concept design includes new turning facilities (a roundabout) in proximity to 185 Mill Road that reduces the diversion and mitigates this effect.⁴⁷
132. The effects of the anticipated diversions from restricting turning movements of all projects have been assessed. These are anticipated to be minor, adding a maximum of between one and four minutes to journey times, which will impact only a small subset of the existing properties. The Requiring Authority consider that this is acceptable and that these effects are expected to be balanced by the positive effects associated with the improved reliability of the corridor and significant improvements to safety.⁴⁸
133. The Requiring Authority evidence was that due to the complexity of access arrangements changing over time, it is not currently possible to confirm a precise treatment for all individual accesses, particularly in areas that are transitioning from rural to urban. An existing property access condition is proposed on all NoRs that requires that where an existing property vehicle access is proposed to be altered by the Project,

⁴³ Hicks EiC at [197]

⁴⁴ Murray EiC at [79]

⁴⁵ Hicks EiC at [198]

⁴⁶ Hicks EiC at [200]

⁴⁷ Hicks EiC at [202]

⁴⁸ Hicks EiC at [201]

the Requiring Authority will consult with the directly affected landowner and the Outline Plan is to demonstrate how safe access will be provided, unless otherwise agreed with the landowner.⁴⁹ Existing accessways that are affected by the Project have been assessed based on the concept design, so that access can be maintained. Details will be confirmed at detailed design.⁵⁰

134. In terms of compensation, the Requiring Authority evidence was that starting point for projects of this nature is that works on private property cannot progress until proper authorisation to utilise that property is obtained under the PWA. This entails discussions (and usually agreement or, failing that, a Court determination) about access to land and compensation.⁵¹ There are a number of mechanisms available in the PWA to ensure land owners affected by public works are entitled to full compensation so they are left as far as money will provide in a no better or worse position than they were before the public work commenced.
135. Auckland Transport's compensation arrangements with landowners affected by proposed land acquisition or temporary occupation of designated land may include:⁵²
- replacement of driveways, parking and fencing;
 - compensation for loss of access where it has a quantifiable adverse effect on a business;
 - compensation for business loss that occurs as a result of the projects; and
 - reinstatement of property access post implementation.

Access During Construction

136. Mr Murray advised that access to individual sites will be provided via the Construction Traffic Management Plan condition (**CTMP**) which states that the CTMP shall include *methods to maintain vehicle access to and within property and /or private roads for all transport modes where practicable, or to provide alternative access arrangements when it will not be including details of how access is managed for loading and unloading of goods.*⁵³

Submissions in Relation to Access

137. *Roading and Asphalt Limited (NoR 2 21)* Mr Gates represented this submitter at the hearing and expressed concern about the proposed limited turning movements from the use of a raised median (or similar) and the impacts this will have on access to his property. Mr Gates was also concerned about the effects of limited access on the future rezoning of his land.

⁴⁹ Hicks EIC at [203]

⁵⁰ Mason EIC at [10]

⁵¹ Garvan Opening Legal Submissions at [11.56]

⁵² Van der Hamm EIC at [24]

⁵³ Murray EIC at [177]

138. Access to this section of Sim Road is discussed in the evidence of Mr Murray,⁵⁴ where he outlined that while some property access movements would require additional distance to complete a manoeuvre (such as for right turning vehicles), the NoR also provides new route options that offer shorter and quicker access to a range of areas to the east and south. The Requiring Authority advised that the NoR includes two roundabouts in the vicinity of Mr Gates' property, which will safely facilitate access. Mr Murray further explained that any new access to, or new activities in future development that are conditional on access to, state highways require authorisation from NZTA.
139. *Pukekohe Mega Trustees Ltd and Wrightson Way Limited (NoR5 21 and NoR6 13)*- The substantive matter in this submission has been addressed in the context of the Enviro NZ submission above. Mr Church expressed remaining concerns on the uncertainty as to how the PMC site may operate in the future, and how the service lane adjoining the designated access way may be used by a future tenant. In Mr Church's view, it is possible that there may be impacts on that part of the service lane that need to be addressed by the designation conditions, and he recommended changes to the land use integration process (LIP) and CTMP conditions to address these
140. The Requiring Authority continued to disagree with the changes proposed to these conditions, for the reasons set out in Ms Hicks' rebuttal evidence. These were that CTMP condition (b)(vi) is sufficient to address the concerns raised by Mr Church, where the CTMP must include the access maintenance methodology referred to in paragraph 130 above.
141. *Aedifice Development No.1 Limited (NoR 5 14) and OMAC Limited and Next Generation Properties (NoR 5 13) (Aedifice)*- The Aedifice submission included a request for Auckland Transport to provide certainty of the location and type of intersection for the collector roads shown in the precinct plan and Golding Road. The submitters' concerns in relation to access relate to the future proposed northern and southern collector roads.
142. The submitters presented a new design for the northern collector road at the hearing. Based on the proposed levels under the submitters' earthworks consents, Mr Busnardo considered that there is likely enough space to connect with Golding Road and not encroach on the drainage reserve area as shown in the submitter's proposed design. Alternatively, as explained by Mr Murray in his rebuttal evidence, the precinct rules permit alternative access to East Street if road access cannot be achieved through Golding Road. The Requiring Authority's closing legal submission advised that Auckland Transport is continuing discussions with the submitter.
143. *The Haribhai Master (1975) Trust (NoR 8AC 18)* - Mr Master, speaking to this submission for the Trust, explained that they have development aspirations for the land, but the presence of two NoRs (being NoR 8 and the Papakura to Bombay NoR currently in process) and lack of detail was making it difficult to make any short to medium term strategic decisions on its land. We understood that his key concern was how ongoing access is to be provided to the Trust's land.
144. The Requiring Authority's closing legal submission advised that their team had explained to the submitter that the proposed designation includes access for construction vehicles

⁵⁴ Murray EIC at [80]

and machinery, earthworks areas and environmental controls (such a silt fences) and fencing of the Project area. Construction areas are generally temporary use of land leased from the land owner during construction and then the designation is reviewed and rolled back/removed after construction works (in accordance with the designation review condition). Land will be reinstated after completion of construction works, for example replacement of fencing, planting and driveway contouring.

145. As explained by Mr Murray,⁵⁵ the proposed existing access condition requires that safe access be provided for the long-term (operational) context. He thus considered that the conditions requested in the submission are already proposed to be included on the designation and will suitably manage potential effects on access.
146. The Requiring Authority closing legal submission also noted that the Trust can seek section 176 approval to do works on their land subject to NoR 8, where NZTA Waka Kotahi will work with the Trust to achieve optimal integration with the works and the future road corridor i.e. to design access in a way that takes advantage of the future improvements to the roads rather than being incompatible with them.
147. A second aspect of the Trust's submissions was the legal argument that related to the land being subject to two NoRs which provided for very similar works. Ms Devine, counsel for the Trust, submitted that, as the Papakura to Bombay NoR appeared to be the "primary designation", NoR 8, as it related to the Trust's property, was not 'reasonably necessary' to achieve the purpose of NoR 8 and the Papakura to Bombay NoR could be relied on to achieve that purpose.
148. The Requiring Authority did not accept that argument and submitted in its closing submissions that the two NoRs were for separate purposes, each subject to its own approval process, and as such neither could be relied on to provide for the purposes of the other.
149. Paul Reynolds (NoR 8AC 10)- Mr Reynold's submission sought that the proposed roundabout encroaching on his land, on the four-way intersection of Golding Road/East Road/Belgium Road, is shifted south. His family is concerned about the loss of two access points to the land, which are particularly necessary once the flat area of land to the east of the family's home is developed.
150. The Requiring Authority closing submissions provided details on the extent of engagement with Mr Reynolds. Mr Murray addressed the details of property access both during construction and following the works. We note that the property has a long frontage to Belgium and East Roads, with the proposed roundabout taking up a significant part of the middle section. However, Mr Murray provided reassurance that following the works there would remain access options from both the Belgium and East Road frontages.
151. Other submissions on Access - There were a number of other submitters that raised concerns regarding access to their properties either during construction or following the works.⁵⁶ Mr Murray advised that these issues will be addressed through the CTMP

⁵⁵ Murray EiC at [237]

⁵⁶ Pukekohe Industrial Park and Storage Ltd, IM Mills Properties Ltd, B.Scott & P.Farrer

condition⁵⁷ for construction and through the existing property access and Outline Plan conditions for longer term access matters.

152. *Auckland Council Specialist Comments on Access* - Mr Edwards provided a technical review of the Project's transport aspects. He had reviewed all relevant evidence and attend joint witness conferences on specific issues. In closing comments, Mr Edwards focussed on the following matters.
153. Mr Edwards recommended that the existing property access condition be amended to also require that access is demonstrated to be 'adequate and efficient' (rather than just demonstrated to be safe). Mr Edwards gave the example of a property used for agricultural activities being likely to need access for truck and trailer vehicles and/or agricultural machinery. Mr Murray's opinion was that the efficiency of property access must be balanced against the efficiency and safety of other road users and the movement function of the road. He considered that there was potential for the subjective interpretation of 'access' efficiency and the potential for this to conflict with design standards and similar conditions adopted elsewhere in the SGA programme. He did not support the additions.

Discussion and Findings

154. We note and acknowledge concerns from a number of submitters regarding access to their properties and uncertainty as to how this will be addressed during construction of the projects.
155. We also note the Requiring Authority's advice, provided both specifically and in terms of its general approach, that the detailed consideration of individual vehicle access is best undertaken at the time of detailed design.
156. We accept that access to all affected properties during construction will be provided by way of implementation of proposed Condition (b)(vi) of the Construction Traffic Management Plan condition.
157. For long term access to properties affected by the project we consider implementation of the existing property access condition as proposed by the Requiring Authority will ensure access is provided. We find that this condition does not need to be modified as suggested by Mr Edwards, for the reasons presented by Mr Murray as set out above.
158. In relation to the specific concerns of Aedifice, we are aware that land development is currently occurring. From the evidence we had to consider it appears that some clarification of final contours along the road boundaries was needed to ascertain the collector road location and residual land that was available for subdivision. We note the Requiring Authority advice that discussions were continuing. In the event that a mutually acceptable solution cannot be found then the relevant sections of the RMA/PWA will need to be applied and potentially the conditions of this NoR.

⁵⁷ Murray EIC at [147], [164], [177] and [191].

159. In relation to The Haribhai 1975 Trust, our further finding is that each of the applicable NoRs must be considered separately and that the extent of NoR 8 over the property is reasonably necessary.
160. We acknowledge that there will be adverse effects on some properties due to restrictions on access or right-turning for safety reasons. We accept the evidence of the Requiring Authority that these effects are anticipated to be minor, impacting only a small subset of the existing properties, and adding a maximum of one to four minutes to journey times.
161. In summary we find that access to properties both during construction and in the long term will be satisfactorily achieved by implementation of the proposed Condition (b)(vi) of the Construction Traffic Management Plan condition and the proposed existing property access condition.

Submission by Franklin Local Board

162. The Franklin Local Board supports NoRs 1, 3, 4 and 7 as well as the inclusion of walking and cycling infrastructure in general, and agrees the Pukekohe Transport Network is essential to support the future growth of the area. However, in the Local Board's opinion, the Project does not appear to adequately address the needs of freight that are unique to the wider Pukekohe area as well as provision for cross-boundary traffic between Auckland and Waikato districts.
163. Specifically, the Local Board did not support NoR 5 and the use of Golding Road, as the topography of the road is not freight friendly, and noted that cross border (Auckland-Waikato) traffic volumes have not been considered particularly through Tuakau. The Local Board also did not support the use of Helvetia Road for NoR 6 and recommended the use of Gun Club and Patumahoe Road, which are further to the west, as it would help freight move out of town as part of a ring road around Pukekohe.
164. With regard to provision for freight traffic use of the network, the Requiring Authority opening submissions advised that a freight memorandum had been prepared for the Local Board. The memorandum notes that the Pukekohe Transport Network Projects will significantly increase north-south and east-west connectivity and capacity for existing and future communities in Drury, Paerata, Pukekohe and the wider area, and that the enhanced corridor capacity will result in reduced journey times and reliability for existing and future freight. Mr Murray set out early the hearing the unique transport function of each NoR and clarified that NoRs 4, 5, 6 and 7 are not intended to be a ring route. Mr Murray recognised Gun Club Road and Patumahoe Road as suitable existing roads to accommodate freight, outside of the Projects.⁵⁸
165. The Local Board supported the proposed state highway (NoR 2), but sought that it be four lanes instead of two. Mr Murray advised the Hearing that the intended function of NoR 2 is to support SH1 and SH22 but also provide a function of connecting communities. Mr Murray clarified that there is room for a 4-lane arterial within the designation, but not necessarily for a full expressway with grade separation. The reason that the full expressway was not progressed during the alternatives assessment process is that it would induce more light vehicle traffic than what was optimum.

⁵⁸ Murray EiC at [298]

166. As set out by Mr Murray, the balancing of traffic between the three main corridors accessing Pukekohe (SH22, Mill Road-Pukekohe East Road and NoR 2) was an important influence on the adoption of the Pukekohe Transport Network, given that an expressway option was found to both increase the total amount of vehicle travel entering Pukekohe and concentrate large volumes into the north-eastern parts.⁵⁹
167. With regard to NoR 8, the Local Board supported the four-laning of Mill Road to Harrisville Road, but disagreed with 2 lanes proposed for the remainder of NoR 8 due to consideration of cross border traffic between Auckland and Waikato.
168. The Local Board disagreed with the Requiring Authority's opinion that the issues raised were deemed out of scope for the Pukekohe Transport Network, as the Auckland and Waikato areas should be seen as one transport system despite the jurisdictional boundaries.
169. We summarise the Requiring Authority's response to the Local Board's comments on freight as follows:⁶⁰
- a) the Project will significantly increase north-south and east-west connectivity and capacity for existing and future communities in Drury, Paerata, Pukekohe and the wider area;
 - b) the enhanced corridor capacity will result in reduced journey times and reliability for existing and future freight;
 - c) NoRs 4, 5, 6 and 7 are not intended to be a ring route; and
 - d) Gun Club Road and Patumahoe Road are suitable existing roads to accommodate freight, outside of the Projects.

Discussion and Findings

170. We accept the evidence of the Requiring Authority in relation to the matters raised by the Local Board, noting that the Project does not solve all of the transport issues in and around Pukekohe including localised improvements for freight traffic between Auckland and Waikato.

Cycleways

171. The Project proposes walking and cycling facilities with 26.2km new walking paths, 30.6km of new cycle network, several grade separated active crossings over the NIMT and dedicated pedestrian and cycle crossing facilities. The facilities differ between NoRs depending on surrounding land use, with all NoRs having facilities on at least one side of the road and a number having facilities on both sides of the road. Walking and cycling facilities are proposed to be separated with the exception of the rural section of NoR 8.

⁵⁹ Murray EiC at [157]

⁶⁰ Garvan Closing Submissions at [5.4]

Submissions on Cycleways

172. Location of the walking and cycling facilities between Nelson Street to West Street - A number of submitters raised concerns about the proposed location of the walking and cycling facilities on the north-eastern side of the road between Nelson Street to West Street.⁶¹ Ms Hicks explained that the rationale for preferring the northern side is due to reduced property impacts compared to having the cycleway on the south/western side. She acknowledged the area is highly constrained due to the built-up urban environment. She noted that while there are specific sites where a cycleway on the southern side will have fewer property impacts (e.g where the property on the southern side is vacant or undeveloped), the assessment has been undertaken to assess the whole transport corridor rather than on a site-by-site basis.
173. C&C Daroux (NoR 5 3 and NoR 8AC 3) and R.Cunningham (NoR 8AC 9 and NoR 8WDC 12) – These submissions requested that there be a cycleway on the northern side of Mill Road. Mr Murray advised that the proposed walking/cycling path is intended to both serve the adjacent (future) urban areas along Pukekohe East Road and to provide a more strategic connection along Mill Road connecting to SH1 and the services in Bombay.⁶²
174. A 2-way shared path is considered an appropriate treatment in this semi-rural environment where the distances mean that the number of pedestrians is expected to be much lower than that for cycling. There is an extensive section of future urban development on the south side of Pukekohe East Road, meaning that both sides will have similar levels of urban development generating walking and cycling demand. Those future developments will need to be supported by other internal local streets, which would provide other routes for local walking and cycling movements. In Mr Murray's opinion, a single 2-way facility (rather than paths on both sides), would be suitable for the strategic nature of the corridor and the relatively low level of demand (especially for walking), with very limited justification for an additional facility.
175. Rachel Simpson and Michael Hickmott (NoR6 9)- This submitter raised transportation concerns regarding loss of parking on the roadside berm, safety risk between cyclists/pedestrians and vehicles using the driveway, inappropriate use of the cycleway by 'dirt bikes', safety concerns from increased use of Helvetia Road by trucks, and restricted access during construction.
176. We note Mr Murray's comments on this submission, including that on-road parking immediately outside the submitter's property currently is prohibited (via yellow-line markings) to improve safety on the approach to the nearby roundabout and that parking on the (grass) berm is not permitted by Auckland Council. Mr Murray advised that on-street parking on Helvetia Road south of the property is likely to be removed, however, there are a number of side streets for visitor parking within 100m of the property. He accordingly did not consider any perceived loss of 'berm' parking to represent an adverse effect. Similarly, use of the cycleway by motorist vehicles (including 'dirt bikes') is illegal.

⁶¹ Mayor (NoR6_02), McIntyre (NoR6_03), Baker (NoR6_04), McMahan (NoR6_06), Scott and Farrer (NoR6_07)

⁶² Murray EIC at [154]

177. Auckland Council Specialist Comments on Cycleways – Mr Edwards noted his concerns about the safety of cyclists using the proposed paths where there are numerous driveways, and those concerns are exacerbated for bi-directional and shared paths. These safety issues may require mitigation measures to be taken, for example an alternate design, such as a separated/ protected cycle facility (similar to that provided on Nelson Street in Auckland's CBD) where cyclists are more conspicuous, or speed bumps on driveways.
178. Mr Edwards' concern is most significant where cycle or shared paths are provided in urban areas with a higher frequency of driveways, such as along NoR 6.
179. Ms Hicks noted that the assessment of alternatives investigated multiple forms of the cycle way for the NOR 6 area.⁶³ As summarised in the Alternatives Assessment Report, this area is highly constrained in the existing urban area of Pukekohe. Five options were investigated to utilise space within the existing road reserve. Having a bi-directional cycle facility on one side of the road (rather than a uni-directional facility on each side of the road) was preferred as it best utilises the existing road reserve, significantly minimises property impacts, and reduces costs while ensuring adequate accessibility.
180. In response to a query from Mr Edwards on the estimated walking and cycling demand on NoR 6, Mr Murray advised that based on the strategic active mode model, the estimated demand on NoR 6 will be up to 190 pedestrians and 70 cyclists per day.⁶⁴ Mr Murray acknowledged the conflicts between cycle facilities and driveways, which is a common issue when retrofitting cycle facilities into existing urban areas, where the removal of driveways is not practical.⁶⁵ In his opinion appropriate cycle facilities can be provided in NoR 6, based on the following factors:
- a) there is a generally a 6.8m berm available along the corridor to allow for a footpath and cycleway with sufficient off-set from the property boundary to the cycleway;
 - b) removing cyclists from mixing with vehicles in general traffic lanes improves safety by removing a significant source of conflicts;
 - c) the selected option and proposed generic cross-section has been assessed and approved by Auckland Transport experts in such facilities; and
 - d) There are design treatments to mitigate conflicts with driveways, including road marking and signage, path design and speed management of both the cyclists and driveway vehicles.
181. Mr Mason noted that the provision of cycle ways in berm areas, both uni-directional and bi-directional facilities, are accepted treatments to improve safety for cyclists.⁶⁶ A bi-directional off-road cycle facility is aligned with the Safe System design approach and therefore meets the objectives of both the Government Policy Statement and the Auckland Plan, and will provide a safer cycling environment for all users in comparison with the existing on-road mixed traffic facilities. While he agreed with Mr Edwards that

⁶³ Hicks EIC at [139]

⁶⁴ Murray EIC at [277]

⁶⁵ Murray EIC at [276]

⁶⁶ EIC Mason, at [13]

there is greater safety risk associated with a bi-directional cycle facility in comparison with a uni-directional facility, he considered that these risks can be mitigated and a bi-directional cycle facility does not create an adverse safety effect. The appropriate site-specific mitigation measures are best determined at the time of implementation.

Discussion and Findings

182. We concur with the evidence of the Requiring Authority on the suitability and safety aspects of proposed cycleways, in particular on NOR 6, as the assessment of alternatives identified that a bi-directional cycle facility on one side of the road (rather than a uni-directional facility on each side of the road) was preferred as it best utilises the existing road reserve, significantly minimises property impacts, and reduces costs while ensuring adequate accessibility. This finding is supported by the factors identified by Messrs Murray and Mason above.

NETWORK UTILITIES

183. Several network utility companies made submissions on one or more of the NoRs. The companies included the joint Telecommunication Submitters, KiwiRail Holdings Limited, Watercare Services Limited, Counties Energy Limited, and First Gas Limited. The Requiring Authority advised that it had met with several of these companies with a view to preparing conditions that would address their joint concerns about the effects of construction on their infrastructure.
184. The meeting and other communications resulted in a set of conditions comprising:
- a) A section 176 waiver process for network utility operators;
 - b) The Network Utility Management Plan; and
 - c) The LIP, which requires Auckland Transport to maintain a record of engagement, which must include details of any requests to coordinate the forward programme with network utility operators.
185. These conditions largely or completely addressed the matters raised by the various network utilities and none of the companies made an appearance at the hearing. The Telecommunication Submitters tabled a letter that indicated agreement with the conditions proposed above.

Finding

186. We find that the conditions proposed by the Requiring Authority addresses the concerns of the network utility submitters and will provide for the integration of important infrastructure.

STORMWATER

187. The surface water effects of the proposed NoRs have been addressed by the Requiring Authority as two separate components. The first, addressed in this section, is the general “stormwater” component which includes construction and long term effects on water quality of streams and stream associated ecology. The second component is the effects

of the proposed NoRs on flooding both during construction and operation of future roads, addressed in the following section.

188. We note that the RMA provisions relating to stormwater matters will apply at the regional consent stage. These consents have not yet been applied for by the Requiring Authority as they will require detailed assessments of effects which cannot be completed until detailed design of roads is undertaken.

189. The Requiring Authority advised that it had addressed stormwater matters, including giving effect to the National Policy Statement-Freshwater (**NPS-FM**), through the following mechanisms:⁶⁷

- a) *The options assessment assessed the ecological impacts of a variety of options including extent of effects on stream/ waterway ecology as well as the consideration of natural wetlands under the NPS-FM.*
- b) *Through the alternatives assessment and design refinement process the requiring authority have sought to avoid wetland areas and minimise impacts on rivers and waterbodies where practicable. Where avoidance is not practicable, design refinements have looked at ways to minimise effects.*
- c) *Stormwater discharge quality will be managed through the use of soft stormwater infrastructure where possible such as swales and stormwater wetlands. An integrated stormwater network will be designed at the detailed design/ regional consenting stage that is sensitive to receiving environments, recognising capacity constraints of streams and the importance of maintaining or enhancing the quality of freshwater.*
- d) *provision is made for the future management of potential stormwater effects (stormwater quantity and stormwater quality) by identifying the space required for stormwater management devices i.e. treatment swale and wetlands and incorporating land for that purpose into the designation footprint.*

190. Mr Justin Kirkman, environmental engineer and Senior Associate at Beca Limited provided stormwater and flooding evidence for the Requiring Authority. Mr Kirkman described the general approach to stormwater management as follows:⁶⁸

191. The concept design and proposed designation boundaries provide land for the future management of stormwater effects (stormwater quantity, stormwater quality, erosion prevention and erosion countermeasures). In identifying the land required for these devices, preliminary sizing and siting has been undertaken and space allowed for constructing stormwater management devices (**SWMD**) based on the following assumptions:

- (a) Wetlands in the upper half of the region wide catchment are sized to attenuate 100-year peak flows from the transport corridor on a 10% of the total road

⁶⁷ As summarised in the s42A report , at [4.9.3] and AEE at [11.7]

⁶⁸Kirkman EiC at [26]

catchment basis. This allows for 100-year, 10-year and 2-year attenuation, 95th percentile detention and water treatment.

- (b) Wetlands in the lower half of the regional catchment would likely produce coincident flood effects and attenuation is not desirable. These are sized on a 3% of the total road catchment basis. This allows for detention and stormwater treatment only.
 - (c) Allowance is made for wetland attenuation storage and hydraulic gradients from corridor inlet to discharge point (typically a minimum of 2.0 to 2.5m vertically).
 - (d) Wetland geometry and footprints were modelled to determine the required cut and fill. Additionally, a perimeter buffer was added for construction purposes and maintenance
 - (e) Offsets from earthworks extent and designation are provided for construction purposes and allow for works such as drainage channels and culvert inlets/outlets and flexibility in the vertical alignment.
 - (f) Diversion channels are identified where they are needed to prevent upstream flooding.
 - (g) Roadside swales are sized to take small local catchments only no greater than 4 hectares in size. These swales can provide treatment, detention, retention and attenuation (if required).
192. Mr Kirkman considered that these allowances are appropriate for sizing the devices at this early stage of the design process and also provide opportunity for future refinement as the detailed design of devices will be developed further for the future regional consents and implementation processes. In general, the approach has been to avoid SWMDs in floodplains where possible. If this is not possible, the design has sought to employ offline systems located in low velocity flood zones where there is minimal risk of scour for resilient and maintainable systems.
193. Positive stormwater related ecological effects were outlined within the Assessment of Ecological Effects and are summarised below:⁶⁹
- a) Improved blue/green infrastructure, such as stormwater wetlands, swales, and associated landscaping (which will include indigenous vegetation) will provide a wide range of ecosystem services that will not only contribute to the mitigation of the relevant effects from the proposed Pukekohe Transport Network, but also enhance the ecosystem services provided by natural ecosystems in a modified landscape.
 - b) Landscape planting of berms, embankments, and stormwater wetlands are connected and integrated with retained forest remnants and mature trees, streams, riparian margins, and open space zones. Where applicable, the landscaping is

⁶⁹ Pukekohe Transport Network AEE September 2023, para 11.8.1

anticipated to enhance the connectivity of some of the remaining natural and semi-natural areas.

- c) The proposed bat mitigation in association with the landscape planting of berms, embankments, and stormwater wetlands is likely to improve ecological connectivity for other native fauna.
194. A recommended measure to avoid, remedy or mitigate potential construction adverse effects on streams included in the AEE is:⁷⁰

Where possible during detailed design, the alignment of the corridor should minimise effects on streams and the extent of earthworks and vegetation removal. In particular of mature and native vegetation.

195. We note that the AEE states that this measure is included in the ULDMP⁷¹ (or Landscape Management Plan (**LMP**)) proposed as a condition on all transport projects. The proposed ULDMP/LMP condition does not include this measure.

196. The AEE also states that the proposed ULDMP condition incorporates the below measures to avoid, remedy or mitigate operational effects related to stormwater:⁷²

- a) *Configure stormwater wetlands to a naturalised appearance (avoiding a purely engineered design/ form), conforming and integrating with the adjacent landform and future urban context. Provide planting of appropriate indigenous plant species for long term sustainability, maintenance and hydrological and ecological function.*
- b) *Where it is anticipated that a bridge is required to span a vegetated gully or stream catchment, a construction methodology should be prepared to minimise vegetation loss within the corridor. Any vegetation removed should be offset through future planting works.*
- c) *Landscape design and planting design details should be prepared for the Project that demonstrate (but are not limited to) the following:*
- (i) *Retains existing vegetation where possible*
- (ii) *The species selected should be appropriate for use within stormwater treatment areas and berms.*
- (iii) *Stormwater wetland design and planting*

197. We note that the proposed ULDMP condition does not include all the above described measures to avoid, remedy or mitigate operational effects related to stormwater.

198. The AEE also records the consultation that the Requiring Authority had with mana whenua – Ngati te Ata Waiohua, who prepared a Cultural Impact Assessment. There were no submissions from Ngati te Ata Waiohua or any iwi group on the NoRs.

⁷⁰ Pukekohe Transport Network AEE September 2023, para 11.9.5

⁷¹ Pukekohe Transport Network AEE September 2023, para 11.9.5

⁷² Pukekohe Transport Network AEE September 2023, para 11.9.5

Nevertheless there were several matters to note from the CIA commentary on waterways and ecology that are relevant to this matter. These include:

- a) opportunities for riparian planting alongside streams to restore and regenerate the environment and increase wetland areas as part of the Project;
- b) treatment of stormwater before it is discharged into waterways and the protection and enhancement of the mauri of all natural waterways; and
- c) a preference of bridges instead of culverts, where feasible, to remove barriers to fish passage.

199. We note that these matters are likely to be the subject of discussion with mana whenua during their participation in the preparation of the ULDMP and as part of required regional consent processes.

Submissions on Stormwater

200. There were several submissions concerning increased amounts of runoff arising from future roads. There were also a number of submissions questioning the locations of proposed stormwater treatment wetlands, including some that requested the relocation of wetlands.

201. Siobhan Ainsley (NoR4 10 and NoR5 19) was represented at the hearing by Birch Surveyors Ltd. Sir William Birch addressed the proposed location of the stormwater management wetland for NoR 5, located at 84 Pukekohe East Road, and suggested relocation of the wetland within the submitter's land holdings to better align with their land development aspirations. Sir William also sought confirmation that the cost of the relocated stormwater wetland on the submitter's property would be shared between the Submitter and Auckland Transport on a pro-rata basis. The cost-sharing of the wetland is not a matter that we can comment on.

202. The Requiring Authority confirmed that, from an engineering perspective, the alternative proposed by the submitter is appropriate.⁷³ This wetland would provide for management of stormwater from the future NOR 8 road as well as from NoR 5 and the proposed residential development at 84 Pukekohe East Road. The position of the Requiring Authority set out in their legal closing is that the location proposed by the Submitter is not the preferred location and, as the submitter's private plan change has not yet been lodged with Auckland Council, the most appropriate process for agreeing the final stormwater wetland location and its construction (including any cost-sharing) is through the plan change process and section 176/178 RMA approval from Auckland Transport.

203. L. Harrison and E. Ah-Wong (NoR 2 01) submitted on the proposed position of a stormwater wetland at 143 Tuhimata Road. Their submission noted that the proposed stormwater wetland is to be located on the highest point of land, and would require extensive excavation to construct. It was further advised that the discharge from the

⁷³ Requiring Authorities Opening Submissions at [12.51] – [12.53]; Hicks EiC at [258] – [259]; Hicks Summary at [52]; and Kirkman EiC at [92].

stormwater wetland on the west side of their property would be in an area with a history of instability.

204. In response to this submission the stormwater wetland has been relocated from the Harrison/Ah-Wong property to the property of D and S Carpenter at 491 Sim Road.⁷⁴ The new placement of the stormwater wetland is supported by D and S Carpenter who seek to have their property designated in its entirety due to its direct effects on the dwelling area.
205. X Chen (NoR 5 08) submitted in opposition to the extent of the designation on the site at the eastern part of 7 Youngs Grove (which borders Golding Road). Mr Chen requested that the stormwater wetland be moved further to the north of the property to provide for a potential future collector road connection to Golding Road. Following a review of the wetland location, the Requiring Authority support this amendment which will provide further space between the property and designation boundary extent.⁷⁵
206. Paerata 5 Farms Limited (NoR 2 28 and NoR 3 06) submission, relating to land at 412 Sim Road, was presented by Mr Henry Chiang at the hearing. Mr Chiang included an Appendix with a layout plan raising stormwater design matters, in particular that there is no stormwater device shown for the road connecting Sim Road to the Paerata Station Roundabout (NoR 3 – the southern connection) and that the Drury to Pukekohe Link (NoR 2) Wetland 9 is not showing an outlet overland flow path (OLFP). The submitter has questioned whether this needs an easement. More generally Mr Chiang had concerns about the location of proposed wetlands at 412 Sim Road included how they would serve future developments.
207. This submission was comprehensively addressed in the evidence of Mr Kirkman⁷⁶ and noted again in the Requiring Authority closing, that should the Paerata 5 Farms site be developed ahead of NoRs 2 and 3, there is an opportunity through the section 176/178 RMA approval process to agree the final stormwater wetland location on the site.⁷⁷ We also note the use of the proposed Land Use Integration Process condition in these circumstances.
208. Des and Lorraine Morrison (NoR 7 05) submission point on stormwater matters related to their property at 17 and 17A Butcher Road and the stormwater wetland attenuation device proposed to be located within their property. The submission stated that the current assessment for stormwater management appears to be based on existing use and location of dwellings rather than the planned residential use under the expected future Residential Mixed Housing Suburban zoning. As a consequence they submitted that stormwater management provisions may be inadequate and further that the option of locating such provisions in parks or reserves areas had not been considered.
209. The submission was responded to by Mr Kirkman as follows:⁷⁸

⁷⁴ Kirkman EiC at [70]

⁷⁵ Kirkman EiC at [72]

⁷⁶ Kirkman EiC at [79-80]

⁷⁷ Requiring Authorities Closing Submissions at [4.29]

⁷⁸ Kirkman EiC at [98 & 99]

“Attenuation systems need only be sized for the road infrastructure, and they have been adequately sized for this purpose. The development of private land outside of the NoR will need to manage stormwater effects independently from the road infrastructure. Changes in stormwater runoff resulting from the development of the private land is not a responsibility of the road infrastructure owner.

The submitter states there are better ways to address stormwater effects through parks and reserve areas capable of managing water volumes with the added value of recreation and amenity. This view is not supported by the Auckland Design Manual, Auckland Council’s GD01, or by myself. Providing parks and greenspaces do infiltrate rainwater do provide amenity. However, they will not mitigate effects of increased impervious area created by a road surface.”

Discussion and Findings

210. The Requiring Authority has taken account of stormwater matters including giving effect to the NPS-FW by way of assessing the ecological impacts and avoiding wetland areas as part of the options assessment. Stormwater discharge quality will be managed through the use of swales and stormwater wetlands and provision is made for the future management of potential stormwater effects (stormwater quantity and stormwater quality) by identifying the space required for stormwater management devices within the proposed designation.
211. The response to several submissions above demonstrates that the Requiring Authority has already worked with affected landowners to rationalise proposed wetland locations and where possible to provide for a single wetland to provide stormwater management for both the future road and future urban development of the site. The Requiring Authority have also indicated that they are willing to do this for other landowners should the need arise and we note proposed conditions that enable this coordination.
212. We consider that the level of detail in the proposed ULDMP is insufficient to achieve the level of effect minimisation on streams and stormwater that is stated in the AEE that will or should be achieved through ULDMP conditions, as described above in paragraphs [196].
213. We note the proposed ULDMP condition has no mention of minimising effects on streams in its objective and very little mention of stormwater in requirements to be included.
214. We consider that the ULDMP conditions need to be augmented to be aligned with the commitment provided in the AEE and for which no further explanation was provided for such variance. We have accordingly added an objective of minimising effects on streams and included more specific requirements for planting details and maintenance requirements.
215. We find that, subject to augmented ULDMP condition as discussed above, the Requiring Authority has taken account of stormwater matters including giving effect to the NPS-FW to the extent possible and necessary for the proposed NORs, noting that regional plan consents required will be applied for after detailed design has been carried out.

FLOODING

Flooding during construction

216. The Project approach to managing flooding during construction was firstly to avoid such effects by locating works outside of flood plains and overland flow paths as far as practicable. Where this was not possible, the Requiring Authority recommended a number of measures to avoid, remedy or mitigate potential adverse effects.⁷⁹ The detail of these measures are to be included in accordance with the proposed Construction Environmental Management Plan (**CEMP**) condition. Key matters include:⁸⁰

- Methods to reduce the conveyance of materials and plant that is considered necessary to be stored or sited within the flood plain (e.g. actions to take in response to the warning of heavy rainfall events) and
- Staging and programming to carry out work when there is less risk of high flow events,
- Diverting overland flow paths away or through areas of work
- Minimizing the physical obstruction to flood flows at the road sag point

Flooding during road operation

217. Flood effects during road operations have been assessed through flood modelling to consider the flooding extents at culvert crossings, bridge structures and areas where the new road embankment is within an existing flood plain or major overland flow paths.⁸¹ The assessment also considered the extents of flooding on existing properties due to the proposed projects. Climate change scenarios for a 2.1°C and 3.8°C increase were assessed to give context and sensitivity of future flood effects that may result from a changing climate.

218. Flood hazard risk resulting from the Pukekohe Transport Network may result from changes to:

- The flood freeboard to existing habitable buildings;
- Overland flow paths and flood prone areas;
- Flood levels on urban land and developable land (in the FUZ);
- The ability to access property by residents and emergency vehicles.

219. A Flood Hazard condition is proposed which will require the future detailed design of the transport corridors to be designed to achieve specific flood risk outcomes.⁸² This

⁷⁹ Pukekohe Transport Network AEE September 2023, para 11.7.2

⁸⁰ Pukekohe Transport Network AEE September 2023, para 11.7.2

⁸¹ Pukekohe Transport Network AEE September 2023, para 11.7.2

⁸² Pukekohe Transport Network AEE September 2023, para 11.7.5

includes flood modelling of the pre-Project and post-Project 100-year ARI flood levels (for Maximum Probable Development land use and including climate change).

220. Future detailed design of the alignments will be subject to a separate detailed flood hazard assessment which will refine the design of formations, culverts, bridge crossings and location / size of treatment (attenuation, water quality or both). Regional stormwater consents will also be required closer to the time of construction.
221. The following flood hazard condition was proposed in the Requiring Authority's closing legal submissions for all NoRs:
- (a) *The Project shall be designed to achieve the following flood risk outcomes:*
 - (i) *No increase in flood levels in a 1% AEP event for existing authorised habitable floors that are already subject to flooding or have a freeboard less than 500mm;*
 - (ii) *No increase in 1% AEP flood levels for existing authorised community, commercial, industrial and network utility building floors that are already subject to flooding or have a freeboard less than 300mm;*
 - (iii) *Maximum increase of 50mm in water level in a 1% AEP event outside and adjacent to the designation boundaries between the pre and post Project scenarios.*
 - (iv) *No new flood prone areas and*
 - (v) *no increase of flood hazard for main access to authorised habitable dwellings existing at the time of the Outline Plan is submitted. The assessment shall be undertaken for the 1% AEP event. Where flood hazard is:*
 - A. *velocity x depth $\geq 0.6 \text{ m}^2/\text{s}$ or*
 - B. *depth $> 0.5\text{m}$, or*
 - C. *velocity $> 2 \text{ m/s}$*
 - (b) *Compliance with this condition shall be demonstrated in the Outline Plan, which shall include flood modelling of the pre-Project and post-Project 1% AEP flood levels (for Maximum Probable Development land use and including climate change).*
 - (c) *Where the above outcomes can be achieved through alternative measures outside of the designation such as flood stop banks, flood walls, raising existing authorised habitable floor level and new overland flow paths or varied through agreement with the relevant landowner, the Outline Plan shall include confirmation that any necessary landowner and statutory approvals have been obtained for that work or alternative outcome.*
222. The Requiring Authority advised through a Memorandum dated 21 May 2024 in response to the Panel's request for draft condition wording that Auckland Transport

proposed to change clause (a)(v) of the flood hazard condition on its NoRs to align with the parameters sought by Healthy Waters.

223. The proposed change to clause (a) (v) is

no increase of flood hazard class for main vehicle and pedestrian access to authorised habitable dwellings existing at the time of the Outline Plan is submitted. The assessment shall be undertaken for the 1% AEP event. and reference the hazard class in accordance with Schedule X to these conditions.

Where flood hazard is:

A. ~~velocity x depth >= 0.6 m²/s or~~

B. ~~depth > 0.5m, or~~

C. ~~velocity > 2 m/s~~

224. The above proposed change is recommended by the Requiring Authority to apply to NoRs 1, 3, 4, 5, 6 and 7 but is not recommended to apply to NoRs 2 and 8. This is because the previously proposed, i.e unchanged, condition follows NZTA's Z/19 Taumata Taiao-Environmental and Sustainability Standard for the infrastructure delivery process and is consistent with NZTA's national approach.

225. With those changes, the Requiring Authority's conclusion on operational flood effects is that there are potential operational effects risks of increased flood levels upstream and downstream of crossings and where the vertical alignment of the road is elevated.⁸³ A number of potential management and mitigation measures have been provided to manage operational effects at the future detailed design stage.

226. Auckland Council Review- Mr Trent Sunich, a consultant stormwater engineer with SLR Consulting Ltd, prepared a stormwater and flood hazard technical assessment which formed part of the s42A report.⁸⁴ Mr Sunich agreed with the approach undertaken in the Assessment of Flood Hazard Effects and found the use of the risk criteria sufficient to identify the quantum of effect for various existing properties (particularly in relation to moderate and high-risk areas), and that will exist in the future when detailed design is completed via the proposed conditions of the Outline Plan process.

227. Mr Sunich concluded that he agreed with the flood hazard conditions proposed by the Requiring Authority on 13 March 2024, which we understand to be the same as those in the Requiring Authority's closing legal submissions. He suggested including an advice note describing the purpose of the flood conditions as follows:⁸⁵

The purpose of the Flood Hazard Condition is to manage flood plain, flood prone and over land flow path water levels.

228. This advice note is not included in the Requiring Authority's recommended flood hazard conditions.

⁸³ Pukekohe Transport Network AEE September 2023, para 11.7.6

⁸⁴ Hearing Report at 4.8.8

⁸⁵ Memorandum from Trent Sunich on Flood Hazard Concluding Comments, 18 March 2024

229. We note that in his stormwater report prepared for the s42A report Mr Sunich recommended a flood hazard condition requiring no increase in flood hazard classification very similar to the RA's current position on the flood hazard condition for NoRs 1 and 3-7.
230. Mr Sunich observed that the proposed condition requiring flood hazard assessment during construction (and associated mitigation) is to be addressed as part of the CEMP. He considered this approach is satisfactory to assess and mitigate, as necessary, any temporary flood hazard effects associated with the construction activities.

Submissions on Flooding Effects

231. Paerata 5 Farms Limited (NoR 2 28 and NoR 3 06) submission also addressed concerns that the Project should not enable any increase in flood hazard (even by 50mm) on any sites. Mr Chiang considered that this could create an unacceptable hazard for which future developers and landowners will have to bear the costs of future technical work to mitigate the flood risk. Any new flood risk will devalue land by creating a "hazard" on sites where no such hazard existed.
232. Mr Kirkman responded to this submission for the Requiring Authority as follows.⁸⁶
233. A 0mm change in flood hazard at the designation boundary is a very difficult outcome to achieve by any Project and it would likely require an extremely oversized culvert or bridge to achieve. Although technically possible, it is likely to place an unreasonable cost burden on the road asset owner and may be cost prohibitive. Based on my experience, the concern raised by the submitter that this effect will incur a cost to the future developers and landowners, is not supported. If this increase were to materialise, it would not need to be mitigated. This increase can be adapted to by placing future buildings with floor levels that consider this increase as part of the flood level with which building floors and freeboards need to comply with. I note that the houses should be built up and out of culvert headwater zones to anticipate culvert blockage risks.
234. Ken Vincent and Andrew Vincent, Pukekohe Industrial Park and Storage Limited, (PIPSL) (NoR 4 04) own the property at 1199 Paerata Road. The submitters requested that the proposed flood hazard conditions should also refer to the 50%, 20%, 10% AEP rainfall events, not only the 1% AEP event.
235. In her evidence on behalf of PIPSL Limited Ms Edwards expressed concerns about flood displacement effects and requested amendments to the flood hazard condition. In her tabled statement of evidence Ms Edwards advised that after reviewing Mr Kirkman's rebuttal evidence she accepts the flood hazard condition proposed by the Requiring Authority.⁸⁷
236. Aedifice Development No.1 Ltd (NoR 5 14), OMAC Ltd and Next Generation Properties Ltd (NoR 5 13) (Aediface) Mr Balaji Karnan, a Senior Civil Engineer at Civix Ltd, provided evidence on behalf of Aedifice in relation to land at 2 and 19 Golding Road which was part of the 'Kohe Project'. Mr Karnan's evidence addressed a number of flooding related matters. Firstly, he referred to the role of the existing culvert underneath

⁸⁶ Kirkman EiC at [77]

⁸⁷ Edwards, tabled evidence 11 March 2024

Golding Road and the consequences for the Kohe project site, downstream of the culvert, if the culvert is upgraded.⁸⁸ Mr Karnan considered it would result in flushing the upstream catchment into the Kohe Project site, but the flood model and proposed drainage reserve necessary for attenuating the 1% AEP event for the Kohe Project have already undergone review and approval by Healthy Waters. Therefore, Mr Karnan requested reconsidering the proposed culvert size in a manner that ensures the upstream catchment's attenuation of the 1% AEP event remains within the eastern side of Golding Road, and the culvert positioning size and gradient under Golding Road should consider mimicking the current status to minimise the impact on the Kohe Project.

237. In response, Mr Kirkman agreed that the existing culvert under Golding Road performs a role in regulating flow passing from the development on the eastern side of the road to the western side of the road.⁸⁹ However, while flood hazard conditions are proposed, the upgrade of culverts is not been proposed as part of the designation. The design outcomes need to be met through the future detailed design of the Project (including the road and culvert arrangement) in parallel with stormwater design and management requirements, which at this stage have not been confirmed as regional consents have not been obtained.
238. Mr Kirkman advised that the Project team met with the submitter on the 15th of February 2023. During the meeting, Mr Busnardo confirmed that it is possible for the road design to be updated at detailed design to suit the Kohe project flood outcomes.⁹⁰ The flood hazard condition would require not more than 50mm of flood level increase at the designation boundary unless a building freeboard is being infringed, in which case it would be less.
239. Mr Karnan was also concerned that the proposed low point / sag on Golding Road is at Chainage 260m, while the proposed culvert is at Chainage 220m.⁹¹ In his view, this offset is likely to impact on the proposed flood basin within the Kohe development, and he recommended that the road low point / sag to be at or close to the proposed culvert location to minimise the impact.
240. Mr Kirkman responded to this by stating that he was confident that the flood hazard conditions will require the effects associated with the road sag to be mitigated and he believed there is sufficient space available in the designation to achieve this.
241. Mr Karnan⁹² considered that the NoR 5 proposed stormwater pond as shown is unlikely to be built prior to the development of Aedifice land. He noted that the proposed location of this pond is partially covering the necessary storage that will be incorporated within the land to attenuate a 1% AEP event, and as such, there is an opportunity to collaborate and reach an optimal solution (subject to a funding agreement with AT).
242. Mr Kirkman response to this noting that the relative timing of NoR 5 being built and the subject land developing is not known at this stage.⁹³ He agreed there may be an

⁸⁸ Karnan EiC at [6.5,a, b & d]

⁸⁹ Kirkman Rebuttal at [7]

⁹⁰ Kirkman Rebuttal at [8]

⁹¹ Karnan EiC at [6.5 (c)]

⁹² Karnan EiC at [6.5 (e)]

⁹³ Kirkman Rebuttal at [11]

opportunity for the developer to seek an agreement with AT in the future. However, as it stands presently, he maintained that the space to manage stormwater in a manner that allows NoR 5 to meet its regulatory requirements will need to be preserved should the Project be constructed before the development.

243. Finally Mr Karnan's evidence considered that the Project should ensure that flood modelling includes the development of the submitter's proposed development.⁹⁴ Alternatively, Mr Karnan requested a 3D model of the proposed Golding Road alignment to evaluate the flooding impacts on the Kohe Project more accurately.
244. Mr Kirkman's response⁹⁵ was that the NoR 5 design is concept only and when it is progressed to a stage where regional resource consent is applied for, the effects will be assessed with appropriate mitigation measures. The NoR 5 pre-construction state, or base case state, upon which the project effects will be evaluated and managed will depend on the level of development in the catchment at the time the design is advanced. It is premature to include NoR 5 or require inclusion of the adjacent developments in a combined flood model at this stage. He noted that if the proposed development had regional resource consents for stormwater and flood mitigation at the time of implementation of the Project these would need to be the basis for the future NoR design.
245. Gerald Baptist (NoR 4 01) This submission expressed concern that the proposed road alignment will divert the catchment to the flowpath near their property at 1173 Paerata Road and ask how it will be managed, including stream enhancements. Mr Baptist advised that he has observed the flowpath near their land (Whangapouri Stream) becoming a fast-flowing torrent within an hour of a rainfall event.
246. Mr Kirkman's evidence was that the submitter has valid concerns over Whangapouri Stream.⁹⁶ He advised that at this reach in the stream, the upstream catchment consists of the majority share of the Pukekohe township and CBD before flowing toward the submitter's property. The road design will not redirect new catchment to the Whangapouri Stream. It will change a relatively small proportion of pervious area to impervious and contribute to an increase in floodwater runoff. Wetlands are located along the alignment and all road generated stormwater runoff will be directed to the wetlands for treatment, detention and attenuation. Stream enhancements are not proposed as part of his project. The flow leaving the new road areas and into the Whangapouri Stream will require resource consent and during this phase conditions will be placed on the stormwater discharge to prevent effects raised by the submitter.
247. E and B McIntyre (NoR 6 03) The submitters did not want the Project to impact the improvements of floodwater egress as a part of previous road improvements or increase the likelihood of their house at 1 Ward Street being flooded.
248. Mr Kirkman's evidence advised that the proposed changes to the road are minor and provide for enhanced walking and cycling mostly within the existing road reserve. These works will likely have only a minor or negligible impact to the current stormwater drainage system and performance standard. A more detailed design will be developed in

⁹⁴ Karnan EiC at [6.5(h)]

⁹⁵ Kirkman Rebuttal at [18]

⁹⁶ Kirkman EiC at [85]

the future to address the stormwater drainage implications of the road design and resource consents applied for at that stage. In the interim, the flood hazard condition set being sought for this NoR would apply to the new designated areas. These will add a level of assurance to the submitter that flood effects will be managed.⁹⁷

249. Maimere Properties Ltd, MC & LJC Johnstone & LF Williams (NoR 8AC 05) and Rodney Cunningham (NoR 8AC 09) The submitters sought confirmation from the Requiring Authority that the stormwater wetlands effectively manage all stormwater runoff from the road areas in the vicinity of their respective properties at 8 and 80 Mill Road.
250. Mr Kirkman's evidence confirmed that all road areas will be treated and stormwater runoff will be managed with new swales and wetlands (where currently there are no formal stormwater treatment systems). Details will be developed for resource consent and will likely achieve the requested outcome by the submitter.⁹⁸
251. Peter Gorton and Louise Ward (NoR 2 – 33) This submission advised that the stream (Oira Creek) adjacent to their property at 319D Sim Road floods several times a year and considered that this will have a significant impact on any proposed road construction works with negative financial consequences.
252. Mr Kirkman's evidence advised that this stream is a major waterway for the region, and it is naturally formed through a long history of floodwater flows.⁹⁹ It has the potential to impact the road construction should it flood. These risks can be managed through construction. The CEMP will set out the measures to mitigate flood hazard effects such as siting stockpiles out of floodplains, minimising obstruction to flood flows, and actions to respond to warnings of heavy rain.
253. This submitter had also observed runoff from a neighbouring property (319C Sim Road) that flows into their property and causes erosion and reports significant erosion during the late January 2023 extreme rainfall. In response, Mr Kirkman advised that the NoR 2 alignment will include a significant fill embankment through the areas where erosion has been observed and the potential for erosion will be managed during and post construction as typically required by regional consents.

Discussion and Findings

254. Flooding during construction - The CEMP condition includes the following section relevant to flooding:
- (b)(viii) measures to mitigate flood hazard effects such as siting stockpiles out of floodplains, minimising obstruction to flood flows, actions to respond to warnings of heavy rain;*
255. We note that future detailed design will be subject to a separate detailed flood assessment at the outline plan and regional consenting phase, where measures to mitigate effects during construction will be assessed in more detail.

⁹⁷ Kirkman EiC at [95]

⁹⁸ Kirkman EiC at [101]

⁹⁹ Kirkman EiC at [82]

256. We find that the flood hazard risks during construction can be adequately managed through implementation of the CEMP.
257. Flooding during road operation - There are a number of potential management and mitigation measures that are available to manage operational effects at the future detailed design stage. Flood hazard outcomes are included within conditions on all of the NoRs so that flood hazard effects can be appropriately managed.
258. At the hearing we questioned Mr Kirkman's evidence on the flood hazard in relation to water depth, in particular our understanding that small vehicles could float in water depth of 0.3 m. Mr Kirman advised his view was that water depths of 0.5 m were acceptable for small vehicles. Mr Kirkman's evidence noted that:¹⁰⁰

Flood hazard condition [(a)(v)] wording has been changed to reflect the threshold from category H2 to H3 in the Australian Institute of Disaster Resilience 2017, Handbook 7, Managing the Floodplain. Using categories of protection, allows some changes to depth or velocity within category 2 while providing appropriate protection. The protection of both pedestrians and small vehicles are covered within category H2.

259. Following our further examination of the categories referred to, we considered that Mr Kirkman was not correct that the H2 category protects both pedestrians and small vehicles. The Requiring Authority addressed this matter with the revised Flood Hazard Condition for NoRs 1 and 3 to 7 by having the condition refer directly in a schedule to the figure that defines the thresholds.
260. However, as noted above, the Requiring Authority's confirmed in the 21 May 2024 Memorandum that the NZTA Waka Kotahi NoR 2 and 8 flood hazard conditions were to remain as per the closing submissions, with Condition (a)(v) referring velocity and depth parameters.
261. Our finding is that the maintenance of this condition is not supported in evidence and that the wording of the flood hazard condition for NoRs 2 and 8 should be the same as for the Auckland Transport NoRs. In the alternative, criterion B in the initial flood hazard condition should be amended to a depth > 0.3m. NZTA Waka Kotahi's adherence to a standard that has been demonstrated as being not in accordance with accepted evidence which is based on human experience is not a matter that we can, or should, give weight to.

NOISE

Construction Noise and Vibration

262. The construction noise and vibration effects of the Project have been conservatively addressed based on the anticipated construction methodology and on a worst-case scenario basis (i.e. the noisiest machinery operating at the designation boundary).
263. Ms Wilkening, for the Requiring Authority, predicted that the construction noise levels for the majority of works will be able to comply with relevant standards following mitigation.

¹⁰⁰ Kirkman EIC at [39]

Some receivers will still intermittently experience noise levels over 85 dB LAeq (predicted worst case scenario) after mitigation, if high noise construction activities occur on the edge of the designation boundary. Where high noise activities are likely, these activities will be intermittent and temporary in nature. As the road construction is linear, each receiver would only be affected for part of the overall construction duration.

264. The specific mitigation measures will be identified within a Construction Noise and Vibration Management Plan (**CNVMP**), and this is proposed as a condition on each of the NoRs. Closer to construction, if it is anticipated that the construction noise criteria will be exceeded, a Schedule to the CNVMP will be prepared which will set out measures to manage noise and vibration effects beyond these measures set out in the CNVMP.
265. Ms Wilkening also anticipated that some night-works may be required to complete the construction of the Project. This will be limited, but should night works be required, consultation with affected properties and mitigation measures will be undertaken under the CNVMP. In some cases, this may include an offer of temporary relocation for the most affected receivers to manage and mitigate adverse effects.
266. For construction vibration, Ms Wilkening stated that compliance with the Category B standards (related to building damage) is achieved for the majority of receivers in NoRs 1, 2, and 3. However, without mitigation, existing receivers in NoRs 4, 5, 6, 7 and 8 have been identified to potentially experience cosmetic damage to buildings (such as cracking) and annoyance from the perception of vibration.
267. Ms Wilkening considered that NoR 6 will likely experience higher construction noise and vibration levels than the rest of the Project, as it is located largely in an established urban environment.
268. Under the CNVMP, building condition surveys will be carried out at detailed design and after construction at properties where predictions indicate the relevant building damage criteria may be exceeded.
269. Construction effects will be reassessed at the time of construction based on known construction methods, machinery and the receivers present at the time of construction. The CNVMP provides a framework for the development and implementation of best practicable options to manage adverse construction noise and vibration effects on receivers.

Submissions on Noise and Vibration Effects During Construction

270. A summary of submitter concerns about noise and vibration effects during construction and Ms Wilkening's detailed responses is as follows.¹⁰¹
271. McKean Family Trust (NoR 1 04, NoR2 25) sought absolute noise and vibration limits of 70 dB LAeq and 5 mm/s PPV respectively, without the option of exceedance, irrespective of management measures. Ms Wilkening disagrees with setting an unmovable noise limit for construction noise (and vibration). Construction is a highly variable activity with many peaks and troughs. The noise criteria set out in NZS 6803

¹⁰¹ D&S Carpenter, McKean Family Trust, Ministry of Education, R. Beaurain, B. Beaurain, T. Brown, P. Haddad, K. Cole, R. Burns, J. Thompson, M&C Connors, R. Simpson & M. Hickmott

and referenced in the construction noise and vibration conditions are trigger levels that, if exceeded, require additional management and mitigation. Such management will occur by means of the CNVMP and, where required, Schedules.

272. R and B Beaurain (NoR 2 03 and 04) consider that “noise levels during construction [...] must be agreed with affected homeowners”. Ms Wilkening’s response was that where a CNVMP Schedule is required, consultation with affected parties is also required. While the objective of such consultation is not to “agree” on noise levels, it will assist in determining construction times and duration of high noise activities as well as management and mitigation options when works are close to the house. What is sought by the submitters is already required by the conditions.
273. Ministry of Education (NoR1 06, NoR2 27, NoR3 05, NoR4 09, NoR5 18, NoR6 11, NoR7 13 and NoR8 AC 14) expressed concern about potential construction noise effects on schools in the area. All schools are more than 200 metres from the roads and Ms Wilkening predicted that they will therefore receive compliant noise levels at all times during construction without additional mitigation. This means that Schedules are unlikely to be required, and therefore specific consultation in relation to noise levels would not occur through the mechanism of the CNVMP and Schedules. However, the general stakeholder engagement that is sought by the Ministry will likely also include communication in relation to construction noise and vibration, even if it does not affect the operation of a school. We note that the Ministry of Education did not appear at the hearing but tabled a statement indicating that its concerns had been met by changes to conditions.
274. M & C Connors (NoR4 13) are concerned about noise from construction laydown areas. The closest construction boundary from the dwelling at 1223 Paerata Road is some 80 metres, well outside the extent where significant noise levels could be expected. The designation allows for space for a laydown area adjacent to the Paerata Road/Butcher Road roundabout, about 150 metres from the dwelling. Given that the laydown areas are mostly used for storage and associated activities, noise from these areas is relatively low compared with active construction work. Ms Wilkening thus considered that adverse noise impacts from the potential laydown area will be unlikely.
275. T Brown (NoR2 10) submission focussed on potential construction vibration from works close to their house at 397 Burt Road, which is about 30 metres from the closest construction boundary. Ms Wilkening explained that at that location, the proposed realignment of Burt Road reconnects with the existing Burt Road. Works will be relatively minor, with high vibration activities closest to the house involving the compaction of the realigned Burt Road prior to sealing. She predicted that the vibration levels will be compliant with the Category B criteria and that the Category A (amenity) criteria are also likely to be complied with. This does not mean that no vibration will be felt, but this will be for limited times when high vibration inducing activities occur close-by. The predicted vibration levels will not cause damage to the house, cosmetic or otherwise.
276. P Gorton and L Ward (NoR2 22) Mr Gorton and Ms Ward are concerned about construction vibration from works close to their house at 319D Sim Road. Ms Wilkening advised that as their dwelling is inside the designation, and it has been assumed that it

will be removed. Therefore, vibration or noise impacts are not being assessed at this property.

277. K Cole (NoR6 01) This submitter identified a general concern about construction noise and vibration impacts from the construction of the Shared Use Path (**SUP**) as part of NoR 6. The works in NoR 6 involve the reallocation of road space to allow for a bi-directional cycleway and footpath, while retaining a two-lane road. We note that the works will occur on the far side of Helvetia Road, away from this submitter's dwelling. It is anticipated that no, or only very limited, night-time works will be required for these works as they generally do not affect active roads and therefore avoid disruption to traffic. However, in accordance with the proposed designation conditions, should night-time works be required, a schedule would need to be prepared that ensures consultation with affected neighbours has been undertaken before works commence. Similarly, the proposed CNVMP requires the publication of a contact for complaints that is available during construction times. These two requirements should ensure that the submitter's concerns are addressed appropriately.
278. Council Specialist Review – Mr Hegley provided the Council review on construction noise and vibration effects. In his closing remarks, Mr Hegley identified two matters for amendment in the relevant conditions:
- a) That the conditions should clarify that night time works should only be for activities that can not practicably be undertaken in the day; and
 - b) That the conditions for NORs 2 and 8 the schedules to the CNVMP should require certification by the councils as they do in the conditions for the AT NoRs.

Discussion and Findings

279. We find, based on the evidence of Ms Wilkening, that the matters raised in submissions have been satisfactorily addressed. We also accept Ms Wilkening's response to the comments on conditions from Mr Hegley that such amendments were not necessary. We accordingly consider construction noise and vibration effects have been comprehensively assessed and that the proposed conditions on the designations, particularly the CNVMP and schedules to the CNVMP, will appropriately manage these effects.

Operational Noise

280. The AEE and Ms Wilkening's evidence set out the framework for operational noise assessment based on NZ6806 as required by Rule E25.6.33 of the AUP:OP. This includes:
- a) predicted noise level changes comparing the future traffic noise levels with and without the NoRs;
 - b) the definition and identification of Protected Premises and Facilities (**PPF**);
 - c) the noise criteria categories for new and altered roads in relation to these PPFs; and

- d) the future noise scenarios for these categories.
281. Overall, most existing PPFs (181 from a total of 198) are predicted to receive noise levels within Category A (the desired noise criteria category) and that only PPFs in NoRs 2 and 8 require noise mitigation beyond the use of low road noise surfacing. Potential mitigation may take the form of roadside barriers or boundary fences, however this would be reassessed at the detailed design stage. During the confirmation of the BPO at detailed design, the proposed conditions require that updated noise level contours will be prepared and can be made available to interested parties. Details on how to access this information has been added to the LIP condition for the AT NoRs and the project information condition for the Waka Kotahi NoRs.

Submissions on Operational Noise Effects

282. Several submitters raised concerns about operational traffic noise effects resulting from the Project¹⁰². Ms Wilkening responded to these concerns in a collective manner and we summarise this response as follows:
- a) Where the future increased traffic noise is located a significant distance from the road (more than 100 metres, and some more than 200 metres), the resultant noise levels will be well within Category A (the most stringent criterion) and therefore Ms Wilkening advised that no additional mitigation beyond the use of low noise road surface is proposed;
 - b) Where the proposed works introduce a Shared Use Path (SUP), but no additional road capacity, there is no increase in traffic noise as the road layout is not being changed;
 - c) For some submitters, traffic noise levels are likely to increase due to the anticipated urbanisation of the neighbourhood, which is demonstrated by comparing the current situation and the future “Do Nothing” situation (i.e., without the Projects);
 - d) Noise levels at the showgrounds at 58 Station Road are predicted to be at a level that would generally be acceptable and appropriate for all but the most noise sensitive uses and will not cause adverse effects on the use of the Station Road showgrounds site, particularly when taking into account the noise produced during showground events.
 - e) Despite the increase in traffic volume over time, due to redistribution of traffic over the wider area the Projects are predicted to result lower noise levels along some of the roads (particularly NoR 1).
 - f) No noise mitigation has been recommended for dwellings on properties inside the designation as it has been assumed they will be removed.

¹⁰² McKean Family Trust (NoR1_04, NoR2_25), Beurain (NoR2_03), Beurain (NoR2_04), Postles (NoR2_08), Berry (NoR2_16), Gates (NoR2_21), Haddad (NoR2_31), Franklin Agricultural and Pastoral Society (NoR5_02), Whiteman (NoR7_02), Morrison (NoR7_05), Telfer (NoR7_07), Lynch (NoR7_09), Burns (NoR7_11), Johnstone (NoR8_AC_05), Cunningham (NoR8_AC_09), Neumann (NoR8_WDC_06), Gorton and Ward (NoR2_33).

- g) The proposed low noise road surface on NoR 2 will benefit some properties as a whole as most of the property will have noise levels such that no further noise mitigation would be recommended as these levels are inside the most stringent Category A for New roads.
 - h) With respect to concern about noise from trucks, both from passers-by and engine braking, for most dwellings the traffic noise levels will remain the same or decrease. Most traffic noise increases would occur due to wider intensification rather than the Projects. Truck noise is generally higher than noise from light vehicles. With the increase in overall traffic volume, it is likely that trucks may pass more frequently, however, this will not be a result of the Projects.
 - i) Engine braking can be an annoyance for neighbouring residents. Good road design, such as early indication of roundabouts ahead, can reduce the need to use engine braking. While observance of “no engine braking” signs is not mandatory, the signs may help in reducing braking events. However, there are other considerations such as safety that would take precedence over noise effects. It is therefore not possible to include a requirement or regulation that stipulates that engine brakes cannot be used, as sought by one submitter.
 - j) Concerns were expressed in some submissions about the increase in noise level due to the road moving closer and the removal of an existing fence, trees and vegetation. It is expected that where an existing fence needs to be removed for the road widening, a new fence will be constructed along the new boundary as outlined in the evidence of Mr van der Ham. Vegetation does not act as an effective noise mitigation measure as it has neither the depth nor the density to achieve even a noticeable noise level change. While people sometimes perceive visual shielding to also reduce noise levels, this is not the case for boundary planting.
283. Council Specialist Review – Mr Hegley also provided a review of operational noise effects, focusing his closing comments on several of the proposed conditions.
284. Future Road Surfacing Condition 31 for NoRs 1, 3, 4, 5, 7 - Mr Hegley notes that Condition 31 requires that future resurfacing works to be low noise road surface (asphalt) if one of four subsequent criteria are applicable, none of which is noise related. His concern is that this condition could allow resealing using chip seal which generates higher noise than asphalt which would appear at odds with Condition 43 which requires the detailed mitigation options to be maintained.¹⁰³ The Requiring Authority’s closing legal submissions response was that if provision of low noise road surfacing is part of the selected mitigation option then it must be maintained pursuant to Condition 43.¹⁰⁴
285. Design Limits Conditions 32 and 30 respectively for the relative condition sets - Mr Hegley was concerned that the Noise Criteria Categories are reasonably broad, with the future level of road traffic noise varying from that currently predicted. He favoured setting limits based on the predicted noise levels plus a 2 dB margin.

¹⁰³ Hegley Summary Evidence at [22]

¹⁰⁴ Garvan Closing Submissions at [12.3]

286. Ms Wilkening disagreed with this approach to setting traffic noise criteria for several reasons:
- a) The predicted noise levels provided in Appendix A of the traffic noise assessment are for individual Project roads only but assume that all roads of the Pukekohe Transport Network Project have been implemented. This means that noise levels may be different when taking into consideration all roads (and the NIMT) in the vicinity of any PPF.
 - b) Project roads may not all be implemented at the same time. This would result in different traffic volumes in the interim, and therefore different traffic noise levels. Her assessment was based on all Project roads being implemented. Therefore, setting a "hard" noise limit for any one road is not practicable.
 - c) In Ms Wilkening's experience, setting a fixed limit for PPFs provides no opportunity to implement the BPO. NZS 6806 now requires practicability to be taken into consideration when determining appropriate mitigation and for that reason does not include fixed noise performance standards.
 - d) The Project involves route protection for eight roads that are likely to be constructed in the future. Her assessment was based on the indicative alignments of these roads. While the existing roads that will be upgraded are generally fixed in their location, the new road alignments may change within the designation. Therefore, setting hard noise limits is unreasonable at this stage of the Project. The BPO mitigation to achieve the indicated outcomes will be undertaken during the detailed design when appropriate detail is known.

287. Noise Barriers Conditions 33&34 or 31&32 respectively for the relative condition sets - Mr Hegley recommends that the following amendment be added to these to the conditions:

In situations where the project passes through future residential areas, noise barriers shall be included in the Detailed Mitigation Options where they can be demonstrated to provide the Best Practicable Option for the control of road traffic noise given its intended future residential use.

288. Mr Hegley suggestion was that barriers are to be considered on their merits during detailed design with respect to the future environment.¹⁰⁵ The purpose of his amendment is to make it clearer to future designers that in addition to PPFs road noise effects should also be considered in the FUZ generally.
289. Ms Wilkening addressed Mr Hegley's recommendation in her evidence with her main points summarised as follows:¹⁰⁶
- a) most of the Project roads are existing roads with regular driveway access. For these roads, the use of barriers is not generally practicable as the frequent gaps required to retain access to sites will reduce the effectiveness of the barriers.

¹⁰⁵ Hegley Summary Evidence at [33]

¹⁰⁶ Wilkening EiC at [165] to [168]

- b) for the new roads (NoR 3 and parts of NoRs 2, 4, 5 and 7), predicted noise levels for all PPFs show that with the low noise road surface and some limited and targeted barriers for existing PPFs, noise levels will be within Category A for 61 of the 76 PPFs assessed against the new road criteria.
- c) for the remaining PPFs predicted to receive noise levels in Category B, barriers have already been tested and, where appropriate, included in the predictions and noise level contours provided. Barriers have been included also where they only provide protection to the ground floor, even if an upper floor is not protected. Only a small number of these PPFs benefit from barriers. This indicates that barrier mitigation is specific and dependent on several factors such as the road location and height, the building location and orientation on site, access requirements to the site and road form passing the dwelling.
- d) barriers will need to be confirmed as BPO during the detailed design phase. The BPO assessment will take account of any other effects the barriers may have, such as visual, shading, safety, or access effects.
- e) it is not practicable to provide for "blanket" barrier assessments adjacent to undeveloped FUZ without knowledge of the location, height, orientation, and design of dwellings. Assessing barriers adjacent to roads allowing driveway access in advance of houses being constructed is not appropriate in the circumstances.

290. Best Practicable Option Condition 35 and 33 respectively for the relative condition sets - Mr Hegley noted his concern with the wording of these conditions including the reference to NZS 6806 when determining the BPO. It is his understanding that the RMA provides the framework for determining the BPO rather than a particular standard. The Requiring Authority does not seem to have specifically addressed this particular question. We note Rule E25.6.33 of the AUP is as follows:

E25.6.33. Noise levels for traffic from new and altered roads

(1) All new roads and all altered roads that are within the scope of New Zealand Standard NZS 6806: 2010 Acoustics – Road traffic noise – New and altered roads must comply with the requirements of New Zealand Standard NZS 6806: 2010 Acoustics – Road traffic noise – New and altered roads.

291. As NZS 6806 is a commonly accepted method for assessing effects of road traffic noise for new and altered roads we consider that its methodology is suitable for assessing the BPO in accordance with the RMA.

Discussion and Findings

292. We find that the Requiring Authority has adequately assessed the impacts of road noise and provided for appropriate mitigation of future road noise for PPFs.

293. With respect to future development adjacent to roads we accept the Requiring Authority's position that there is a shared responsibility between the road controlling authority and adjoining future land developers. The road controlling authority's contribution is to provide a low noise road surface plus sufficient information to enable

- developers to provide appropriate noise mitigation by way of development layout or façade construction.
294. We also accept that the Requiring Authority is taking all reasonable steps to mitigate traffic noise at source within the corridors that they operate.
295. We consider that provision by the Requiring Authority of noise level contours for the future scenario with all Project roads and mitigation in place is appropriate to give developers appropriate guidance how to design their subdivisions in terms of layout and orientation and what, if any, additional insulation may be needed should they decide to provide dwellings with a reasonable indoor noise environment.
296. We concur with the Requiring Authority's view that the proposed conditions on the designations appropriately provide for assessing road traffic noise closer to construction to determine that the recommended mitigation is still the Best Practicable Option to meet the noise categories as recommended by Ms Wilkening.
297. We consider that the matters raised in submissions have been adequately addressed by the Requiring Authority.
298. We address the matters raised by Mr Hegley in relation to the conditions as follows:
299. *Future Road Surfacing Condition 31 for NoRs 1, 3, 4, 5, 7* - We are supportive of Mr Hegley's concern that Condition 31 may conflict with Condition 43 which requires the detailed mitigation options to be maintained. We consider that this could be remedied by adding text to Condition 31 noting that the condition shall not supersede the requirements of Condition 43 and have included this in our recommendation conditions.
300. *Design Limits Conditions 32 and 30 respectively for the relative condition sets* - Mr Hegley was concerned that the Noise Criteria Categories are reasonably broad meaning that actual level of road traffic noise may vary from the currently predicted and favoured setting limits based on the predicted noise levels plus a 2 dB margin.
301. However, we accept Ms Wilkening's evidence on this matter and her conclusion that the conditions as proposed provide a flexible approach to noise mitigation and noise outcomes and an opportunity to implement the BPO.
302. *Noise Barriers Conditions 33&34 or 31&32 respectively for the relative condition sets* – We agree with Mr Hegley that noise barriers should be considered on their merits however we accept Ms Wilkening's viewpoint that is not practicable to provide for "blanket" barrier assessments adjacent to undeveloped FUZ without knowledge of the location, height, orientation, and design of dwellings. Assessing barriers adjacent to roads allowing driveway access in advance of houses being constructed is not appropriate in the circumstances and also requires the input of other disciplines.
303. *Best Practicable Option Condition 35 and 33 respectively for the relative condition sets* - We find that as Rule E25.6.33 of the AUP-OP requires new and altered roads to comply with NZS 6806 and that as NZS 6806 is a commonly accepted method for assessing effects of road traffic noise for new and altered roads we consider that its methodology is suitable for assessing the BPO in accordance with the RMA.

ECOLOGICAL EFFECTS

304. We have described the existing environment for all NoRs in paragraph [14]. With the exception of NoR 6, which passes through urban Pukekohe, the alignments traverse generally rural environments with potential effects on the natural terrestrial and fresh water aquatic environment. Ms Fiona Davies provided evidence for the Requiring Authority on ecological effects. Ms Davies was involved in the MCA process for route selection and then supervised the desktop and site investigations for the terrestrial, freshwater and wetland environments within each NoR boundary. Her evidence summarised the investigation findings as follows:
- a) A total of 15 vegetation types ranging in value from Negligible to High;
 - b) Long-tailed bats were associated with all NoRs, however they were considered unlikely to occur within NoR 6. The bats were assessed to have a Very High value;
 - c) A total of 48 avifauna species may be present, of which, 28 are native, 14 have a Threatened or At-Risk status, and the remainder are exotic. The Threatened or At-Risk species were considered unlikely to occur within NoR 6;
 - d) Two native skink species with an At Risk- Declining status may potentially occur within all of the NoRs, except NoR 6. Three native gecko species with an At Risk- Declining status were identified to possibly occur within remaining adjacent indigenous forest patches, which marginally extend into NoR 4;
 - e) A total 36 streams (intermittent and permanent) were assessed and range in value from Low to High. Streams are associated with the following main catchments: Ngakoroa Stream, Oira Creek, Whangapouri Creek, and Tutaenui Stream catchments;
 - f) A total of seven native fish of which two have an At-Risk status have the potential to occur in the Pukekohe Transport Network area;
 - g) Extensive natural inland wetland habitat was identified within the Pukekohe Transport Network project area. Wetlands range in value from Negligible to Moderate.
305. The detailed design of the road and construction footprint has avoided SEA/SNAs and other high value habitats as far as practicable with a small portion of one SEA only being within the boundary (of NoR 4) but not the actual works footprint. Ms Davies assessment of ecological effects took account of the requirements of the both the relevant sections of the AUP-OP and the Waikato District Plan (Operative and Proposed). She recommended that all ecological effects assessed as being Moderate or higher be mitigated noting that some works-related activities would be subject to regional plan consenting requirements. Her evidence listed the effects to be mitigated as follows:
- a) Effects on long-tailed bats and their roosts due the removal of district plan (Auckland and Waikato) trees within NoR 8.
 - b) Effects on Threatened and At-Risk (TAR) herpetofauna species due to the removal of district plan (Auckland and Waikato) vegetation in NoR 8.

- c) Disturbance and displacement to TAR and native birds, and nest sites, resulting from construction activities (except NoR 3 and 6).
 - d) Habitat fragmentation leading to loss in connectivity to long-tailed bats, due to light, noise, and vibration effects from the operation of the road.
 - e) Disturbance and displacement of long-tailed bats and roost sites due to light, noise, and vibration effects from the operation of the road.
 - f) Disturbance and displacement of TAR and native birds (including nest sites) due to light, noise, and vibration effects from the operation of the road.
 - g) Habitat fragmentation leading to loss in connectivity to TAR and native birds, due to light, noise, and vibration effects from the operation of the road.
 - h) The recommended mitigation to reduce the Moderate or higher ecological effects relevant to construction and operation of the Pukekohe Transport Network included:
 - i) A Bat Management Plan for all NoRs except NoR 6, and specific recommendations relating to vegetation removal for NoR 8 only.
 - j) An Avifauna Management Plan for all Threatened and At Risk-Declining birds is recommended as a condition on the proposed designation for NoR 1, NoR 2, NoR 4, NoR 5, NoR 7, and NoR 8 (AC and WDC).
 - k) A Lizard Management Plan for the removal of vegetation within NoR 8 (WDC and AC).
306. In relation to the reference to any Bat Management Plan, Avifauna Management Plan or Lizard Management Plan required after pre-construction ecological surveys, guided by the Identified Biodiversity Area (**IBA**) schedules for the relevant NoR, these are to be prepared as provided for in the ecological management plan condition for each NoR.
307. We also note the differentiation between activities provided for by the designation and those that will be subject to regional consents in the future.

Submissions on Ecological Effects

308. Relatively few submissions were received that identified ecological concerns. Ms Davies reviewed each of these and we address them below.
309. Ms Madeline Hart-Robb (NoR 2 – 7) – Ms Robb’s submission was opposed to the NoR which included all of her parents’ property at 319E Sim Road. The property was bounded by the NIMT to the west and Oira Creek (depicted on Schedule 2 to the proposed conditions as an IBA for long-tailed bats and/or Threatened and At Risk bird species) to the east. Ms Robb’s submission expressed concerns about a range of adverse effects including the bat habitat provided by a large redwood tree. Ms Davies confirmed that bat activity had been recorded in the vicinity and that due to the age and size of the tree it is possible that it provides habitat for roosting long-tailed bats. She also confirmed that the proposed alignment would result in the removal of the redwood tree and that, if surveys

at the time confirmed the bat habitat, this removal would be subject to regional consents and the provisions of the Wildlife Act 1953.

310. Ms Jane Telfer (NoR 7- 07), Mr Des Morrison and Mrs Lorraine Morrison (NoR 7 – 05) and Mr Peter Gorton and Ms Louise Ward (NoR 2 – 33) raised similar concerns about the general adverse effects of the respective alignments on the natural environment. Ms Telfer's property is at 101 Butcher Road, within the southern urbanised section of the road. NoR 7 did not directly affect her property however her submission expressed concerns on the wider environment.
311. The Morrisons reside at 17 and 17A Butcher Road, a lifestyle block within the currently rural section of the road. The property has two watercourses which drain towards a tributary of Whangapouri Stream to the east, the northern of which features an exotic wetland and pond area. The NoR 7 boundary cuts across the northwestern corner of their property extending some 40m in from boundary, providing for part of the new road alignment, related batter filling and for a stormwater wetland. The Morrison's lodged an extensive submission, which they elaborated on at the hearing, included expressing concerns that there had not been sufficient ecological assessment undertaken to understand the site-specific effects and mitigations required.
312. Mr Gorton and Ms Wade's property is at 319D Sim Road adjacent to Ms Hart-Robb's property described above. Mr Gorton explained at the hearing that they had spent the last 20 years developing a successful farmlet producing beef, lamb, poultry eggs, fruit and vegetables while protecting the existing native flora and fauna of the property, which they wanted to see protected as much as possible.
313. Ms Davies responded to these submissions collectively explaining that the ecological surveys of habitats and species within terrestrial, freshwater and wetland features which had been undertaken included the submitters' properties at 17/17A Butchers Road and 319D Sim Road. In relation to the 17/17A Butchers Road, the wetland and pond habitat was assessed as having low ecological values but it was potential habitat for the native dabchick which has a high value. At the hearing it was established that the proposed stormwater wetland was separately provided for 'offline' and that the pond would remain (although future urban development would determine this result in the future). Both of the waterways within the site, including the wetland and pond were scheduled IBA locations subject to pre-construction ecological surveys.
314. In relation to 319D Sim Road, the planted amenity/native and mixed native/exotic tree land and the exotic wetlands were rated as having a low ecological value except for the border with the Oira Creek along the eastern boundary which had a high ecological value and a scheduled IBA as noted above. The presence of native birds was also noted and, as with the neighbouring 319E Sim Road property, the potential for bat habitat made this area a likely subject for a pre-construction ecological survey.
315. Whilst the proposed NoR boundary for both the Morrisons and the Gorton/Wades did not encompass their entire property or their dwelling, the proximity of the future works would mean that full purchase was a likely outcome. We have noted the purchase options in relation to Mr van der Ham's evidence below at paragraph [365]. However, the terrestrial and aquatic environments either directly affected or adjacent to the works would be

subject to a pre-construction survey and associated environmental management plan to address the presence of fish, skinks, birds and bats if found to be present.

316. The Council review was undertaken by Mr Chapman. Mr Chapman's initial review did not identify any reasons to oppose the designations sought, subject to appropriate conditions, and considered that the potential ecological effects of the Project will be adequately managed. Mr Chapman recommended amendments to conditions relating to integration with regional consenting matters in the future and in relation bat management plans for NoR 8 within both Auckland and Waikato areas. We note that amendments to the ecological management plan conditions have been effected to respond to this.

Discussion and finding

317. In summary we find that the Project has been located and designed to avoid almost all significant ecological areas within each local authority area and that appropriate conditions are proposed to mitigate residual effects to an acceptable level.

HERITAGE EFFECTS

318. Dr. Campbell provided evidence for the Requiring Authority on heritage and archaeological matters. He noted that two significant sites, the Pukekohe East Church and Te Māunu a Tūmatauenga pā, had been avoided during the options assessment phase. Dr Campbell advised the following heritage matters, all of which are within Auckland Council territory:
- a) two potentially pre-1900 villas within the proposed designation boundaries of NoR 4 at 1201 Paerata Road and 87 Pukekohe East Road, and one in NoR 8 at 188 Mill Road, and their settings, are likely to be affected by future works;
 - b) Nehru Hall in NoR 6 and its setting, particularly the brick gateway, are likely to be affected by future works; and
 - c) Bombay Flour Mill (or Pilgrim's Mill) is within 200m of NoR 8 but no remains are visible on the surface as the site has been demolished. It is possible that sub-surface remains associated with the mill operation exist which could be unearthed during construction.
319. Dr Campbell was confident that the potential effects on these sites can be appropriately managed through the HHMP.
320. The Hearing Report advice from Ms Eaves addressed both Auckland Council and Waikato District Council matters. Ms Eaves had reviewed Dr Campbell's assessment and evidence and was satisfied that all historic heritage matters had been addressed.
321. Heritage New Zealand Pouhere Taonga (**HNZPT**) lodged a submission expressing concern at the potential effects of NoR 6 on Nehru Hall on the corner of Puni Road and Ward Street. Ms Alice Morris, a planner/heritage expert with HNZPT, provided evidence which was followed by a tabled statement for the hearing. In the tabled statement Ms Morris confirmed her acceptance of the adequacy of the proposed HHMP condition to manage the heritage values of Nehru Hall.

Discussion and Findings

322. We find that effects on heritage by the proposed NoRs have been satisfactorily assessed and that the proposed HHMP will adequately manage potential effects on the heritage places referred to above and any other sites currently unknown but discovered as a result of future implementation.

URBAN DESIGN AND LANDSCAPE/VISUAL EFFECTS

323. We address these two related matters together because they address similar aspects of the interface between the Project and the environment and, more practically, because the Council review of the matters assessed has been undertaken in an integrated manner by the same reviewer.
324. The existing and future environment of the Project is not all 'urban', however the urban design principles (and Design Framework) apply to aspects of all environments. Mr Foster provided evidence for the Requiring Authority on urban design. Mr Foster had provided inputs to the MCA process and undertaken an Urban Design Evaluation (**UDE**) for the Project.
325. Mr Foster explained that the UDE employs the Design Framework to evaluate each of the NoRs and that the framework characterises urban areas as a series of layers - environment, social, built form, movement and land use (with cultural and sustainability values underpinning and spanning across these layers). Twenty design principles established within these layers provide high level guidance on the contribution each NoR makes to a responsive, resilient, sustainable, vibrant and high-quality, and well-functioning urban environment.
326. We have reviewed the UDE recommendations and consider that they provide a useful 'checklist' of matters to be addressed in the Urban and Landscape Design Management Plan, the key means by which urban design outcomes are to be achieved and opportunities are recognised at the time of implementing each NoR in the future.
327. The landscape and visual assessment for the Requiring Authority was provided by Mr Jones. Mr Jones advised that a concept design had been undertaken for each of the NoRs, upon which he had undertaken his landscape analysis. The respective alignments and designations had largely avoided any landscape features and identified overlays (such as Outstanding Natural Features (**ONFs**), Outstanding Natural Landscapes (**ONLs**) or Significant Ecological Areas (**SEAs**)). However, NoRs 5 and 8 do skirt the outer edges of the Pukekohe East Tuff Ring (an ONF).
328. Mr Jones had undertaken a Landscape and Visual Effects Assessment (**LVEA**) of each NoR alignment to understand the potential landscape character and visual amenity effects associated with the construction and operational phases of the Project. He observed that a high proportion of the NoRs will form part of emerging urban environments and become visually integrated elements within these locations, designed to respond to the underlying landscape and forming future urban patterns. These NoRs, or parts of them, will be consistent with the anticipated urban landscape character and will be supported by the mitigation measures to be implemented through the ULDMP for Auckland Council NoRs or a LMP for that part of NoR 8 within Waikato District. Where the designations span through what will remain as a rural environment, the alignments

will also change the character of the landscape, however Mr Jones' evaluation of the concept design considered that the proposed alignments and the extent of the designations are appropriate.

329. Ms Skidmore provided a review of the UDE, proposed conditions and submissions on these matters. Ms Skidmore characterised the key issue for urban design as *“striking an appropriate balance between providing suitable flexibility at this stage of route protection in order to future proof the design options for the corridor and the ability to achieve an appropriate long-term interface with surrounding land-use.”*
330. Ms Skidmore considered that the UDE report set out a clear and detailed analysis that followed an appropriate methodology. Similarly, Ms Skidmore found that the LVEA undertaken by Mr Jones was consistent with current NZILA landscape assessment guidelines (*Te Tangi a te Manu Aotearoa*). Nevertheless, Ms Skidmore identified several submissions raising either property-specific urban design or landscape and visual matters or matters of general concern that she considered should be addressed by amendments to proposed conditions. The matters of general concern were:
- a) Extent of the designations and integration with adjacent land use – Ms Skidmore's concerns related to the extended lapse period and the likelihood of urban development occurring adjacent to the designations prior to the Project being implemented with particular issues relating to the creation of redundant land parcels;
 - b) Land modification and integration with surrounding environment – where the concern was in relation to the universal use of earth batters as the most straight forward and cost-effective way to tie into existing land contours, and the consideration of alternatives as suggested in the UDE;
 - c) Landscape effects resulting from noise mitigation measures – noting that such mitigation was likely in some sections of NoRs 2 and 8, Ms Skidmore considered further landscape character and visual amenity assessment was needed; and
 - d) Amendments to the ULDMP to reference UDE Outcomes and Opportunities plans. Whilst acknowledging that the construction within the designations may not occur for some time and that there are likely to be changes in the surrounding context, Ms Skidmore nevertheless considered that the Outcomes and Opportunities plans were helpful and should be referenced. She also identified specific recommendations in the LVEA.
331. Some resolution of these matters resulted through rebuttal evidence from Messrs Foster and Jones on behalf of the Requiring Authority and the acceptance of amendments to conditions. Ms Skidmore's concluding comments as part of Councils' summing up related to two submitters and identified her residual recommendations on amending conditions. We address these in the following paragraphs.

Submissions on Urban Design and Landscape

332. *Aedifice Development No.1 Ltd (NoR5 14), OMAC Ltd and Next Generation Properties Ltd (NoR5 13) (Aedifice)* This submission is also addressed in the property access and stormwater sections. However, we record Ms Skidmore's views here from an urban design perspective. Part of the Aedifice land is located at 2 Golding Road on the southwestern corner of the Golding Road/East Road/Belgium Road intersection and is zoned Residential: Mixed Housing Urban and subject to the Pukekohe East-Central Precinct provisions pursuant to a recent plan change. Access to the land is very constrained by its topography and a watercourse/riparian area. While the property access and stormwater considerations provide additional detail on the feasibility of developing this land, Ms Skidmore remained of the opinion "*that the intersection design in this location should seek to minimise the extent of road infrastructure footprint and to achieve ground contouring that can facilitate residential development of the adjacent land*". Ms Skidmore concluded with the view that the Land Use Integration Process, which she approved of, would be "critical" in this location. Our findings on the Aedifice submission are found in the property access and stormwater sections.
333. *E and B McIntyre (NoR 6 03)* The McIntyre's submission expressed concerns about the effect of the proposed designation and resulting new street edge on their property at 1 Ward Street. Mr Jones addressed this submission in his primary evidence, noting the reinstatement fencing and planting and referring to Mr van der Ham's evidence on injurious affection compensation payable for the adverse effect on land remaining with the property owner, this being in addition to any land purchased. Mr Jones was of the view that the effects on the McIntyres property could be managed to an appropriate level with fencing and landscape treatment implemented.
334. Ms Skidmore's opinion was that given the proximity of new footpath to the house, the proposed new fence and screening "*would, in itself, reduce the amenity experienced from within the dwelling, due to proximity to the windows*".

Finding

335. We agree with Ms Skidmore that such is the proximity of the footpath and fence to the dwelling that the amenity currently provided by the front yard is permanently lost. Having made our position clear, the purchase of a part, or all, of this property, and when that happens will be determined by the parties and subject to the options advised by Mr van der Ham, the details of which are available from the Requiring Authority.

Recommended Changes to Urban Design and Landscape Conditions

336. Having considered the rebuttal evidence and further responses from the Requiring Authority, Ms Skidmore set out her residual concerns relating to urban design and landscape and visual matters and recommendations on amendments to conditions to address these concerns. We summarise the concerns and related conditions as follows:
- a) LIP condition – as already noted Ms Skidmore is very supportive of this condition and while noting that it is replaced by existing NZTA Waka Kotahi internal processes for NoRs 2 and 8, she was of the opinion that for transparency and consistency purposes the same condition should be included for these NoRs.

- b) Network Integration Management Plan (**NIMP**) – Ms Skidmore supported the broadening out of the Plan integration objectives beyond the transport network to include the surrounding land uses.
- c) Urban Landscape and Design Management Plan – this plan being the main vehicle for achieving urban design and landscape outcomes, there were several amendments that Ms Skidmore continued to seek:

For NoRs 1 and 3-7

- i. The referencing of outcomes and opportunities recognised in the UDE more explicitly;
- ii. The addition of a clause to address a matter we raised in relation to mitigating heat island effects;
- iii. Additions to matters which directly address the ULDMP objective in Condition 14c;
- iv. Expanded reference to noise wall treatment;

For NoRs 2 and 8 (Auckland)

- v. A cross-reference to the LIP condition (to be inserted);
- vi. The addition of a clause to address a matter we raised in relation to mitigating heat island effects;
- vii. The referencing of outcomes and opportunities recognised in the UDE more explicitly;
- viii. Expanded reference to noise wall treatment;
- ix. The deletion of wording related to an outcome rather than simply information provision in Condition 13 g(iii)A on road design;

NoR 8 Waikato

- x. The replacement of the proposed LMP with the full ULDMP in order to provide consistency of treatment along the entire corridor.

Discussion and Findings

- 337. The LIP for NoRs 2 and 8 – we find that an LIP should be included in the NoR 2 and 8 condition sets. We are more concerned with the consistency of practice within the Project than any nationwide practices adopted by NZTA Waka Kotahi.
- 338. Our understanding is that the NIMP was promulgated to bring a focus on the transport network as the Project is rolled out in stages, with the purpose of ensuring that unforeseen circumstances of that roll-out can be identified and addressed. Consequently, we find that that addition of land use matters to this management plan is

inappropriate and that such matters are better addressed by the ULDMP. However, we find in favour of cross-referencing between the NIMP and ULDMP.

339. We had some concerns that the outcomes and opportunities in the UDE should be referenced more explicitly as we saw little point in conducting an extensive and thorough UDE and then not capturing these findings in the relevant conditions. However, having considered the Requiring Authority's reply and reviewed the conditions further we accept that no further detail is required, with the exception of the stormwater matters noted previously.
340. We find in favour of the expanded reference to noise wall treatment and the addition of "location", with "design" being already contemplated by "architectural" treatment.
341. We agree with the argument presented by Ms Skidmore for the deletion in NoR 1 and 3-7 Condition 13 g(iii)A (and the same condition for other NoRs) and find accordingly.
342. For NoR 8 Waikato we consider that the reasons for replacing the proposed LMP with the more fulsome ULDMP are sound and find accordingly.

TREES

343. Mr Webb undertook an arboricultural report and provided evidence on trees for the Requiring Authority. Mr Webb summarised his findings as follows:¹⁰⁷

Two groups of trees are within the road reserve adjacent to the designation boundary for NoR 5. Multiple groups of trees growing within or adjacent to the designation boundary for NoR 8 (AC) are within the Outstanding Natural Feature overlay – Pukekohe East Tuff Crater. A group of Norfolk Island pine trees and a standalone English oak at 60 Morgan Road are scheduled trees with root zones that extend into the designation boundary for NoR 8. One tree protected under the Waikato District Plan (Proposed) is also affected resulting from NoR 8 (WDC).

344. We note that the large majority of trees affected by the NoRs are in either rural or FUZ zoned land and subject to regional plan consent requirements on vegetation removal in the future. Trees within road reserves adjoining these zones were not protected, as they are in urban areas.
345. Mr Webb recommended conditions for a Tree Management Plan (**TMP**) to be included for NoRs 5 and 8 to inform their respective landscape management plan conditions (ULDMP or LMP). The TMP includes requirements focus on the adverse effects of the Project on the identified trees, with the objective of avoiding, remedying or mitigating such effects at the time of final design.
346. Mr Webb also addressed several submissions on trees. He advised that these submissions were all in relation to trees that did not have any protections under the relevant District Plan. Nevertheless, mature trees and native vegetation is proposed to

¹⁰⁷ Pukekohe Transport Network Assessment of Arboricultural Effects at [v]

be retained where possible and if removed will require replanting as part of the landscape management plans to remediate the adverse effects of tree removal.¹⁰⁸

347. Mr Saxon reviewed the arboricultural assessment and proposed tree mitigation measures. Mr Saxon, concluded that overall there were no arboricultural reasons to oppose the NoRs. He recommended in his review that a TMP be required for all NoRs on the basis that there is a potential for trees to become protected between the time of designation and construction through either the growth of trees or changes in adjacent land zoning (to an urban zone).¹⁰⁹ In his closing comments, Mr Saxon continued to seek the adoption of a TMP for all NoRs and greater recognition of existing trees in the landscape management plans.
348. The Requiring Authority did not agree with the inclusion of a TMP for all NoRs as the designation will authorise the removal or alteration of all trees otherwise protected by district plans.¹¹⁰

Discussion and Findings

349. We have noted above the ‘patchwork’ nature of the tree protection rules between zones and within road reserves. We also note that when it comes to implementation, particularly for NoR 6, whereas the upgrade works are to be undertaken along the route, not just where it is subject to the NoR. The ULDM/LMP proposed for each of the NoRs is solely to address the works provided for in the Project. However, it would be an inefficient and fragmented approach if landscape and urban design plans only addressed those parts of a roading project subject to the NoR, when in fact the whole road length was being upgraded.
350. With this potential concern in mind we have examined the ULDM/LMP conditions in relation to tree matters and note that, in order to achieve its objective on integration, it must consider adjacent landscape context, including the natural environment and landscape character, and also identify and retain, where practicable, mature trees and native vegetation. Acknowledging these provisions, and the authority for tree removal where required provided by the designation, we find that there are no additional provisions required for tree protection in the future within the other NoRs or for recognition of existing trees in the preparation of landscape management plans.

ADEQUATE ASSESSMENT OF ALTERNATIVES

Discussion and Findings

351. We have set out the statutory requirements for the assessment of alternatives in paragraph [10] and in paragraphs [24 to 30] we reviewed the Requiring Authority’s submissions and evidence in support of its case that the assessment of alternatives had been adequate. Ms Hicks noted that the Councils’ reporting officers agreed that there had been adequate consideration given to alternative sites, routes, or methods of

¹⁰⁸ Webb EiC at [42 and 47]

¹⁰⁹ Saxon Arboricultural Memo at [6]

¹¹⁰ Webb EiC at [56]

undertaking the work for all NoRs. This agreement is confirmed in the respective Hearing Reports for Auckland Council and Waikato District Council.

352. While there were several submissions that suggested alternative routes for the NoRs, for example submissions by affected landowners on the alignment of NoR 2 between Drury and Pukekohe, and the submission by the Pukekohe Local Board on the route to be taken by NoR 6 around the northwestern outskirts of Pukekohe, no submissions were substantive or presented expert evidence on the alternatives. Ms Hicks responded in some detail to submissions that questioned the adequacy of assessment or suggested alternatives they considered had not been assessed. We accept her evidence on the adequacy of the assessment of alternatives.
353. The one submission on which there was a significant amount of expert input and alternatives detailed was that from Enviro NZ, which we have addressed comprehensively above. Our findings at paragraph [105] and [108] are that we are satisfied that the consideration of alternatives were also adequate at the locality and site-specific level for this section of NoR 5.
354. In conclusion, we find that the requirements of section 171(1)(b) have been met.

REASONABLY NECESSARY

Discussion and Findings

355. We have set out the statutory requirements for the designation being reasonably necessary in paragraph [10] and in paragraphs [31 to 36] we reviewed the Requiring Authority's submissions and evidence in support of its case that the extent of the proposed designation in each NoR is reasonably necessary.
356. We have given specific consideration to the submissions and evidence from Enviro NZ who presented a substantive challenge to whether the designation and works were reasonably necessary. In paragraphs [109 – 123] we address the submissions and evidence from Enviro NZ, concluding that the designation over the whole Enviro NZ site was reasonably necessary.
357. The Haribhai Master 1975 Trust also questioned whether the designation along the frontage of its property at Bombay was reasonably necessary. At paragraph [159] we concluded that this was the case.
358. In conclusion, we find that the requirements of section 171(1)(c) have been met.

LAPSE PERIOD

Requiring Authority Case

359. The Requiring Authority sought lapse periods of 20 years for all nine NoRs. Beyond the specific issues relating to individual properties, the 20 year lapse period was a matter of concern raised in many of the submissions.

360. Ms Garvan addressed the lapse period in her opening submissions and again in the closing submissions, particularly as it had been the subject of legal submissions by Mr Williams for Enviro NZ. Ms Garvan submitted that:¹¹¹

The lapse period proposed is based on the modelled growth and land use demands as per the Auckland Council FDS. The lapse dates align with the timeframes of sequencing development as set out in the FDS.

361. Noting that the RMA does not provide any guidance on what matters should be considered in determining a longer lapse date to the 5 years referred to in s.185, Ms Garvan submitted that some key principles in the *Beda* case¹¹² should guide the exercise of that discretion as follows:¹¹³

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

362. In the *Beda* case, Ms Garvan advised that the Environment Court considered factors relevant in favour of a longer lapse period and a shorter lapse period as follows:¹¹⁴

For a longer lapse period

- (a) The desirability of the lapse period reflecting the realistic timeframe within which the project is likely to be constructed;
- (b) That the designation will safeguard the chosen alignment from inappropriate development in the period before the project becomes fundable;
- (c) That the designation will provide certainty for affected landowners and the local community as to the requiring authorities' future intentions over the longer term; and
- (d) That the designation will provide certainty for the requiring authority that it will be able to fully implement the project when it becomes fundable.

For a shorter lapse period

- (a) A designation restricts what affected landowners can do with their land; and

¹¹¹ Garvan Opening Submissions at [11.22]

¹¹² *Beda Family Trust v Transit New Zealand* EC Auckland A139/2004, 10 November 2004 at [113]. This case concerned the Notices of Requirement for the Hamilton Bypass section of the Waikato Expressway to the east of the city.

¹¹³ Garvan Opening Submissions at [11.28]

¹¹⁴ Garvan Opening Submissions at [11.29]

- (b) The ability for affected landowners to require the requiring authority to acquire their land under section 185 of the RMA sets a high threshold so is not always an adequate remedy.
363. Ms Garvan submitted that the Project satisfied all of the considerations for a longer lapse period. In support of this submission she referred to the decision of the Independent Hearing Commissioners for Southern Links¹¹⁵ (a designation for route protection west and south of Hamilton City) which referred to similar factors in support of a 20 year lapse period. In response to this specific reference, Mr Williams noted that this decision was resolved by way of consent order and consequently the 20 year lapse period was not tested in the Environment Court. Mr Williams submitted that there was no case he was aware of where the Environment Court had confirmed a 20 year lapse date. His submission on this point was consistent with the Table of Designations for Significant Infrastructure Projects with Long Lapse Dates attached as Appendix A to Ms Garvan's opening submissions and confirmed by her in the closing submissions.
364. On factors favouring a shorter lapse period Ms Garvan addressed the effect a designation might have on property rights and values. Often referred to as 'planning blight' she submitted that this effect was typically interpreted to mean the effects arising from the existence of the proposal or uncertainty as to when the public works might commence. One such effect was the effect on property values. Ms Garvan referred to the findings of the Environment Court in the *Tram Lease* case¹¹⁶ where the Court found that effects on property values are inherently subjective and best addressed via the Public Works Act, which incorporates a land valuation process. The Court stated:¹¹⁷
- "People concerned about property values diminishing are inclined to approach the matter from a "rather subjective viewpoint"; people become used to certain environments, considering that property values will drop after physical changes, but a purchaser who has not seen what was there before might not be greatly influenced by such changes."*
365. In relation to other adverse effects, Ms Garvan referred to the proposed conditions for each designation that required the timely provision of information on the project to all directly affected owners and occupiers (Condition 2 Project Information) and the preparation of a Stakeholder Communication and Engagement Management Plan (**SEMP**) (Condition 11). Ms Garvan also noted the early property acquisition policies in the event of hardship and the statutory mechanism for compulsory acquisition available under RMA section 185 which had been explained by Mr van der Ham. Mr van der Ham noted Auckland Transport's Early Acquisition Guideline for Property and identified the requirements of early acquisition as:
- a) they need to sell their property due to a personal, medical or financial hardship;

¹¹⁵ Refer to the Notices of Requirement and application for resource consents in respect of Southern Links, Hearing Commissioner's Report, 24 October 2014.

¹¹⁶ *Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137

¹¹⁷ *Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137 at [57], quoting *Foot v Wellington City Council* (Decision number W73/98, Environment Court, Wellington)

- b) they have marketed the property and are unable to sell the property at the current market value due to the designation; or
 - c) the NoR or designation prevents reasonable use of their land.¹¹⁸
366. Mr van der Ham also advised that the region-wide early acquisition fund balance was \$64.5 million, answering a question from the Panel about the adequacy of this provision. We consider that early acquisition is a realistic mitigation measure which can be pursued by property owners to suit their particular aspirations and timing for property sale.
367. In relation to what is compensated for, Mr van der Ham responded to various submissions with the following evidence;
- a) compensation for a property includes the land value without the designation, and injurious affection and property damage;
 - b) compensation for a business, in addition to the value of the land acquired, can include the costs of relocation including the cost of new premises, fitout, specialist equipment, signage and consenting costs; and
 - c) for partial acquisition, the compensation amount can include the cost of trees removed, fencing, vehicle crossing etc.
368. Relevant to the consideration of the lapse period we note that the closing submissions of the Requiring Authority attach the following conditions that also address the uncertainty of the designation and restrictions on what affected landowners can do with their land. These include:
- a) Condition 3 Land Use Integration Process, which is specifically designed to address the early development of land directly affected or adjacent to the designation including details such as the extent of and horizontal and vertical alignment of the road, boundary treatments, other roading, services and noise contours. The condition can be initiated by the property owner;
 - b) Condition 8 Section 176 Approval Exemption (for AT NoRs), which exempts persons on property zoned Rural or Future Urban Zone will not require written consent under RMA section 176 for specified activities. This condition operates alongside the standard section 176 condition which provides for works to be undertaken on the affected land, with written consent of the requiring authority.
369. We also note the use of section 178, the companion provision to section 176, and which operates currently while the NoR process is undertaken. Ms Simons advised us that while no section 178 applications for the Pukekohe Transport Network had been received at the time of writing evidence, there are plenty of examples in the neighbouring land in Drury subject to Auckland Transport designations where Auckland Transport has provided written approval to undertaken works within the designations.

¹¹⁸ Van der Ham EIC at [31]

Submitters' Cases

370. The proposed 20 year lapse periods were commonly raised by submitters as a cause for concern with reference to the uncertainty and 'planning blight' associated with the extensive time period. However, only Mr Williams made substantive submissions on this matter. Mr Williams commenced with this statement:

"Of all concerns raised by Enviro NZ in its submission, the question of the lapsing date and associated planning blight is perhaps the most significant and pervasive."

371. Mr Williams critiqued the Requiring Authority evidence and made significant reference to the case law in support of his submissions.¹¹⁹ He helpfully provided copies of the relevant case law.

372. Mr Williams recounted the full context of the *Beda* decision, emphasising not only the factors supporting a 20 year lapse period in that case, but ultimately the Court's reasons for limiting the lapse period to 10 years as follows:

"[120] The evidence relating to blighting effects on those properties directly affected by the project was not really disputed by Transit's witnesses. Transit's answer to the severe blighting effect on affected properties, was section 185 of the Act, and in some cases the voluntary acquisition of land affected."

"[121] In our view a term of 10 years will assist in giving Transit a focus and commitment, not only to complete the project, but more importantly for the owners of affected properties, to ensure that Transit is focussed and committed to dealing with them in an appropriate and fair manner."

373. In another case, *Hernon v Vector Gas Limited*,¹²⁰ Mr Williams noted that the Environment Court rejected the potential provision of consent pursuant to section 176 as mitigation for the blighting effect of 10 years for a gas pipeline project, deciding that the standard five year lapse was justified.

374. Mr Williams then referred extensively to the *Meridian* case,¹²¹ in which the Environment Court rejected a 15 year lapse date for an airport runway extension for Hamilton Airport primarily due to uncertainty as to when, and even if, the project would proceed. The uncertainty derived from the runway extension being contingent on the need for it by yet-to-be-identified long haul operators, and a related issue of the installation of high intensity approach lights, the effectiveness of which could be compromised by buildings on or near the location of the lighting facility. In commenting on the section 176 "prevent or hinder" test for interim uses of the designated land, the Court found that even relatively minor proposals for the site would hinder the designation and so were unlikely to survive that test.

¹¹⁹ Williams Submissions commencing at [154]

¹²⁰ *Hernon v Vector Gas Limited* [2010] NZEnvC 203

¹²¹ *Meridian 37 Ltd v Waipa District Council* [2015] 19 ELRNZ 310

375. Mr Williams quoted the Court's conclusion in Meridian as follows:

Conclusions

[31] Balancing the positions as best we are able, we have the view that to expect a landowner to endure such a planning blight on a not insubstantial portion of otherwise valuable land, and for such a long period, is unreasonable and unfair. That is not because we see the proposed, or perhaps more accurately envisaged, runway extension and HIAL installation as unimportant. That is not the case at all. But it should not be that a private landowner has the use of its land significantly limited for such a long period (ie a total of three times the statutory default period) because of a possible third-party requirement that, literally, may never happen.

376. *[32] In such a situation, we consider that the fairness of the situation calls for that burden of uncertainty to be borne by the party which wishes to keep its options open for such a length of time. In practical terms, that will mean that unless the parties can agree on a use of the affected land that is satisfactory to both, WRAL could consider buying the land and assuming the risk and uncertainty itself, rather than imposing it on the present owner for such an extended period. We do not consider that a need to resolve this one issue will negate or even lessen the benefits WRAL enjoys from the length of the other designations - it is, rather, simply a consequence of wishing to control the use of the property of another entity. [Williams emphasis underlined]*

377. Mr Williams submitted that we should consider Enviro NZ situation in light of the Meridian decision. In particular the application of section 176 and what might be proposed for the land in terms of development over the 20 year lapse period, and whether any or all of such development would survive the "prevent or hinder" test.

378. Ms Garvan addressed the lapse period again in her closing submissions, focusing on many of Mr Williams submissions. She acknowledged that the cases referred to by Mr Williams have applied *Beda* in favour of a shorter lapse date, however she submitted that these cases are context specific and can be differentiated on their facts.

379. On the *Heron* case, Ms Garvan noted that all parties accepted that a reduced lapse date would not materially affect the ability of the requiring authority to deliver the project, and further that Vector was a public company with full control over funding and implementation and consequently the timing of the project, in contrast to the Pukekohe Transport Network.

380. In relation to *Meridian*, Ms Garvan drew attention to the lack of any business case evidence providing certainty the project would actually occur, Further, there was a lack of policy support within the relevant planning documents for the runway extension. She compared this situation with the business case (both indicative and detailed) for the Project and it's alignment with the policy direction, which we have referred to above.

381. Ms Garvan also listed three roading projects where the application of the *Beda* principles resulted in recommendations by local authorities (Independent Panels) for longer lapse periods, being the Southern Links (2014) for 20 years, Warkworth to Wellsford (2021) for 15 years, and Drury Arterial Network (2022) for 15 years. Ms Garvan further advised that the Waikato Expressway section that was the subject of the *Beda* decision, and had

its lapse period reduced from 20 to 10 years, subsequently required an extension of the lapse period.

Discussion and Findings

382. The case law on designation lapse periods is extensive and provides a consistent and well-settled set of principles for the exercise of discretion on this matter. Notwithstanding, the evidence for this NoR confirms that designations are context specific and can be differentiated on their facts. We agree with Ms Garvan on this point. More broadly, we observe that there has been an evolution of methods to mitigate the uncertainty of a long lapse period and to address the individual requirements of property owners and occupiers over that period.
383. Ms Garvan summarised the ‘principles’ set out at paragraph 113 of the *Beda* decision and their articulation in terms of factors in favour of longer and shorter lapse periods. We agree with Ms Garvan’s submission that the Project satisfied all of the considerations for a longer lapse period. The Requiring Authority’s evidence relevant to this submission focussed on the alignment with Auckland Council’s revised Auckland Future Development Strategy 2023-2053 and the requirement for the Projects to be funded by successive central governments.
384. We also accept the Requiring Authority’s position that a shorter lapse period is unlikely to force the ‘funder of the day’ into including the Project on its priority list.
385. However, we note the *Beda* decision’s observation that, in recommending a period longer than 5 years, “[t]he exercise of the discretion needs to be underlain by fairness”.¹²² In other words, what are the measures available in the RMA and proposed in conditions by the Requiring Authority that mitigate the longer period before implementation of the works provided for by the designation?
386. We consider that those mitigation measures must provide for the range of individual circumstances (as referred to in the *Beda* principles) be they residential or business activities, and the plans and aspirations of the property owner, including ongoing occupation and development of their property or property sale. At the time of the *Beda* decision, now 20 years ago, it appears from the decision that the two RMA statutory mitigation measures addressing such plans and aspirations (being s.176 for ongoing occupation and development and s.185 for property sale) were considered, as was advanced purchase. In determining a 10 year lapse period, and not the 20 year lapse period sought, the decision referred to the s.185 provisions as being Transit’s main answer to the “severe blighting effect”. With reference to its own tests in paragraph 113, it is evident that the Court did not consider 20 years of the designation as proposed by Transit was ‘fair’ on property owners.
387. The evidence from the Requiring Authority, including the final proposed conditions for the NoRs, demonstrates that the mitigation measures have evolved significantly over the intervening 20 years since *Beda*. These measures, and our assessment of their potential to mitigate the longer lapse period, is as follows:

¹²² *Beda* at [113]

- a) Project Information Condition 2 requires that, at the latest, and within 6 months of confirmation of the NoR, a project website or equivalent information source on the Project progress is established and notified to all directly affected owners and occupiers. We consider that the ongoing provision of information is integral to ensuring the fair administration of a designation;
- b) Section 176 which provides for ongoing use and development of the land subject to a designation. As noted previously, proposed Condition 8 for AT NoRs extends the s.176 concept to exempting specified structures in residential and farming activities from the s.176 requirements. We note that condition 8 is limited in its application and does not encompass business activities, perhaps due to bespoke requirements of various business activities. The application of s.176 to business activities, such as Enviro NZ, would need to be negotiated on a specific basis whereby uncertainty is reduced by approval for identified site development or by a purchase date contingent on replacement site identification. We consider that an agreement of this type would address the balance of risk (or fairness) raised by Mr Williams in his submissions for Enviro NZ and could be applied to address the concerns of other submitters;¹²³
- c) Section 185 orders from the Environment Court for land acquisition. We received alternative commentary from Ms Garvan and Mr Williams about the burden placed on the property owner in applying for an order. In commenting on the difficulties of such an application, including the requirement in section 185(3)(a) for the applicant to demonstrate that it has unsuccessfully attempted to sell the property, Mr Williams hypothesised on the potential for “*an opportunistic, even hostile bid from a competitor*” to take over the existing Enviro NZ operation, while the company was establishing on a replacement site. We do not place much weight on such an evidentially unsupported hypothesis;
- d) Early acquisition – we have noted the requirements for early acquisition as advised by Mr van der Ham above;
- e) Land Use Integration Process Condition 3 (proposed for Auckland Transport NoRs only) as we have noted above;
- f) The Outline Plan (RMA s.176A) and its composite Management Plans, plus the Stakeholder Communication and Engagement Management Plan, are initiated only when the Project is implemented which, for a 20 year lapse period, could be many years in the future. These plans do little to mitigate uncertainty about the effects of the Project in the interim. However, for all property owners they address a full range of potential effects on the local environment.

388. Our finding on the lapse period is to recommend a 20 year lapse period for all NoRs.

RELEVANT PROVISIONS IN THE POLICY AND PLANNING DOCUMENTS

389. 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 were to

¹²³ Williams Submissions at [165]

be assessed against the environment envisaged by those planning documents and the environmental outcomes sought by the relevant objectives and policies for the land through which the routes are to pass.

390. Both the Requiring Authority evidence from Ms Hicks and the Hearing Reports prepared respectively for each of the NoRs by Ms Annika Swanberg, Mr Joe McDougall and Ms Karen Bell for NoRs 1 and 3 to 7, by Ms Bell for NoR 2 and NoR 8 (Auckland) and Ms Louise Allwood for NoR 8 (Waikato) contained a comprehensive review of the framework established by these documents including the statutory provisions as they relate to various parts of the routes.¹²⁴
391. In terms of the national level documents, we were referred to:
- The New Zealand Coastal Policy Statement;¹²⁵
 - The National Policy Statement for Electricity Transmission 2008; and
 - The National Policy Statement for Freshwater Management 2020;
 - The National Policy Statement on Urban Development 2020;
 - The National Policy Statement for Highly Productive Land 2023;
392. At the regional and local level, Ms Hicks referred to Section 12 of the AEE which contained a table collating relevant provisions that addressed the various policy and planning themes for the project. For the Auckland NoRs, Ms Swanberg, Mr McDougall and Ms Bell had reviewed the Requiring Authority analysis, recognised the various provisions within the Auckland RPS, overlay, Auckland-wide and zone chapters and provided general agreement with the Requiring Authority findings.
393. For NoR 8 in Waikato, Ms Allwood had taken a similar approach to the Auckland assessment, recognising provisions from the Waikato RPS, the Waikato Regional Plan and the Waikato Operative and Proposed District Plans. Ms Allwood concluded that NoR 8 was consistent with the district plan provisions.
394. Notwithstanding general agreement with the Requiring Authority's findings, each Council planning review identified some plan provisions for which the Requiring Authority's analysis was either missing or deficient. Ms Hicks responded to these comments in Appendix C of her evidence. We note that the matters appeared to be resolved as no further comment was made in the Councils' closing statements.
395. In summary, there was a high level of agreement amongst the above planners as to the relevant provisions and the extent to which the Project had particular regard to these provisions. Based on her overall summary of the assessment of effects, Ms Hicks concluded that appropriate regard has been had to the statutory policy framework in considering and selecting the preferred alignments, identifying actual and potential

¹²⁴ Ms Hicks referred to Section 12 of the AEE

¹²⁵ We note that Ms Allwood's reference to the NZCPS here was in relation to the Ngakaroa Stream which discharges to the Manukau Harbour.

positive and adverse effects, and developing methods to avoid, remedy and mitigate adverse effects.

396. The submitters did not provide much in the way of expert planning evidence but nevertheless the evidence that was provided, such as that from Mr Campbell for Enviro NZ, brought our attention to specific elements of the planning documents upon which their evidence focussed. We find that the conditions attached to the recommendation address the concerns raised in the submitter evidence about the consistency of the Projects with the relevant provisions.
397. A further matter to take into account in terms of section 171(1)(d) is Auckland Council's FDS. We note that in the Hearing Report for NoRs 1 and 3-7, the Reporting Officers request comment on the now adopted FDS. This was addressed earlier by Ms Hicks in describing the need for the NoRs.

PART 2 OF THE ACT

398. Consideration of section 171 is subject to Part 2 and, as advised by Ms Garvan, is subject to the overall broad judgement approach, should that be necessary in the weighing of competing outcomes.¹²⁶ The environmental effects assessment above deals with a multitude of matters, with a focus on avoiding, remedying and mitigating adverse effects as sought by section 5 of the RMA. With reference to the matters in sections 6, 7 and 8, not all matters are relevant to the Projects (for example the routes do not pass through any outstanding natural landscapes). Our summary of how the Project does fare against the relevant clauses of sections 6, 7 and 8 is as follows:
- a) The Requiring Authority engaged with mana whenua throughout the development of the route alignments, committing to partnership principles and developing and including proposed conditions that address resources and issues of concern to and recognising the kaitiakitanga of mana whenua (sections 6(e), 7(a), 7(aa) and 8);
 - b) Adverse effects on natural character values and high value habitats have been largely avoided or can be appropriately mitigated (sections 6(a), 6(c) and 7(d));
 - c) Adverse effects on historic heritage have similarly been avoided and minimised, with detailed conditions applying to the implementation of works in the future (section 6(f));
 - d) The matters in (b) and (c) above, as well as the proposed alignment and concept design for the NoRs, which has resulted from a rigorous alternatives assessment, will contribute to future amenity and the quality of the environment (sections 7(b), 7(c) and 7 (f));
 - e) Flood hazards will be appropriately managed during construction and during future urban occupation (section 6(h));
 - f) The effects of climate change have been responded to by the Projects providing resilience to flooding (taking into account climate change); the provision for street tree planting that, when delivered, will contribute to reducing urban heat island

¹²⁶ Garvan Opening Submissions at [9.28]

effects; and contributing positively towards reducing greenhouse gas emissions by providing modal choice, improved reliability for public transport and active transport facilities (section 7(i)).

399. In summary, we agree with Requiring Authority and the Council Hearing Reports that the Projects are consistent with Part 2.

RECOMMENDATION

400. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters and the requirements of section 171 we recommend to the Requiring Authority that the Notices of Requirement be **CONFIRMED SUBJECT TO CONDITIONS** attached to this decision.

A handwritten signature in blue ink, appearing to read 'D Serjeant', written in a cursive style.

Dave Serjeant

Chairperson

On behalf of Commissioners Dave Serjeant, Nigel Mark-Brown and Basil Morrison

Date: 1 August 2024

**APPENDIX A
HEARING DETAILS**

Application number(s):	Joint hearing for 8 NoR's for Auckland Council and 1 NoR for Waikato District Council for the Pukekohe Transport Network project
Site address:	As described above
Requiring Authority / Applicant:	Te Tupu Ngātahi – Supporting Growth Alliance
Hearing commenced:	Monday 11 to Thursday 14 and Monday 18 to Tuesday 19 March 2024, 9.30am
Hearing venue:	The Franklin Centre, 12 Massey Avenue, Pukekohe
Hearing panel:	Dave Serjeant (Chairperson) Nigel Mark-Brown Basil Morrison
Appearances:	<p><u>For the Requiring Authority:</u></p> <p>Te Tupu Ngātahi – Supporting Growth Alliance represented by: Natasha Garvan / Laura Lincoln / Rebekah Te Rito (Legal Counsel) Alastair Lovell – Auckland Transport Owner Interface Manager for TeTupu Ngātahi Aimée Simons – Auckland Transport Owner Interface Lead for the Post-Lodgement Phase Deepak Rama - NZTA Waka Kotahi Owner Interface Manager for TeTupu Ngātahi Andrew Murray – Transport engineer and Technical Director at Beca Limited Rob Mason – Senior Technical Director of the Transport Advisory Business in Auckland at Beca Limited Bruno Busnardo – Civil engineer and Associate of the Transport and Infrastructure Business at Beca Limited, Justin Kirkman – Senior Associate Environmental Engineer at Beca Limited Samuel Foster – Associate - Urban Design at Beca Limited Matthew Jones – Landscape Architect Principal at Isthmus Group Craig Webb – Consulting Arborist of CWCA Limited Fiona Davies – Consulting Ecologist at AECOM NZ and Technical Director- Environment and Team Leader Natural Resources Siiri Wilkening – Acoustician and Director at Marshall Day Acoustics Ltd Dr Matthew Campbell – Heritage and Archaeological Consultant at CFG Heritage Limited Alicia McKenzie – Environmental Planner at AECOM Mark van der Ham – Principal Property Specialist at Auckland Transport</p>

Helen Hicks – Planner at AECOM New Zealand Limited and Associate Director – NZ Planning Team Leader

For the Submitters:

Tabled Statements

The Telecommunications Submitters
The Ministry of Education
Heritage New Zealand Pouhere Taonga
Pukekohe Industrial Park and Storage Limited
Julian Dawson for Susan & David Carpenter

Local Board

Franklin Local Board represented by
Angela Fulljames (Chair)
Alan Cole (Deputy Chair)
Andrew Bayly (MP for Port Waikato)
Jacqui Church (Mayor of Waikato District Council – tabled statement)
Andy Baker (Franklin Ward Councillor – tabled statement)

Wednesday 13 March:

Siobhan Ainsley (Honara Trust) represented by Sir William Birch
Peter Gorton and Louise Ward
Glen McCall
Barry Beaurain
The Haribhai Master (1975) Trust represented by Jayant Master (Landowner) & Alex Devine, Legal Counsel Ellis Gould
David & Lynne Lawrie
Pukekohe Mega Trustees Limited and Wrightson Way Limited represented by
Bianca Tree, Minter Ellison Rudd Watts (Legal Counsel)
Jennifer Andrews, Pukekohe Mega Trustees Ltd (Corporate)
Bruce Mackenzie, Wrightson Way Ltd (Corporate)
Terry Church (Traffic Engineer and Director at Flow Transportation Specialists)
Steven Rankin (Director and Principal Civil Engineer at Chester Consultants)

Thursday 14 March:

Roading & Asphalt Ltd represented by Derek Gates
Des & Lorraine Morrison
Aedifice Development No.1 Ltd, OMAC Ltd & Next Generation Properties Ltd represented by
Andrew Braggins (Legal Counsel)

	<p>Balaji Karnan (Civil Engineer, Civix) Duncan Ross, (Director, Civix) Paul Reynolds</p> <p>Monday 18 March: Enviro NZ Services Limited represented by Martin Williams (Legal Counsel) Laurence Dolan (National Environmental Manager at Enviro NZ) Daryl Hughes (Transport Engineer at CKL Limited) Michael Campbell (Director of Campbell Brown Planning Limited and independent planning consultant)</p> <p>Ewen & Bev McIntyre XLU Ltd represented by Steve (Zhaoyang) Xin John Ruddell Paerata 5 Farms Ltd represented by Henry Chiang Shao Jie Zheng represented by Douglas Allan, Legal Counsel Ellis Gould</p> <p><u>For the Councils:</u> Karen Bell, Senior Principal Planner at Stantec – for both Councils Craig Cairncross, Team Leader – for Auckland Council Joe McDougall, Policy Planner – for Auckland Council Annika Swanberg, Senior Planner at Stantec – for Auckland Council Louise Allwood, Planner at Stantec – for Waikato District Council Simon Chapman, Principal Ecologist at Ecology New Zealand – for both Councils Wes Edwards, Consulting Traffic Engineer at Arrive Ltd – for both Councils Rhys Hegley, Noise Consultant at Hegley Acoustics – for both Councils Leon Saxon, Arborist at Arborlab – for both Councils Trent Sunich, Stormwater/Flooding Specialist and Principal Environmental Consultant at SLR Consulting – for both Councils Myfanwy Eaves, Senior Specialist Archaeology at Auckland Council – for both Councils Rebecca Skidmore, Urban Designer and Landscape Architect at RA Skidmore Urban Design Ltd – for both Councils Bevan Donovan, Hearings Advisor – Auckland</p>
Hearing adjourned	Tuesday, 19 March 2024
Commissioners’ site visits	Conducted during the hearing
Hearing Closed:	Thursday, 23 May 2024