

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**) by New Zealand Transport Agency Waka Kotahi (**NZTA or Requiring Authority**) for route protection of the land required to authorise the future construction, operation, maintenance of upgrades of the State Highway 1 in the following locations:

NOR1 – ALTERATION OF DESIGNATION 6706 STATE HIGHWAY 1 – TAKANINI TO DRURY

Notice of requirement to alter State Highway 1 (SH1) Designation 6706 'Motorway – between Takanini and Hamilton' to authorise the construction, maintenance and operation of SH1 improvements between an area 200 metres north of Quarry Road overbridge and, an area north of the proposed Drury South Interchange, and associated infrastructure.

NOR2 – ALTERATION OF DESIGNATION 6700 STATE HIGHWAY 1 – DRURY TO BOMBAY

Notice of requirement to alter State Highway 1 Designation 6700 'Motorway' to authorise State Highway 1 (SH1) improvements to an area south of Quarry Road overbridge and the SH1 Great South Road overbridge at Bombay, including construction of a new interchange at Drury South, and associated infrastructure.

NOR3 – ALTERATION OF DESIGNATION 6701 STATE HIGHWAY 1 - BOMBAY

Notice of requirement to alter State Highway 1 Designation 6701 'Motorway' to authorise State Highway 1 (SH1) improvements between the SH1 Great South Road overbridge at Bombay and Bombay/Mill Road Interchange, and associated infrastructure.

NOR4 – A NEW DESIGNATION: SHARED USE PATH

Notice of requirement for the designation for a new Shared User Path (**SUP**) to be constructed from an area 200m north of Quarry Road to the existing Bombay/Mill Road Interchange, and associated infrastructure. The SUP will include the construction of a new overbridge at Great South Road, and tie-in infrastructure at all new and/or upgraded interchanges. This NoR provides a continuation of the SUP authorised under NZTA Designation 6778 (approved under Stage 1B1 of the Papakura to Bombay Project).

NOR5 – A NEW DESIGNATION: DRURY SOUTH INTERCHANGE CONNECTIONS

Notice of requirement for the designation for a new state highway to be constructed at the

proposed Drury South interchange and provide direct transport connections between State Highway 1 (SH1) and Quarry Road (to the east) and Great South Road (to the west). This includes a new overpass across State Highway 1 at Drury South Interchange, and associated infrastructure.

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EDITORIAL NOTE:

Appendix A contains hearing details including the persons who presented at the hearing, the party that they represented, their role, and employment details where relevant. These details are not repeated in the text.

Appendix B contains a glossary with abbreviations. Full descriptions of abbreviations are not always provided within the text.

INTRODUCTION AND PROCEDURAL MATTERS

1. This recommendation on the NoRs is made on behalf of the Council by Independent Hearing Commissioners Mr Dave Serjeant, Mr Nigel Mark-Brown and Mr Basil Morrison appointed and acting under delegated authority pursuant to sections 34 and 34A of the RMA.
2. Pursuant to section 168 of the RMA, the Requiring Authority gave notice to the Councils to designate the land areas described above. At the request of the Requiring Authority, the NoRs (which we collectively refer to as the **Project**) were publicly notified on 14 June 2024. Submissions closed on 15 July 2024. There was a total of 56 submissions recorded within the submission period and one late submission, for the Project as a whole. 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 9 submissions for NoRs 1 and 5 to 14 submissions for NoR 4.
3. The NoRs were referred to the Commissioners for a hearing and recommendation. Application materials, the Council's section 42A reports, and both expert and lay evidence was produced for pre-reading pursuant to an agreed timetable. The hearing took place on Wednesday 20 and Thursday 21 November 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 were advised by the Council of a late submission by BP Oil New Zealand Ltd. The Council recommended that the submission was accepted pursuant to the provisions of sections 37 and 37A of the RMA and we accepted the recommendations of Council on this matter at the hearing.
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. The details of these submissions are recorded as follows.
6. By email dated 24 October 2024, a joint group of submitters under the banner of The Telecommunication Companies and comprising Chorus New Zealand Limited, Connexa Limited, Spark New Zealand Trading Limited, One New Zealand Group Limited and FortySouth Group LP advised that as a result on their ongoing engagement with NZTA that the matters raised in their submissions had been satisfactorily resolved in the proposed conditions and on that basis would not attend the hearing.
7. Dutton Land Holdings, the owner of land at 1940 Great South Road in Bombay filed a statement dated 1 November 2024 advising that as a result of further discussions with NZTA on the location of the designation boundary on its property, a revised location had been agreed as depicted in Figure 10, at para 8.8, of the Statement of Primary Evidence of Mark Laing.
8. SJ and RE Allen, the owner of land at 1972 and 1994 Great South Road in Bombay had similarly agreed a revised location for the designation boundary on their land. This was depicted in Figure 12, at para 8.11, of the Statement of Primary Evidence

of Mark Laing.

9. Auckland Transport advised by letter dated 1 November 2024 that following further discussions with NZTA, and review of the section 42A report and applicant's evidence that it did not intend to pursue the matters raised in its submission at the hearing. Auckland Transport advised:

"NZTA has worked with AT during the NOR process to address concerns raised by AT about potential adverse effects that the State Highway Project may have on the local transport network. The Requiring Authority (RA) agreed some amendments as set out in the conditions included in Attachment A to the planning evidence of Dean Ingoe on behalf of NZTA on transport matters. Auckland Transport is appreciative of the collaborate approach NZTA has brought to discussions with it and considers the revised provisions are improved over those originally notified.

A summary of the outcomes on various matters is as follows:

- (i) The inclusion of a network utility operators (section 176 approval) condition relating to Auckland Transport asset maintenance;
 - (ii) The inclusion of Tegal Road and Harrison Road in the OPW condition;
 - (iii) Agreement on advice notes for the vesting of assets in Auckland Transport;
 - (iv) Confirmation from NZTA that if a retaining wall is built at Quarry Road then it will be an NZTA maintenance obligation;
 - (v) Clarification of access arrangements for a wetland within NoR 3 near St Stephens; and
 - (vi) Agreement that network integration between NZTA and Auckland Transport could be addressed through a formal arrangement but not conditioned.
10. During the hearing we took the opportunity for a site visit to acquaint ourselves with each section of the NoRs and the existing environments through which they passed. We identified various submitters' land along each route, particularly those submitters who had attended the hearing.

STATUTORY ASSESSMENT FRAMEWORK

11. Mr Gribben commenced his submissions on statutory requirements and legal principles by observing that section 171(1) of the RMA sets out the matters that must be considered by a territorial authority in making a recommendation on a NoR for a new designation and that pursuant to section 181(2), those same matters are to be considered 'with all necessary modifications', in relation to a notice of requirement for an alteration as if it were a notice of requirement for a new designation. The key implication is that in terms of the State Highway 1 upgrade, the Panel should limit its consideration of effects only to the altered portions of the existing state highway corridor as recognised in Designations 6706, 6700 and 6701.
12. In relation to the section 171 requirements Mr Gribben advised that 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(1)(a)-(d) as follows:

- a) 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;
 - b) whether adequate consideration has been given to alternative sites, routes and methods of undertaking the work;
 - c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
 - d) any other matters considered reasonably necessary to make its recommendations.
13. 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 (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

14. The approach we have taken in this recommendation is:
- a) To record the key submissions and evidence given by NZTA in relation to engagement, the existing environment, the need for the NoRs, the Project Objectives, and amendments to the designation boundaries since lodgement;
 - 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 NZTA'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;
 - c) We then turn to consider several key location-specific submissions. These submissions typically raised multiple issues and were supported by legal submissions and/or expert evidence.
 - d) NZTA gave comprehensive evidence on the actual and potential effects on the environment. For each effects topic area, we summarise this evidence, the Council response and any 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, the effects were not the subject of submissions and there was little in the way of expert evidence from submitters;

- 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, reviewing the evidence from NZTA and Council (section 171(1)(a)); and
- g) Finally, we provide a part 2 RMA assessment and our recommendation.

PROJECT INFORMATION

Engagement

- 15. Ms Wild provided us with a summary of the engagement programme undertaken for the Project. She has been involved with the P2B Stage 2 Project since 2019 during which time she had also been involved with the rollout of the Stage 1 Project from Papakura to Drury. Ms Wild's local experience also included several other NZTA projects in the local area.
- 16. Her involvement in the P2B Stage 2 Project included first contact with potentially affected landowners in mid-2019 and then further meetings when the details of the project and how it would affect individual landowners became clear. Prior to lodgement, all affected landowners were provided with plans showing the Stage 2 Project's impact on their properties. Landowners were also informed when lodgement of the notices of requirements had occurred, and when Auckland Council later publicly notified those notices of requirements. Following notification, community information days were held 3-4 times per year to keep the community informed. Ms Wild had also overseen the maintenance of the Project webpage.
- 17. Engagement also included early and extensive engagement with mana whenua and locally elected members of Auckland Council.
- 18. From the answers to questions provided by Ms Wild, it is clear to us that the effort in the engagement programme has been significant and effective. Engagement was both extensive in its reach within the community and intensive where necessary to respond to questions and concerns of elected members, network utilities, community groups and the public in general. The ongoing commitment to resolving matters where possible has been evident in the agreements reached on revised designation boundary outcomes and other accommodations in the lead-up to the hearing.

The Existing Environment

- 19. The existing environment for the NoRs is dominated by the existing state highway situated within a generally rural setting. The Assessment of Environmental Effects (AEE) provided a full description of this environment and adjacent land uses. Table 8-1 of the AEE identifies these land uses for NoRs 1-4 including rural production, areas of residential development, lifestyle blocks, light industrial and commercial activities. The non-rural land use tends to be located at the northern end of the Project at Drury South and to a lesser extent at Bombay in proximity to the interchange. The Strategic Transport Corridor Zone covers the highway, with Future Urban Zone, Business – Heavy Industrial Zone, Rural – Mixed Rural and Rural Production Zones, Residential – Mixed

Suburban Zone and Special Purpose Zone (for the school site at St Stephens) providing for the other land uses. The Ramarama Hall comprises the single community facility within the affected area.

20. Table 8-1 lists relatively few special values. However these comprise:
- a) The Hingaia and Ngakoroa Streams and their tributaries;
 - b) Scattered Significant Ecological Areas and other habitats potentially occupied by terrestrial fauna such as long-tailed bats; lizards and native bird species;
 - c) The scheduled historic site of Bishop Selwyn's Cairn Stone Monument; and
 - d) A Notable Tree Overlay.
21. Table 8-2 separately listed the features of the existing environment for NoR 5, spanning from Great South Road to Quarry Road, which were similar to the above.
22. In terms of the future environment, the AEE noted that the Future Urban Zone areas were likely to be live-zoned around the time of construction and that the existing residential zones would be subject to intensification provisions. These changes are located in the north of the Project area. The section 42A report also described the existing environment consistent with the above details.

The Need for the NoRs

23. Mr Smith provided background on the need for the NoRs founded on the transport for urban growth programme undertaken by NZTA, Auckland Council and Auckland Transport. The business cases (PBC and DBC) that followed identified problems to be solved in terms of:¹
- (a) *The inability of this part of the corridor to safely and efficiently manage existing and future demands, which would compromise intra- and inter-regional travel; and*
 - (b) *The limited modal connectivity along and across the Southern Motorway between Papakura and Ramarama compromises access to local employment, core services and amenities in the area.*
24. Solving these problems would provide related benefits for the regional and national economy, the growth of local communities in terms of employment, markets, core services and amenities and the liveability of these communities through improved walking and cycling access and the functionality of the local road network.
25. Mr Smith advised that the intent of long-term designations is to identify and appropriately protect the land corridor and enable the future construction, operation and maintenance of the Project. Funding for the Project has not been secured and the actual staging and timing of the Project has yet to be confirmed, although this was given a 15 - 20 year timeframe. However, Mr Smith noted that funding had been allocated for Stage 1 of the Project between Papakura and Drury.

¹ Smith EiC at [5.7]

26. Mr Smith identified the implementation benefits of the designations as being to:²
- (a) *Provide district plan authorisation to undertake the project works, and to maintain and operate the transport corridors;*
 - (b) *Provide certainty to all parties by publicly defining the use and extent of the improvements to the state highway corridor;*
 - (c) *Restrict activities or use which may prevent or hinder the identified Project being realised, while enabling ongoing interim use of the required land by owners where it will not;*
 - (d) *Allow detailed design to be undertaken prior to project delivery and regulated by Council through the Outline Plan process;*
 - (e) *Provide flexibility for NZTA to respond quickly to changes in funding priorities or growth pressures;*
 - (f) *Enable early acquisition through the link to the Public Works Act (PWA) and ensure property and acquisition costs are not prohibitively expensive; and*
 - (g) *Align with the route protection approach implemented by NZTA in relation to the Pukekohe Link and Mill Road (South), which both directly connect to the Project. This will also help to avoid fragmentation of the wider preferred transport network.*

Project Objectives

27. The Project Objectives are set out in the application AEE and in the evidence of Mr Smith.³ We recognise the importance of these in making a finding on section 171(1)(c) in relation to the Project being “reasonably necessary”. The Project Objectives are:
- (a) *Improve the safety and resilience of the SH1 network between Papakura and Bombay;*
 - (b) *Increase transport choice and accessibility to support growth in the south of Auckland;*
 - (c) *Support national and regional economic growth and productivity; and*
 - (d) *Support the inter and intra-regional movement of people and freight.*

Amendments to the Designation Boundaries Since NoRs Lodged

28. The Requiring Authority amended the designation boundaries in response to several submissions prior to the hearing. Mr Laing addressed these changes in his evidence, including diagrams for each change. The changes were made for various reasons after

² Smith EiC at [7.3]

³ Smith EiC at [5.19]

consultation with the submitter, typically to accommodate onsite infrastructure and improvements. The changes related to the following submissions:

- Dutton Land Holdings Limited (NoR 3 #7)
 - Bone 187 Limited (NoR 3 #12)
 - SJ and RE Allen (NoR 3 #3)
 - Drury Property Group (NoR 2 #2)
 - Rebekca Kelsey Vernon, Cameron Graham Vernon and CG Vernon KW Trustee Limited (NoR 4 #13)
29. We accept these amendments agreed between the parties and include them in our recommendation.
30. We also accept the amendments to conditions made by NZTA in its final conditions in response to the submission of Counties Power as contained in the tabled evidence of Mr Hay.

STRATEGIC MATTERS

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

31. NZTA's approach to identifying the Project routes is detailed in the AAR and in the evidence of Mr Laing. Mr Gribben set out the principles for our evaluation of alternatives with reference to the key case law as follows:⁴
- (a) *The focus is on the process, not the outcome.⁵ whether the requiring authority has made sufficient investigations of alternatives to satisfy itself of the option 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;*

⁴ *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Update Project*, Ministry for the Environment, Board of Inquiry, 4 September 2009 at [177]. Cited with approval most recently in *Director-General of Conservation v Taranaki Regional Council* [2019] NZEnvC 203, at [96].

⁵ The Supreme Court in *Royal Forest and Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26 confirmed at [154] that the requirements of section 171 are process-based. A consent authority only needs to be satisfied that the requiring authority has "adequate consideration" to alternatives. The focus is on the process and not the result.

- (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 authority;*
 - (e) *The RMA does not require every alternative, however speculative, to have been fully considered; and*
 - (f) *The requiring authority is not required to eliminate speculative or suppositious options.⁶*
32. Mr Gribben also differentiated the Project from other NoR Projects in south Auckland, several of which this Panel has considered and provided recommendations on. Mr Gribben explained that while NZTA had sought to be consistent in its approach to that taken for these other projects, especially as they were all largely interconnected, he considered that the presence of the existing highway logically constrained the range of alternative sites and routes that can be assessed. Mr Gribben also noted that the existing highway and its effects, including visual amenity, traffic and noise is already part of the existing environment, and the effects of the Project are only those additional to these effects.
33. Mr Laing provided evidence that alternatives had been assessed as part of preparing the Detailed Business Case (DBC) which included a short list of relying on other parts of the existing and future strategic transport network, improving the rail network only, a new alternative western corridor (Weymouth to Karaka), pricing strategies and technology and barrier-separated managed lanes. The assessment concluded that improvements to the existing state highway corridor were the preferred option.
34. More detailed assessment of alternatives followed in relation to the need to accommodate six general traffic lanes, the existing interchanges being Ramarama and Bombay, a new interchange at Drury South and related connections to Great South Road and Quarry Road, the location of the SUP along the entire length of the highway upgrade, and land required for related infrastructure such as stormwater.
35. Mr Laing concluded that the alternatives assessment was transparent and robust and the process adopted was essentially consistent with the principles advised above by Mr Gribben. In relation to the SUP, we include additional specific consideration in a later section.
36. The section 42A report concluded that NZTA had satisfied the requirements of section 171(1)(b) in that adequate consideration had been given to alternatives, sites, routes, or methods of undertaking the work.⁷ We draw a conclusion on the NoRs being the subject of an adequate assessment of alternatives at paragraph 245.

⁶ See also the *New Zealand Transport Agency v Architectural Centre* [2015] NZHC 1991, at [152]-[156], in which the High Court held that section 171(1)(b) does not require a full evaluation of every non-suppositious alternative with potentially reduced effects.

⁷ Section 42a Report, at [517]

Whether the Project is Reasonably Necessary to Achieve the Objectives

37. Mr Gribben made the following submissions on what is required of the Panel in this aspect of the recommendation:⁸

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 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.

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. When assessing reasonable necessity, the Panel cannot cast judgment on the merits of a requiring authority's objectives, unless the objectives are so self-serving as to only produce one result.

38. Mr Gribben also noted in relation to a recent case that the designation boundary can include land for mitigation measures, construction activities and some allowances for changes in detailed design.⁹
39. We have set out the Project Objectives in the section with that title above. With reference to those objectives Mr Ingoe addressed how each of the NoRs were reasonably necessary as follows:¹⁰

(a) *For NoRs 1 - 3, the proposed works will:*

- (i) *Provide an additional lane in each direction to ensure continued efficiency of the motorway corridor from Stage 1 of the P2B project;*
- (ii) *Reduce crash risk and severity through safety upgrades to SH1 corridor; and*
- (iii) *Support the inter and intra-regional movement of people and freight by providing for faster travel times and a wider shoulder, which may be used as a special vehicle lane or public transport connection in the future.*

(b) *For the NoR 4, the proposed SUP will result in:*

- (i) *Increased transport choice and accessibility to support growth in the south of Auckland, where there is currently no active mode access along the SH1 corridor;*
- (ii) *Promotion of a sustainable and efficient transport system and improving the health and well-being of communities, by facilitating mode-shift; and*

⁸ Gribben opening submissions at [6.16]

⁹ *Aokautere Land Holdings Ltd v Palmerston North City Council* (Aokautere) [2024] NZHC 2870.

¹⁰ Ingoe EIC at [16.3]

- (iii) *Increased safety for active mode user by providing a separated alternative from local roading network.*
- (c) *For the NoR 5, the proposed works will:*
 - (i) *Increase transport choice and accessibility to support growth in the south of Auckland by proposing link roads to the planned transport network projects as part of the Southern Strategic Network on either side of the Drury South Interchange such as Mill Road Extension and Pukekohe Link Road;*
 - (ii) *Provide an integral tie-into the Pukekohe Link Road to create an integrated transport network for the south of Auckland;*
 - (iii) *Increase transport options by enabling the use of active modes through the provision of a SUP that is connected to the local transport network; and*
 - (iv) *Support the movement of freight linking SH1 to the light industrial land on the eastern side of Drury Interchange.*
- 40. Mr Ingoe also confirmed that in his view in terms of methodology, designations were the most appropriate method for securing the long-term protection of the routes for the Project.
- 41. The section 42A report concluded that NZTA had satisfied the requirements of section 171(1)(c) on reasonable necessity.¹¹ There were no 'global' submissions challenging the reasonable necessity of any of the NoRs. However, the extent of the designation over their site was a matter of concern for several of the site-specific submitters and we address those concerns below. We draw a conclusion on the NoRs being 'reasonably necessary' at paragraph 249.

SUBMITTER / LOCATION SPECIFIC MATTERS

Notable Trees at St Stephen's School

- 42. As noted in the opening submissions from NZTA counsel, the effects of the removal of Notable Trees at St Stephen's School and the consistency of that removal with parts of the AUP were one of the few areas of disagreement between NZTA and the section 42A reporting officers. Specifically, the officers referred to the policies in Chapter D13 Notable Tree Overlay and proposed an amendment to the Tree Management Plan (TMP) condition, in order to address their concern.¹² The Council's arboricultural expert Mr Saxon went further and recommended that NoR 4 should not be confirmed at all due to those effects.¹³
- 43. The designation footprint for both NoR 3 (motorway improvements) and NoR 4 (Shared Use Path) impacts on the group of Notable Trees. The land is needed in order to construct and then support the extension of the motorway lanes and the SUP.

¹¹ Section 42a Report, at [523]

¹² Section 42a Report, at [94]

¹³ *ibid*

44. Mr Gribben advised that the owners of the site, the St Stephen's Trust Board had been consulted by NZTA and had decided not to lodge a submission on the relevant NoRs but did not object to the proposed designation boundaries.
45. The proposed tree removal had implications for the arboricultural, heritage and landscape assessments. Mr Paul advised that the future works would require the removal of 21 smaller Notable Trees on either side of the school entrance and also 13 of the more significant larger Notable Trees further along the existing school entranceway. All of the trees concerned were London Plane trees. The root zone of a further 11 such trees would be affected by the anticipated realignment of the entranceway. The trees are listed in the AUP Schedule 10 as a group of Notable Trees Item 2152.
46. The assessment of historic heritage effects prepared by Mr Cruickshank and Mr Brown¹⁴ noted that the trees were originally associated with the Rutherford family home which pre-dated the school and further that within the area affected the trees have already been largely replaced following the construction of the current motorway alignment in the late 1980s. The assessment rated the plane tree avenue as having moderate historic significance.
47. Ms Lamb-Egar considered that the trees provided amenity values to the local area and that these values would be reduced by the Project. However, she considered that this effect was only moderate taking into account the chosen mitigation of a landscaped batter between the site and the widened motorway embankment. Ms Lamb-Egar's visual assessment included viewpoints that depicted the existing entranceway showing the trees to be removed.
48. Messrs Paul, Cruickshank and Brown also confirmed that the mitigation of the tree removal by way of the landscaped batter was appropriate and effects acceptable. Mr Paul noted the increased ecological values from landscaping with native species, compared with the exotic plane trees.
49. The Council concern about the removal of the trees has been noted above. The reporting officers pointed to the provisions of AUP Chapter D13 (Notable Trees Overlay) which has a single objective (D13.2) that:
- Notable trees and notable groups of trees are retained and protected from inappropriate subdivision, use and development.*
50. The objective is supported by policies, principally D13.3(2) which repeats the objective and refers to more specific matters to achieve the objective including:
- a) considering the values for which the trees have been identified as notable;
 - b) the degree to which the development can accommodate the protection of the trees;
 - c) alternative methods that could result in retaining the trees;

¹⁴ Papakura to Bombay Stage 2 Assessment of Historic Heritage Effects NZTA 16/02/2024

- d) whether the values can be adequately mitigated; and
 - e) the provision of a tree management or landscape plan.
51. Mr Saxon sought the inclusion of conditions that, at the time of construction, required further consideration of the alternatives to a landscaped batter. He supported a retaining wall as this allowed more of the trees to be retained and estimated that a retaining wall might only require 12-13 of the trees to be removed. The reporting officers did not advocate for the retaining wall but supported amendments to proposed conditions so that at final design the Project avoids the removal of the trees as far as practicable.
52. Ms Skidmore's urban design and landscape assessment also opposed the landscaped batter approach. She stated:¹⁵
- In addition to the heritage value of the scheduled avenue of London Plane trees, the large mature trees collectively contribute to the landscape character of the area and contribute positively to the prominence and amenity of the school entrance and arrival experience. Replacement planting will take a considerable time to recreate the character that currently exists. In my opinion, adverse landscape character and visual effects will be high during the construction phase, reducing to moderate-high in the operation phase. Replanting with native species will not replicate and complement the avenue planting that remains.*
53. Ms Skidmore supported conditions that required consideration of alternatives to accommodate the SUP without extensive batter slopes.
54. During the hearing we questioned the NZTA witnesses on alternatives that had been considered for the widening of the motorway and the alignment of the SUP at St Stephens. Mr Laing explained that an 'off-line' option for the SUP (potentially coming down through the St Stephens land from the south) would not be a direct route for active mode transport, that it would be less safe in needing to cross Great South Road and could potentially increase the land take from St Stephens. On the matter of locating motorway lanes and the SUP to the eastern side, there was the conflict with the Bishop Selwyn's Cairn to consider as well as the overall decision to locate the SUP on the western side.
55. The NZTA opening submissions also emphasised that a statutory assessment must be a '*fair appraisal*' of all the relevant policies, with reference to the use of this term by the Supreme Court in a recent decision.¹⁶ Taking that approach, Mr Ingoe referred us to the provisions of Chapter E26 Infrastructure which had not been addressed in the section 42A report, emphasising that these provisions specifically considered the resolution of conflicts that arise with infrastructure provision in areas of the plan recognised for other important values including natural and historic heritage (E26.2.2(6)). Mr Ingoe's evidence was that when all matters are considered in the context of that fair appraisal, he supported the NZTA option of a vegetated batter slope as mitigation for the trees' removal.

¹⁵ Skidmore Urban Design Landscape and Visual Effects specialist report to contribute towards Council's s42A Report at [5.14]

¹⁶ *Royal Forest and Bird Protection Society v New Zealand Transport Agency* [2024] NZSC 26 at [79]

Discussion and Findings

56. We have recorded the multiple values of the trees which are proposed to be removed above. Primary amongst these values is their identification as a group of Notable Trees due to their association with the occupation of the land, firstly by the Rutherford family home and later the school. No further record is provided as to their historic 'provenance' or connection to events. Further, we note that English Plane trees are relatively fast growing, and that the majority to be removed (likely the smaller ones) were planted following the last motorway works in the late 1980s. We accept that the association with early occupation provides them with moderate heritage significance. The trees' endurance over time has also generated the landscape and amenity values recognised in both the NZTA and Council landscape assessments.
57. We have considered the matters addressed in E26.2.2(6) and Mr Ingoe's analysis of them. We accept his conclusions that the alignment of the motorway and adjacent SUP has a functional and operational need to be on the western side of the existing motorway, and further that NZTA's assessment of design alternatives for the passage of the SUP, other than through the site, has been adequate.
58. The reporting officers refer to AUP Objective D13.2 and we have listed the key policies giving effect to this objective above. The objective does not seek absolute retention or protection, but retention and protection from inappropriate subdivision, use and development. The reporting officers accepted that the objective qualified the protection sought.
59. We note that the closing position of the reporting officers was:

We have ultimately come to the conclusion that the removal of Notable Trees in this case is of a higher priority than their retention given the proposed provision of regionally significant infrastructure and its associated benefits. We have addressed the positive effects of this infrastructure in our s42a report (in Section 6.5). We consider that this amounts to a fair assessment of the NoR proposal and that the amended condition (to the Tree Management Plan for NoRs 3 and 4) is also fair.

60. With reference to the assessment against the relevant provisions we find that the widening of the motorway and development of the SUP in this location would not be inappropriate. That finding takes into account the mitigation of the tree removal at the time of development.
61. Consequently, the difference between NZTA and the Council was not whether some trees would be removed but how the matter was to be dealt with in conditions in relation to the mitigation of adverse effects. Mr Saxon and the reporting officers recommended the following amendments to the relevant conditions of both NoR 3 and NoR 4 which left the matter of mitigation to be decided at the time of implementation. Their wording sought the minimisation of tree removal at that time, leaving open the choice of mitigation (batter slope or retaining wall):¹⁷

¹⁷ Zhang and An Closing Comments of Council's Reporting Planners on the five Papakura to Bombay (Stage 2) Notices of Requirement 25 November 2024 at [5.4]

Prior to the Start of Construction, a Tree Management Plan shall be prepared. The objective of the Tree Management Plan is to: ~~avoid, remedy or mitigate the effects of construction activities on trees, identified to be retained in Condition PC7 (ULDMP).~~

- (i) avoid, remedy or mitigate the effects of construction activities on trees, identified to be retained in Condition PC7 (ULDMP).
- (ii) ensures that the Project avoids the removal of Notable Trees as far as reasonably practicable

Tree Management Plan shall:

- (i) identify opportunities to reduce the number and area of Notable Trees identified for removal in Schedule 3;
- (ii) demonstrate that any reasonable practicable measures, including the location and design of Project works, to reduce the number and area of notable trees identified for removal in Schedule 3, has been considered before confirming the area of Notable Trees to be removed:

62. NZTA's response to this recommendation in the closing submissions was that these amendments were unnecessary as the alternatives have been fully assessed and that the proposed conditions already provide for the mitigation of the tree removal through the planted batter. NZTA also considered that the demonstration of being 'reasonably practicable' would lead to a retaining wall being adopted for mitigation and that a repeated assessment of alternatives at design stage was inappropriate.
63. The Panel has considered all the information provided and find that the final mitigation design should not be determined at this time. Our reasons are as follows:
- a) While the 'notability' of the trees was assessed as moderate, as a group of trees they provide significant visual amenity in the local area.;
 - b) It is an existing objective of the ULDMP to retain mature trees and native vegetation, where practicable, an objective that operates more generally irrespective of 'notability';
 - c) We have had no direct input from the owners of the site;
 - d) The designation has a long lapse period and much can change in that time;
 - e) Our experience with the various southern NoRs is that many final design matters, much more significant than this one, are left open for consideration at the time of implementation, especially where all alternatives are feasible within the agreed designation boundary;
 - f) Visual assessment of the batter vs retaining wall options was only indicative. Assessing the visual effects was problematic for us as no montage or other representation was provided to assess the alternative mitigations. That said, it does appear that the batter option, whatever its final appearance, could well be screened through the retention of a single line of plane trees along the northern berm of the entranceway;

64. Having made that finding we find the conditions as proposed by NZTA, and as amended by the Council, to have interpretational difficulties which require some redrafting, in particular confusion within conditions on avoiding tree removal and providing for mitigation or remedial action in the case of removal for trees listed in Schedule 3, the interrelationship of the ULDMP and Tree Management Plan conditions. The recommended amendments are detailed in the Modifications to Conditions section.

Master Family, Bombay

65. Mr Bhupen Master appeared at the hearing on behalf of the Master Family and outlined his family's concerns about the Project. Key amongst these concerns was what they considered to be a lack of detailed plans from NZTA for the site which made their own long-term planning for the site difficult, together with lack of justification for the extent of designation of the site.
66. Mr Master had the following requests of NZTA:
- a) Access from Mill Road to the family site, ideally from the new signalised intersection;
 - b) Shared access for the proposed stormwater pond to avoid duplication with stormwater infrastructure that may be required for their site in the event it is developed in the future;
 - c) Detailed evidence to justify the quantum of land to be taken, including the split between permanent and temporary take; and
 - d) Restoration of their land which will be impacted by future works by NZTA, including remediation of any adverse effects on soil structure.
67. NZTA's position in response to the requests as set out in closing submissions was:¹⁸
- a) As outlined by Mr Keating at the hearing, NZTA is neutral about the land use and has no objection to development of the site but is concerned about effects on Mill Road and State Highway 1. Those effects need to be assessed and any mitigation identified before NZTA can confirm access through the new signalised intersection. Mr Laing had however shown how access could potentially be achieved.¹⁹
 - b) Mr Laing advised that NZTA's stormwater ponds are unlikely to be compatible with a private landowner and would not hold water suitable for use in irrigation. In addition, NZTA has a general policy of controlling its own stormwater ponds and not sharing such infrastructure, in order to ensure compliance with all necessary regulations.
 - c) Mr Laing had carefully considered the extent of the designation and his evidence confirmed that it is reasonably necessary. He advised that it was not

¹⁸ Applicant's closing legal submissions, at [7.8]

¹⁹ Laing EiC Figure 9.

possible to identify the split between permanent and temporary occupation at this point in time.

68. As part of his reporting for the s42A report, Mr Sergejew advised that he was satisfied that site specific access arrangements will be best addressed through the outline plan of works by way of the proposed conditions and that safety issues can be further considered and addressed at the detailed design.²⁰

Findings

69. NZTA have advised that its general approach for all property owners, as part of the property negotiation process, is to consult and work collaboratively with landowners to find the optimum solution for each property owner.²¹ The land acquisition process for the Projects will follow the PWA requirements to ensure that compensation paid to affected landowners and parties with an interest in the land is fair and reasonable, and that landowners are treated fairly by the process of land acquisition.²²
70. We understand and have sympathy with the Master family's concerns regarding the current uncertainties with the likely detailed requirements associated with the designation and effects on their planning the future use of their land. We acknowledge that, due to the property's location at a major transport nexus, the family has had to endure successive proposals for road widening, infrastructure and land acquisition.
71. Regarding future access to the site, we consider that the Existing Access Condition is sufficient to provide future access to the site from Mill Road.
72. Regarding the Masters family's concerns about restoration of their land which will be impacted by the future works, including remediation of any adverse effects on soil structure, this matter does not appear to have been addressed in detail by NZTA. However, we consider that such effects would come within the ambit of proposed condition CC.4 (b) which reads:

The purpose of the CEMP is to set out the management procedures and construction methods to be undertaken to avoid, remedy or mitigate any adverse effects associated with Construction Works as far as practicable.

73. The condition would address potential adverse effects on land used for construction purposes and then returned to the owner. This would involve avoiding such effects if possible or require restoration of land which will be impacted by future works.
74. We understand that should land be damaged as a result of Project works, under section 60(1) of the PWA, landowners affected by public works are entitled to 'full compensation' for "injurious affection" resulting from a direct physical impact of the works.²³

²⁰ Technical Transportation specialist report to contribute towards Council's s42A end-of-hearing response, A. Sergejew, 20 November 2024, at [3.3.12]

²¹ Applicant's Opening Legal Submissions, at [12.11]

²² Harrington EIC, at [5.1]

²³ Harrington EIC, at [5.4]

NZ Storage Holdings Ltd and NZ Agrihub Ltd

75. NZ Storage Holdings Ltd (**NZSHL**) and NZ Agrihub Ltd (**NZAL**) own a combined 30 properties totalling 124.5ha, including two properties held by NZSHL and 28 properties owned by NZAL. Of the 30 affected properties, 14 are directly impacted by the extent of the Notices of Requirement. The affected sites are generally located:
- a) north of the proposed Drury South Interchange at Great South Road;²⁴
 - b) at the intersection of Ararimu Road and State Highway 1 on the northern side of Ararimu Road;²⁵
 - c) north of Ararimu Road, backing onto State Highway 1;²⁶ and
 - d) south of Ararimu Road fronting Maher Road and sites along the southern boundary of Ararimu Road.²⁷
76. The NZSHL/NZAL submission identified the following matters of concern:
- a) concerns regarding NZTA's Option 3 proposed concept design for a new roundabout at the Ramarama interchange;
 - b) project uncertainty as they wish to ensure that necessary upgrades to infrastructure in the vicinity of affected properties are progressed in a way that enables affected landowners to plan the development of their land with confidence;
 - c) concern that proposed Option 3 for the Ramarama interchange appears to displace a considerable extent of flood plain onto adjacent properties;
 - d) concerns about ensuring continued appropriate access to its various landholdings at Ramarama interchange. They have requested that the outline plan include a condition requiring consultation with them specifically about property access;
 - e) extent of designation boundary including opposition to:
 - (i) the approach to provide for stormwater swales as the primary method of stormwater treatment extensively to the west of State Highway 1 together with the proposed location of the shared user path, which exacerbates the width of the land proposed to be taken; and
 - (ii) permanent batter slopes are proposed rather than retaining walls which would significantly reduce the amount of land required, with insufficient consideration has been given to detailed design at the margins of the proposed designation boundary.

²⁴ Title references 186024 and NA48C/552.

²⁵ Title references NA94B/451, NA94B/450, NAB55B/909, and NA94B/449

²⁶ Title references NA94B/447 and NA94B/446.

²⁷ The site identified as NA6A/1375 is directly affected and NA6A/1220, NA26A/1219, NA26A/1218 are immediately adjacent the Notices of Requirement boundary.

77. In support of their submission, Mr Hills had prepared an alternative roundabout position. The alternative position moved the roundabout approximately 25 m to the south, which significantly reduced the area of the submitter's land required to be designated. Mr Chandrasena and Mr McGarr also provided evidence on the future servicing issues and in support of amendments to conditions respectively.
78. The NZSHL/NZAL submission requested that the NoRs be rejected or amended to give effect to its concerns. We have addressed property access and designation boundary extent issues as a general matter of submission below. The following paragraphs address the specific concerns of NZSHL/NZAL in relation to the Ramarama interchange, project uncertainty and flooding.
79. The NZTA response to these parts of the NZSHL/NZAL submission is as follows.

Ramarama interchange

80. In relation to the Ramarama interchange design, Mr Laing acknowledged that the submitter's alternative roundabout position required the use of less private land controlled by the submitters. In all other respects, this revised option in Mr Laing's opinion had the same, or worse, environmental effects and safety outcomes. It is also likely to be costlier due to the significant retaining walls. In response to Mr Laing's comments the submitter had prepared a revised alternative interchange layout.
81. Mr Laing subsequently advised that he had remaining concerns in relation to safety and useability of the SUP and cost and risk associated with retaining walls which would be required for the submitter's revised interchange layout. Expanding on these concerns, Mr Laing noted that the revised alternative interchange layout would introduce additional retaining walls and put the SUP in a trench-like location which he did not consider to be a good design outcome and should be avoided where possible.
82. Mr Laing was also concerned that the revised alternative interchange design would introduce challenges in providing adequate sight distances for users of the SUP, which could be addressed to some extent with further design refinement but would add cost and risk to the design.
83. At the hearing Mr Hills agreed that his alternative revised interchange design would have additional costs relating to retaining walls (compared to NZTA's concept design) and accepted that it would involve more traffic management and potential construction traffic disruption. Mr Hills still considered his revised design to be preferable since it involved less take of private land.
84. There did not appear to be any discussion on the detail of the proposed interchange in the s42A reporting.

Project uncertainty

85. Mr McGarr's requested amendments to the condition for 'Network Utilities Integration' (referred to as PC.6 in NoR 1, and PC.9 in NoR 2 to NoR 5) to include engagement with stakeholders and affected landowners relating to infrastructure

development on their properties, thus reducing project uncertainty.

86. In its opening submissions NZTA had responded generally to concerns expressed in submissions regarding project uncertainty and related effects on landowners as follows:²⁸

The timely provision of project information will assist to increase the level of certainty regarding project timelines and implementation dates. In this regard, the proposed Project Information condition (GC.5 for NoR 1 and GC.2 for NoR 2 – 5) requires a project website or equivalent to be established as soon as reasonably practicable, and within 12 months of the inclusion of the designation in the AUP. This is intended to provide a "one-stop-shop" for the latest information on the Project. All directly affected owners and occupiers are required to be notified once it has been established.

At the start of detailed design, the conditions require the NZTA to more actively engage with stakeholders and affected parties about the upcoming construction phase, and as part of this, a detailed Stakeholder Communication and Engagement Management Plan (SCEMP) will be developed and implemented. In addition, the engagement process under the PWA commences around three to four years before construction is programmed to commence.

87. In response to Mr McGarr, Mr Ingoe advised in his rebuttal evidence that the condition for 'Network Utilities Integration' is proposed specifically for consultation with network utility operators to ensure that the Project enables, or does not preclude, the development of new or upgraded network utility facilities within the Project's designations boundaries.²⁹ The term 'Network Utility Operators' is derived from the definitions in section 166 of the RMA, such that stakeholders and landowners are not considered to be a network utility operator.
88. Mr Ingoe considered that including all stakeholders and landowners would make the condition apply to a far greater range and amount of people and introduce too great a burden on NZTA and its designers. Individual landowners will be engaged with through the SCEMP and NZTA has indicated its commitment to engage with all affected landowners. Mr Ingoe considered that these are more appropriate channels for the type of engagement contemplated by Mr McGarr and it is inappropriate to include engagement with stakeholders and landowners as part of the 'Network Utilities Integration' condition.
89. In section 42A comments on the provision of wastewater and stormwater infrastructure Mr Russell advised that there is no issue placing services under the motorway in situations like this. He recommended that Watercare be added to the utility providers. This will ensure that they are aware of both the NoR and developer progress.
90. Further, in terms of the draft conditions Mr Russell noted that there are the PC. 9 Network Utilities integration and CC.8 Network Utility Management Plan conditions which should be sufficient to ensure that Watercare can negotiate with the requiring

²⁸ Applicant's Opening Legal submissions, at [8.20] to [8.22]

²⁹ Ingoe Rebuttal at [5.19-5.21]

authority to install needed pipes under the Motorway. The adjacent landowner's site cannot be included in the broadened Network Utilities Management plan for the provision of infrastructure under the motorway. This is the domain of the network utility operator as the future owner of assets under the Motorway.

Potential increase in flooding associated with the proposed Ramarama roundabout

91. Evidence for NZTA from Mr Botha on flood effects advised that flood effects associated with the displacement of flood storage will either be managed within attenuation devices within the proposed designation, or the increase in water levels outside of the proposed designation will be confined to existing stream banks as set out in the proposed Flood Hazard Condition OPW.1). This condition requires NZTA to:
- a) ensure that the Project keeps flood risk at pre-project levels outside the designated area; and
 - b) prove compliance through flood modelling for pre- and post-project 100-year AR flood levels, which includes considering the impacts of climate change.
92. Mr Sunich, Council's consultant technical flood hazard specialist, agreed with the wording of the proposed Flood Hazard Condition OPW.1.

Findings

93. The alternative designs for the Ramarama interchange, in particular the effect of these designs for the SUP, were considered by the parties and explained in detail at the hearing. The implications of these designs for the location of the designation boundary was a key outcome for NZSHL/NZAL. We were not convinced of the practicability of Mr Hills' design for the SUP and related cost implications. That is not to say that it might be a possible future design, which Mr Laing accepted. However, our finding is that the designation boundary should stay where it is for this route protection process. Design refinement is a matter for implementation at a later date.
94. We accept the evidence of NZTA in relation to the matter of network utilities integration as detailed in Mr Ingoe's evidence. Mr Russell also supported the existing conditions and considered that they provided for the involvement of both Watercare and Healthy Waters on behalf of NZSHL/NZAL for the servicing of its land.
95. In relation to flooding effects, we accept the evidence of Mr Botha that flood storage will be adequately managed in practice and through the Flood Hazard condition.

Sain Family Trust and Puiz Trust

96. This submission expressed the following concerns.
- a) project uncertainty - the submitters wish to ensure that necessary upgrades to infrastructure in the vicinity of affected properties are progressed in a way that enables affected landowners to plan the development of their land with confidence;

- b) extent of designation boundary including opposition to:
 - (i) the approach to provide for stormwater swales (as the primary method of stormwater treatment) extensively to the west of State Highway 1 together with the proposed location of the SUP, which exacerbates the width of the land proposed to be taken.
 - (ii) permanent batter slopes being proposed rather than retaining walls which would significantly reduce the amount of land required and that insufficient consideration has been given to detailed design at the margins of the proposed designation boundary.

97. These concerns are the same as two of the concerns in the submission from NZSHL/NZAL and we have made findings above on each.

Z Energy

98. Z Energy Limited has raised concerns in their submission regarding their service station located at 229 Mill Road/2020 Great South Road at Bombay.

99. These concerns were set out in the evidence of Ms Westoby as follows:³⁰

- a) The notified NoR boundaries encroach into the existing forecourt canopy, Mill Road access point, landscaping, vehicle parking and manoeuvring, the underground fuel storage tanks, other underground infrastructure such as stormwater pipes and fuel pipelines, signage, electric vehicle charging stations and the wastewater disposal field;
- b) The impacts of the NoR will require a complete reconfiguration of the service station and potentially the truck stop, and it is not clear if that will be possible on the residual land available after all compulsory land takes have been completed. This results in significant adverse effects.
- c) During construction, temporary traffic and safety effects will be generated, if the service station is even able to remain in operation during this time.

100. The relief sought by Z Energy was:³¹

- a) The Panel recommend that NoR 3 be amended to avoid the site completely, OR
- b) In the absence of amending NoR 3 to avoid the site, the NoR is reduced at the Site's SH1 boundary similar to the way it avoids the above ground water infrastructure and buildings at 1998 Great South Road, Bombay; or if that is not possible, the amendment "proposed" by NZTA is made / confirmed, through removal of the notified boundary; AND

³⁰ Westoby EIC at [4] to [6]

³¹ Westoby EIC at [12]

- c) Access to Z's freehold site from Mill Road is shown on the designation plans (or otherwise is addressed in a site-specific condition); and the conditions are amended as proposed in Attachment B to Ms Westoby's evidence.
101. In response to Z Energy's requests, NZTA had proposed a minor change to the extent of designation to reduce impacts on the wastewater treatment infrastructure while maintaining sufficient land to construct either a retaining wall or a batter for the off-ramp in this location. This results in a reduction in the designation on the site by approximately 900m².
102. A concept layout was also developed for how the existing property access onto Mill Road could be maintained (Figure 7 in Mr Laing's evidence in chief).
103. Mr Ingoe's opinion was that the conditions proposed by NZTA appropriately manage the potential effects of the Project on the Z site. He considered that there is no need to make specific mention of individuals or properties in the conditions as this approach may unnecessarily complicate the implementation of those conditions to achieve the objective.
104. Mr Ingoe also noted that the proposed SCEMP condition, which is included in all of the Project's NoRs, requires identification of how the public and stakeholders (including directly affected and adjacent owners and occupiers of land) will be communicated with. A list of stakeholders, organisations, businesses and persons who will be communicated with throughout the Project's construction works will be included in the SCEMP.
105. With respect to Z Energy's query on the proposed widening of Mill Road to the north, rather than to the south, Mr Laing advised that widening to the north was considered to have less impact on developed properties compared with widening to the south.
106. NZTA commented that any effects of the loss of land that Z Energy may experience are ultimately business disruption or economic effects, and are best dealt with under the PWA, under which regime Z Energy will be fully compensated.
107. Mr Russell in his reporting for the s42A report advised that the extent of the designation in the property appears fully justified for the level of design carried out, in order to give flexibility.
108. As part of his transport reporting for the s42A report, Mr Sergejew advised that appropriate mitigation measures for the Z Energy site can be examined through the outline plan of works stage and be undertaken through the PWA.

Findings

109. We note that NZTA has been engaging with Z Energy regarding effects on its site relating to the proposed designation. This engagement has resulted in a reduction in the extent of designation required and a demonstration of how future access from Mill Road can be achieved.
110. We find that the revised proposed designation of the site is reasonably necessary for the Project and NZTA's proposed conditions adequately address the matters of site access.

111. We consider that loss of land and business disruption or economic effects can be dealt with by way of compensation achieved through the PWA.

BP Oil

112. The submission by BP oil identified the following concerns:

- a) Lack of clarity for construction period or duration for the Project which provides significant uncertainty for the operation and potential maintenance or upgrade of its site;
- b) Construction activities that may restrict the ability for vehicles and customers to access and use the site;
- c) There is no requirement in the proposed CTMP condition for any communication and engagement with affected stakeholders. It seeks input into the CTMP to ensure any disruptions and adverse effects are minimised as much as practicable;
- d) Concern that any change to the layout of the site arising from the designation and eventual works might result in the activities being unable to comply with the conditions of the site's resource consents as well as other legislative requirements; and
- e) EV charging infrastructure, car parking, signage and other ancillary infrastructure located along the northern boundary stand to be impacted by the proposed Shared User Path.

113. BP Oil's relief sought was that NoR 3, in its current form, is withdrawn, or in the event that NoR 3 is not withdrawn, the submission sought that the Project is amended to:

- a) Communicate project milestones with the submitter including the likely construction timeframe and duration.
- b) Amend the CTMP to require communication and engagement with the submitter to ensure access to its site is maintained and any traffic-related adverse effects are appropriately managed.
- c) Minimising the encroachment of the Mill Road works into site and including the avoidance of any existing infrastructure or signage, including any ancillary infrastructure required for the operation of EV charging.
- d) Requirement (via condition) for the submitter to be consulted with and permitted to provide input into the detailed design of the project including any change to the site's access to Mill Road.
- e) Include a lapse period to align with NoR 4 and NoR 5.

114. In her evidence for BP, Ms Redward reiterated the concerns in the submission and recommended that NoR 3, in its current form, is withdrawn; or in the event that NoR 3 is not withdrawn, recommend that the Project is modified to enable EV charging

infrastructure to remain in place at BP Bombay. Ms Redward also considered that a retaining wall in place of a batter slope would avoid impacts on EV charging equipment.³²

115. NZTA's general evidence in response to BP's submission from Mr Ingoe advised that should the Project works result in adverse effects on a business to a quantifiable extent, there exists an established compensation process under the PWA to contend with such impacts.³³ This compensation process will be initiated at an appropriate stage of the Project's implementation. As far as the adverse effects evaluated under the RMA are concerned, the application of the CTMP and the Existing Property Access Condition on the Project NoRs will be sufficient to manage any adverse effects on these businesses arising from changes to property access.
116. Mr Ingoe responded further to BP Oil's submission in his rebuttal evidence on the potential to contradict the site's consent obligations. He advised that if such contradiction could not be avoided, then NZTA would assume responsibility for ensuring variations are obtained by way of the PWA. He considered that mitigation of the possible effects that Ms Redward outlined in her evidence, can occur through the PWA.³⁴
117. On communication matters, Mr Ingoe observed that Condition GC.2 (Project Information) and Condition PC.6 (Stakeholder Communication and Engagement Management Plan) provide for appropriate communication and engagement with BP during the project. He did not agree that a specific condition for BP within the CTMP was needed.³⁵
118. In response to Ms Redward's preference for a retaining wall over batters, Mr Laing advised that in this location it is difficult to comment without a topographical survey and more detailed design to ascertain whether the E-Charging equipment would be affected by the Project works, and what the best solution is to resolve any potential conflicts. He accordingly did not recommend any changes to the designation boundary and considered it reasonably necessary to retain the existing boundary.³⁶
119. The Section 42A report addressed the matters raised in BP Oil's submission generally in support of the NZTA approach as follows:³⁷
 - a) Site-specific conditions are not necessary;
 - b) The PWA is a recognised mechanism for dealing with potential property impacts arising from public works, and that financial compensation will be provided as remedy for impacts on land and business operations; and
 - c) Specific concerns raised by the submitter including uncertainty over the construction period and duration and concern that construction activity may impact upon vehicle access to the site will be appropriately addressed prior to

³² Redward EIC, at [6.1 and 5.3]

³³ Ingoe EIC, at [27.24]

³⁴ Ingoe Rebuttal Evidence at [3.3]

³⁵ Ingoe Rebuttal Evidence at [3.6]

³⁶ Laing Rebuttal Evidence at [6.1] to [6.3]

³⁷ s42A Report at [431 to [440]

the construction phase, as part of a CTMP.

Finding

120. We consider that the concerns raised in BP Oil's submission have been adequately responded to by NZTA and will be satisfactorily addressed through the proposed conditions and through implementation of the PWA where necessary.

EFFECTS ON THE ENVIRONMENT

Mana whenua

121. Mr Smith described the partnership relationship with mana whenua for the Project. NZTA established a collective iwi and NZTA forum, called the Southern Iwi Integration Group (**Southern IIG**) in mid-2014 to discuss and consider matters of interest in relation to the development and delivery of various NZTA projects in southern Auckland.
122. Mr Smith explained the engagement undertaken with mana whenua at each stage of the process.³⁸ For the P2B programme this began in 2016 with the Project business case and has continued with monthly Southern IIG meetings, and a more frequent design hui during more recent stages. While the Southern IIG comprises nine iwi, three iwi representatives are also part of the Project Steering Committee.
123. All the Southern IIG mana whenua groups were invited to prepare a Cultural Impact Assessment (**CIA**) or Cultural Value Assessment (**CVA**). CIAs/CVAs were received from Ngaati Whanaunga, Ngāti Tai ki Tamaki and Ngāti te Ata Waiohua. Te Ākitai Waiohua and Ngāti Tamaoho confirmed not to provide CIAs or CVAs for the Project.
124. The CIAs/CVAs were valuable in recognising potential effects on cultural values along the route including archaeology and heritage, earthworks, ecology and stormwater. Proposed conditions of specific relevance to mana whenua interests include participation in the Urban and Landscape Design Management Plan (ULDMP) in relation to cultural design matters and the preparation of Cultural Monitoring Plan by mana whenua.
125. There were no submissions received from any mana whenua group or submissions that raised matters relating to effects on Māori culture or values. 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.

Extent of Designation Boundary: Effects on Property

126. The extent of the designation boundary is a detailed matter that has a bearing on whether the Project is 'reasonably necessary' pursuant to s171(1)(c).
127. Mr Laing explained that the designation extent has been established through developing a concept design in three dimensions, incorporating standard motorway and SUP dimensions, stormwater attenuation and treatment requirements through swale drains, earthworks batters to integrate with the existing ground profile, and an

³⁸ Smith EIC at [6.2]

allowance for construction space.³⁹ In addition, the designation extent includes some space to account for uncertainties (especially for geotechnical conditions), future design changes and to allow integration with adjacent development. This has previously been described as "flexibility", but uncertainty is a more accurate description. Any additional space to account for uncertainty is a relatively small amount of the overall designation area.

128. Mr Laing advised that the extent of designation on the submitter's land is based on the need to accommodate each of these different aspects in various locations and in light of those factors, from a design and construction perspective, he considered the extent of designations is reasonably necessary.
129. Mr Laing advised that the general design philosophy has been to provide swales for stormwater attenuation and treatment in place of ponds as the alternative option. This is primarily to spread the impact on property along the whole corridor rather than in isolated locations. Swales also generally reduce the number of catchpits and pipes required, therefore have lower capital and maintenance costs.
130. Submitters' concerns about insufficient consideration of the use of retaining walls compared with batters was addressed by Mr Laing as follows:
- a) The concept designs are based on the existing land use and topography, and have been developed with some flexibility to integrate with adjacent land in the future, which means that there are a number of design solutions (including walls or batters) that could be feasible.
 - b) The actual ground profile and detailed site geology will not be known until the time of implementation when appropriate site investigations are undertaken.
 - c) Providing a retaining wall will still require an area for construction and for ongoing maintenance, therefore the extent of the designation may not reduce significantly, albeit the permanent extent of the works may be reduced.
 - d) Retaining walls require a more complex construction method, are generally more expensive, and have greater safety risks than batter slopes.
 - e) The environment through which the Project is located is generally rural in nature and batter slopes are considered more appropriate than hard retaining structures.
131. The Auckland Council reporting officer's comment on the proposed extent of the designation was as follows.⁴⁰

Given the nature of the NoRs being sought is for route protection, instead of being an implementation ready project, we generally accept that the methodology and approach the Requiring Authority (RA) has taken to establish the extent of the five

³⁹ Laing EIC, at [5.3] to [5.5]

⁴⁰ Section 42A report at [136]

NoRs is reasonable, and identification and justification of the temporary and permanent designation boundaries cannot be precisely defined at this stage.

We generally agree with submitters that the level of flexibility retained by the RA does create uncertainty for landowner, however we find that the proposed extent of the NoR is reasonably necessary to allow an extent that:

- provides sufficient space for construction, operation, maintenance and mitigation of effects;
- enables flexibility given that detailed design has not yet progressed;
- acknowledges that the future environment may be different to what exists today; and
- does not lock in a specific design or construction methodology given the uncertainties for a Project that may not be constructed for a decade or more.

Finding

132. We accept the approach of NZTA in relation to the extent of designation and the matter of batters vs retaining walls in particular. We find that, except for the amended designation boundaries as noted, the extent of the designations are reasonably necessary for the achieving the Project objectives. That finding is also supported by the views of the Council officers.

Transport: Land Use Integration

133. The Panel queried NZTA's witnesses about whether there should be a Land Use Integration process condition, similar to that recommended for the Pukekohe Network.
134. NZTA's position including the evidence of Mr Ingoe was that such a condition is not required for the Project.⁴¹
135. The primary reason for this is that a motorway, generally speaking, should not integrate with surrounding land uses. Unlike arterial or collector roads, the edge of a motorway should generally be a hard boundary, and there is limited need or opportunity for integration between it, and the adjacent land uses. The ULDMP has an objective to integrate the Project's permanent works into the surrounding context. This process will address the limited integration between the Project and the surrounding environment.
136. Further, NZTA considers that any such condition is not required to address the period of time between confirmation of the designation and start of the detailed design (when the ULDMP will be prepared).
137. At the hearing Mr Keating advised the Panel that NZTA has a fulltime team dedicated to processing applications and approvals, including land use developments and applications under sections 176 and 178 of the RMA (which require landowners to seek

⁴¹ Applicant's closing legal submissions, at [4.1]

written approval from a requiring authority before undertaking any activities within a NoR or designation).⁴²

Finding

138. We agree with NZTA's position that the requirements to integrate permanent works into the surrounding context will be achieved through the ULDMP and a land use integration process condition is not necessary. We consider that NZTA is an experienced and responsible organisation, and its existing processes are the appropriate mechanism to deal with any integration concerns or requests that might arise.

Transport: Shared Use Path: Location, Purpose and Usage

139. Walking and cycling facilities were envisaged in the DBC to enable mode choice and connect communities with the Project area, as well as provide regional access to the wider network north of Papakura via the existing SUP which has been constructed along the Southern Corridor Improvements.⁴³
140. Design options investigated as part of the DBC included no shared path (do nothing); shared path along the western alignment and using the local road network via Great South Road.
141. The preferred option was a SUP along the western alignment, based on the benefits for reduced trip distances, the attractiveness/safety benefits of a separation from general traffic, faster travel times, and connectivity benefits with local centres via the SH1 interchanges.
142. Additional reasons for a western alignment were that land on the western side of the motorway is less constrained than the eastern side which has several local roads (Tegal Road, Maketu Road, Hillview Road and Great South Road) running parallel to the motorway which would require realignment to accommodate a SUP. The extent of the re-alignment would vary depending on detailed design – in some cases it would require alterations to the berm and/or carriageway but in others it would require re-alignment of the road into private property.⁴⁴
143. The eastern side also has a number of other constraints in close proximity to the motorway, such as a stream between Ramarama and Drury South Interchanges, Transpower and Counties Power designations, Bishop Selwyn's Cairn adjacent to Great South Road and several existing buildings near Bombay.⁴⁵
144. The Franklin Local Board provided their views at their meeting on 27 August 2024 which included a request that the SUP should follow the eastern side of the motorway, for ease of access to substantial business and residential development which would ensure optimum use.⁴⁶

⁴² Land use developments include limited access to road approvals under sections 95, 176 and 178 of the RMA

⁴³ Assessment of Alternatives Report 16/2/2024, at [3.2.2.2]

⁴⁴ Laing SoE, at [6.34]

⁴⁵ Laing SoE, at [6.35]

⁴⁶ s42A Report, at [62]

145. While an eastern side SUP would be closer to a greater proportion of urban or future urban land between Drury and Ramarama, a significant proportion of this is industrial zoning which would generate limited numbers of users of SUP. The residentially zoned land is located across the Harrison Stream from the motorway making direct access to a SUP difficult.⁴⁷
146. In his review for the s42A report, Andrew Temperley⁴⁸ concurred with the findings of the requiring authority that the western side of the motorway represents the optimum location for the SUP.
147. The purpose and expected usage of the proposed SUP was clarified and expanded on by the applicant during the hearing and in the applicant's closing legal submissions. Mr Gribben noted that the SUP is intended to achieve the second project objective, which is to "*increase transport choice and accessibility to support growth in the south of Auckland*".⁴⁹
148. For cycling (or other active modes, such as walking, skating or scooter usage) to be a meaningful transport choice, it must be a safe and viable alternative to private motor vehicle usage.
149. At the hearing Mr Clark spoke to figures suggesting the active commuter is underserved in the South Auckland area, noting that less than half a percent of commuting is done by bicycle there. This compares to 6-8% in cities with more established cycling infrastructure, such as Christchurch and Nelson.
150. Mr Clark's observations were that facilities such as those along Auckland's northwest motorway are primarily used by commuter cyclists. The numbers for the SUP between Papakura and Takaanini are lower, and suggest primarily recreational cyclists. Mr Clark was of the view that this will change with the current typical range for cyclists of less than 10 kilometres being doubled by the adoption of e-bikes. He envisaged that within a decade as the area urbanises, a lot of people will be cycling to work.
151. At the hearing Mr Keating advised that for P2B Stage 1B, a number of landowners and developers have actively sought to have a connection from their subdivision onto the SUP. He considered that this shows that there is a commercial demand for cycleways and landowners see benefit in the facility.
152. Mr Clark also noted at the hearing that the SUP will be designed in such a way that it can provide for recreational users, with it possibly being part of the national cycling trail in the future, while still fulfilling its primary purpose as a commuting route.

Finding

153. We accept and agree that the SUP is intended to achieve the second project objective, which is to "*increase transport choice and accessibility to support growth in the south of*

⁴⁷ Laing EIC, at [6.36]

⁴⁸ Memo (Technical Specialist Report to Contribute Towards Council's Section 42a Hearing Report), A. Temperley, 10 September 2024, at [5.4]

⁴⁹ Applicant's closing legal submissions, at [3.1]

Auckland".⁵⁰ We agree with NZTA and the Council position that the western side of the motorway represents the optimum location for the SUP.

154. We accept and agree that for cycling (or other active modes, such as walking, skating or scooter usage) the SUP will be a meaningful transport choice, as its proposed extent and connections to allow integration into future walking and cycling networks can be expected to provide a safe and viable alternative to private motor vehicle usage.
155. We accept the evidence of Mr Clark that there is likely to be an increasing demand for commuter travel by e-bike in the future as areas adjacent to the project urbanise.

Transport: Need for Network Performance Monitoring

156. Messrs Temperley and Sergejew for Auckland Council both recommended a traffic monitoring condition, to form part of the requirement for a Construction Traffic Management Plan. The recommended condition was included in the closing comments of Messrs Zhang and An for the Council.
157. In his primary evidence, Mr Clark agreed that it was generally desirable to monitor the network performance during construction, and to have responsive implementation of travel demand management measures. Mr Clark noted that these measures assist in informing the travelling public of the works underway and enable them to make informed decisions about travel routes and times.
158. Mr Clark noted in both his evidence and during the hearing, these measures are already routinely employed by NZTA, as part of its 'business as usual'.
159. NZTA's position was that its internal procedures are entirely adequate for these matters. Imposing a condition for matters that NZTA is already doing as a matter of course is not necessary or appropriate.⁵¹

Finding

160. We accept the evidence of Mr Clark. NZTA currently routinely employs travel demand management measures to assist to inform the travelling public of the works underway and enable them to make informed decisions about travel routes and times.
161. We accordingly agree with NZTA that a traffic monitoring condition is not necessary or appropriate.

Transport: Property Access

162. Mr Ingoe addressed concerns about property access in detail, his main points being:
 - a) All Project NoRs include an Existing Property Access condition (OPW.2) that

⁵⁰ Applicant's closing legal submissions, at [3.1]

⁵¹ Applicant's closing legal submissions, at [6.3]

applies when any vehicle access will be permanently altered by the Project. The condition ensures that the outline plan shall demonstrate how safe reconfigured or alternate access will be provided;

- b) NZTA does not agree to site-specific conditions, as the condition needs to be flexible to respond to mitigating adverse effects on the likely future environment, in 10-20 years;
 - c) The Project NoRs will not change the classification of Maher Road as a local road. NZTA has designated nearby areas of the local road network adjacent to the state highway corridor to allow for construction activities to occur within those areas. Any traffic-related effects during construction phase will be detailed in a CTMP. Any permanent changes to property access will be managed through the Existing Property Access condition.
 - d) Access to the property at 24 Ararimu Road will be managed through the Existing Property Access condition detailed above.
 - e) Access from Ararimu and Maher Roads is not removed by presence of the NoR for state highway and motorway purposes. The legal road remains beneath the designations and access to those roads is determined by the provisions of the AUP, Chapter E27 Transport, in addition to sections 176/178, which addresses the matter of future access points to land that is developed/ subdivided as raised by Mr McGarr;
 - f) The Project NoRs include a Designation Review Condition (GC.3), which requires a review of the designation extent upon completion of construction. Where areas of designated land are no longer required, notice is to be given to Auckland Council under section 182 of the RMA to remove the designation from those areas.
163. Mr Temperley advised on the matter of property access for the s42A report. He considered that any new or modified property or landholding access and parking arrangements should be designed in accordance with appropriate requirements of the Auckland Unitary Plan Chapter E27 Transport. Further, he considered that any potential modifications to site access and parking arrangements will be examined on a case-by-case basis during the Outline Plan of Works (OPW) phase.

Finding

164. Property access is one of the key matters to be considered by road controlling authorities when widening and upgrading roads. NZTA is an experienced organisation in undertaking such works. We find that the existing AUP provisions on property access and the Existing Property Access condition adequately address existing and future property accesses affected by the NoRs.

Stormwater and Flooding

165. As regional resource consents are not being sought at this stage, the stormwater design approach for the Project has focussed on identifying an indicative and feasible treatment methodology and the NoR footprint required for appropriate

stormwater management. The design of specific stormwater treatment devices will be further developed during detailed design for the Project and regional resource consents sought at that time.⁵²

166. The indicative stormwater design and associated designation footprint have been developed, taking into account:⁵³
- Existing stormwater infrastructure and stormwater management requirements;
 - Future stormwater discharge and diversion, stormwater runoff quality, and flood hazard requirements; and
 - The AUP and other industry standards, regulations, and guidelines.
167. The proposed designation footprints have allowed for indicative stormwater quality treatment in accordance with Auckland Council Guideline GD01 for all existing and proposed impervious areas, except where a Project only consists of a SUP. Generally, the indicative designs adopt treatment swales or wetlands, depending on which best fits the local conditions and topography. These devices have been selected on the basis that they are proven good practice, green infrastructure methods well suited to road corridors and the contaminants generated within them.
168. AUP SMAF-1 design criteria for retention and detention measures have been allowed for within the FUZ/greenfield environments, where discharging to freshwater streams.
169. Where required, attenuation storage to match pre-Project peak flows to post-Project peak flows for either or both the 10- and 100-year rainfall events has been provided. Attenuation will be provided within devices which can be designed to detain larger storm events, including wetlands and swales. In some instances, diversions or provision of compensatory flood storage will be provided.
170. All existing streams and stream crossings will be maintained through either culverts or bridges. Bridges and culverts are proposed within the indicative design where appropriate to manage environmental effects. However, the final form of stream crossings with consideration to upstream ponding, erosion protection and fish passage will be confirmed during the future detailed design and resource consenting phase.
171. A Flood Assessment has been prepared for the Project assessing the actual and potential effects of the future construction and operation of the Project as it relates to flood hazard effects. This has focused on identifying areas where flood hazards are present in the existing and future environment, to provide an indicative land requirement to mitigate any potential adverse flooding effects resulting from the Project. The design of specific stormwater and flooding mitigation will be further developed for each stage of the Project at a later date, at which stage the Project will require resource consents for Regional Plan matters.

⁵² Botha EIC, at [1.3], [6.5], [6.6]

⁵³ Botha EIC, at [9.2]

172. The loss of flood storage volume due to the Project works were estimated, with the outcome of this assessment used to confirm the proposed designation footprint as well as recommend the suitable flood mitigation measures that can be implemented on site.
173. Proposed works will be located outside of flood plains and overland flow paths as far as practicable. During the construction phase of the Project localised flooding impacts may arise due to temporary diversions during the installation of new culverts and/or modifications to existing structures, and temporary staging platforms required for the construction of new bridges. The exact construction methodology will be outlined at detailed design stage of works.
174. The potential for adverse flooding effects arising from construction of the Project will be managed through a CEMP, which will be developed prior to construction in conjunction with an experienced Stormwater Engineer and will consider the effects of temporary works, earthworks, storage of materials, temporary diversion and drainage on flow paths, flow levels and velocities.
175. A Flood Hazard condition is proposed on all Project NoRs which will require the future detailed design of the Project to be designed to achieve specific flood risk outcomes. This 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).
176. 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.
177. A number of submitters raised concerns about the Project resulting in flooding of their properties, or other stormwater infrastructure issues.⁵⁴
178. In his evidence for NZTA Mr Ingoe considered that the inclusion of the Flood Condition addresses the submitters' concerns as it references specific outcomes to be sought in terms of flood flows when detailed design is progressed.⁵⁵
179. Mr Ingoe also considered that the CEMP condition will appropriately address submitters' concerns about construction phase flooding effects. He also notes that regional resource consents will need to be sought for some construction activities like bulk earthworks, and conditions will be imposed at this stage to mitigate potential flooding effects during construction.
180. Mr Laing advised that the general design philosophy has been to provide swales for stormwater attenuation and treatment in place of ponds as the alternative option. This is primarily to spread the impact on property along the whole corridor rather than in isolated locations. Swales also generally reduce the number of catchpits and

⁵⁴ NZ AgriHub (NoR 2 #3, NoR 4 #2), SJ and RE Allen (NoR 3 #3), Bone 187 Ltd (NoR #12)

⁵⁵ Ingoe EIC, at [25.9]

pipes required and, therefore have lower capital and maintenance costs.

181. Some submitters have raised concerns regarding the impacts of stormwater infrastructure on the requirements for land at their properties.⁵⁶
182. Mr Botha advised that the design has been developed to provide water quality treatment for runoff from the motorway.⁵⁷ This is assumed to only include the motorway carriageway, while the SUP will be impervious, it is not expected to have high vehicle traffic use and therefore no water quality treatment will be provided.
183. Mr Botha added that as regional resource consents are not being sought at this stage, the stormwater design approach has focused on identifying an indicative and feasible treatment methodology and the proposed NoR footprint required for the appropriate stormwater management. The design of specific stormwater treatment features will be further developed at the future detailed design stage of the Project.
184. Mr Sunich in his end-of-hearing response for the s42A report advised that the matters that he had raised in his initial s42A memo had been resolved including for the proposed flood conditions and that in his opinion, no issues remained in contention.

Finding

185. We accept the evidence from NZTA that the proposed designation footprints have allowed for indicative stormwater quality treatment for the future impervious surfaces of the Project in accordance with appropriate stormwater design guidelines.
186. We consider that the potential for adverse flooding effects arising from construction of the Project can be appropriately managed through a CEMP proposed on all Project NoRs, which will be developed prior to construction.
187. We agree that flood hazards arising from or associated with the Project can be adequately addressed through the proposed flood hazard condition proposed on all Project NoRs which will require the future detailed design of the Project to achieve specific flood risk outcomes.
188. We note that this finding is consistent with that reached specifically for NZSHL/NZAL.

Noise

189. State Highway 1 is a significant and long-standing feature in the existing environment. Effects from State Highway 1, including noise, are already part of the existing environment. The effects of the Project are only those additional to the effects currently experienced in the existing environment.⁵⁸
190. The effects of the Project are therefore only those effects occurring at a level

⁵⁶ Tonganui (NoR 1 #7), Sain Family Trust (NoR 2 #5 and NoR 4 #3), The Haribhai Master Trust (NoR 3 #11 and NoR 4 #11), and Vernon (NoR 2 #2 and NoR 4 #13)

⁵⁷ Botha EIC, at [10.10]

⁵⁸ NZTA Opening Legal Submissions, at [1.10]

beyond what is already authorised by the existing designations.⁵⁹

Operational Noise

191. For NoRs 1, 2 and 3, operational noise effects from traffic generation are largely already authorised by the existing designations and therefore form part of the existing environment. The only operational noise effects that should technically be assessed are those arising from the parts of the NoRs outside the existing designations.⁶⁰
192. However, in practical terms, it is impossible to assess traffic noise coming just from a certain part of a certain lane, given that the motorway is inherently a single noise source. As a result, Ms Wilkening assessed the operational noise in a relative sense (by comparing the noise effects of a scenario with the Project to noise effects of a scenario without the Project).
193. Ms Wilkening found the change in noise levels to be "generally insignificant".⁶¹ To the extent that there is potential for any operational noise effects, these will be mitigated through conditions ON.1 and ON.2, which require the use of low noise road surfaces.

Construction Noise and Vibration

194. The construction of the projects in all NoRs will generate noise and vibration levels that are higher than normal day-to-day activities on rural or residential sites, and at times higher than traffic noise on SH1.⁶² The closest receivers will be more affected than those further away, but effects will be temporary as construction moves along the alignment.
195. Ms Wilkening considered that construction noise and vibration can be mitigated and managed through the Construction Noise and Vibration Management Plan (CNVMP) and Schedules (where required) to comply with the applicable standards for most of the works.⁶³ Exceedances of the criteria could occur intermittently over a short duration if high noise or vibration generating equipment is used near occupied buildings, or where night-time works are required. Where an infringement is predicted at any receiver that exists at the time of construction, the effects will be mitigated and managed through the CNVMP and Schedules.
196. We received no presentations at the hearing focussing on noise and vibration. However, submissions concerned about noise or vibration are described below, together with a summary of Ms Wilkening's response.⁶⁴
197. Submission by P and M Gavri (NoR 2 #04) - The submitters operate a greenhouse business at 113 Hillview Road, adjacent to NoR 2. They are interested in the construction noise management and also concerned about potential impact of

⁵⁹ NZTA Opening Legal Submissions, at [5.29]

⁶⁰ Wilkening EIC, at [8.1]

⁶¹ Wilkening EIC, at [8.20]

⁶² Wilkening EIC, at [7.28]

⁶³ Wilkening EIC, at [7.29]

⁶⁴ Wilkening EIC, at [9.2] to [9.22]

construction vibration on their greenhouses.

198. Construction noise will be managed as required by NZS 6803, through a CNVMP. NZS 6803 requires that all buildings that are occupied by people during construction are assessed against the relevant noise criteria, e.g. 75 dB LAeq daytime.
199. For construction vibration and in response to this submission, Ms Wilkening has assessed vibration effects on the glasshouses based on a conservative criterion "Historic or Sensitive Structures" of 2.5 mm/s ppv. Her prediction was that construction vibration levels will be less than 1 mm/s ppv at the closest glasshouse, which is significantly lower than the limits outlined in the Standard. Irrespective, construction vibration effects will be mitigated and managed appropriately through the CNVMP.
200. Submission by M Waring (NoR 3 #02) - Mr Waring resides at 21 Pekepeke Lane. The submitter is concerned about construction noise and vibration and traffic noise. The property boundary is about 44m from the closest potential earthworks, and 72m from the closest shoulder, with little change to the active traffic lane location indicated on the plans lodged.
201. In relation to construction noise, the submitter has stated that the daytime construction noise limits that apply at this property should be those from the construction noise standard for long duration works (70 dB LAeq and 85 dB LAFmax) as the works are expected to be longer than 20 weeks. Ms Wilkening noted that the traffic noise level received is dependent on the distance to SH1 and any existing shielding. She noted that the dwellings at Pekepeke Lane are exposed to traffic on SH1 and therefore already receiving elevated noise levels. However, construction works will be at a reasonable distance (40m or more). Therefore, while a noise limit of 75 dB LAeq is in Ms Wilkening's opinion appropriate for daytime works and will be achievable with mitigation in place, compliance with the sought 70 dB LAeq noise level may also be achievable with mitigation at that distance of works depending on equipment used at the time.
202. Ms Wilkening notes the conditions that have been proposed for the designation require construction noise effects to be managed appropriately, through the CNVMP and Schedules for any non-compliant construction activities. She considered this process will adequately and proactively control construction noise effects at the submitter's property and for all properties in the vicinity also.
203. Night-time construction works that are required (e.g. road surfacing works) will be managed and mitigated as addressed in the CNVMP and through the use of Schedules. Engagement with affected residents will be required if night-time works are proposed in the vicinity of the property. In Ms Wilkening's opinion, these measures will appropriately control construction noise effects.
204. Ms Wilkening predicted vibration levels will comply with the most stringent daytime Category A criterion (1 mm/s ppv). Vibration limits are considerably more stringent at night. Night-time works will be limited and only carried out if necessary (e.g. road surfacing works, which would occur currently as of right). If night-time works are required, vibration levels are predicted to be less than 1mm/s but may at times exceed the night-time Category A criterion (0.3 mm/s ppv).

205. While vibration may be felt at night-time during those occasions, this would only occur intermittently if compaction equipment was used close to the dwelling. The amenity impacts would be addressed through the provisions of the CNVMP and Schedule, including communication prior to the works, and would only occur for a limited time.
206. For operational (traffic) noise, the predicted noise levels with the Project are predicted to increase by 2 dB compared with the Project not going ahead. The predicted noise level for the submitter's property is in Category C (the highest noise criteria category in NZS 6806). Therefore, no condition is required within the designation. However, Ms Wilkening suggested that mitigation (if any) be assessed at the time of detailed design by NZTA. This could involve either a traffic noise barrier or building modification mitigation.
207. Ms Wilkening notes further that the dwelling at 21 Pekepeke Lane is in the Drury South Residential Precinct which contains noise performance standards for new houses (refer AUP I451.6.2 Noise and Ventilation). All dwellings adjacent to Maketu Road (which this dwelling is) must have been designed based on an assumed external traffic noise level of 75 dB LAeq at 10m from the nearest Maketu Road lane and traffic noise from SH1 for the future design year. The dwellings must have been designed to achieve an internal noise level of 40 dB LAeq(24h) and include mechanical ventilation and cooling. With these provisions implemented, the dwelling will already be designed to achieve the relevant internal noise (and ventilation) environment to allow for the Project to have no adverse effect.
208. Therefore, at the time of detailed design, no further building modification mitigation may be required provided the dwelling fulfils the requirements of the Drury South Residential Precinct provisions.
209. Submission by BP Oil (NoR 3 #13) - This submission relates to the service station at 216 Mill Road. This submission raised general concerns about construction noise and vibration effects.
210. Ms Wilkening advised that as required by the Designation conditions, such effects will be appropriately mitigated and managed through the CNVMP which requires engagement with affected stakeholders. Service stations are in themselves generally noise producers and not considered noise sensitive locations.
211. Nevertheless, any occupied building, e.g. the service station shop, would be assessed in accordance with NZS 6803 for compliance against the relevant noise limits and mitigation managed through the CNVMP.
212. Submission by C Parker (NoR 5 #03) - This submitter lives at 1823 Great South Road. The property is adjacent to the SUP in NoR 4 and in the vicinity of NoRs 2 and 3. The submission raised concerns about the traffic noise effects on the property and seeks that a noise wall be installed.
213. The predicted traffic noise level at this property increases by less than one decibel with the Project in place. A one decibel difference is generally unnoticeable, particularly when the character and location of the noise remains the same as is the case here.

214. The change in noise level as a result of the Project will be minor. However, the dwelling is predicted to receive a noise level in Category C. Ms Wilkening, therefore, suggested that further mitigation be assessed at the time of detailed design and no designation condition is required. Such mitigation would likely involve either a traffic noise barrier or building modification mitigation (provided the dwelling still exists at the time of detailed design).
215. Council s42A Report - Mr Gordon advised that there are no construction noise and vibration, or operational traffic noise issues or matters of contention raised in his s42A memo. He supports NZTA's proposed noise conditions.⁶⁵

Finding

216. We accept the evidence of Ms Wilkening that the change in operational noise levels to be "generally insignificant".⁶⁶ To the extent that there is potential for any operational noise effects, these will be mitigated through conditions ON.1 and ON.2, which require the use of low noise road surfaces.
217. For construction noise and vibration, we accept Ms Wilkening's evidence that this can be mitigated and managed through the CNVMP and Schedules (where required) to comply with the applicable standards for most of the works. We note that exceedances of the criteria could occur intermittently over a short duration if high noise or vibration generating equipment is used near occupied buildings, or where night-time works are required. Where an infringement is predicted at any receiver that exists at the time of construction, the effects will be mitigated and managed through the CNVMP and Schedules.

Ecological Effects

218. We have described the existing environment for all NoRs in paragraph 19, noting that the existing SH1 environment sits within a largely rural production environment, with some urbanised areas particularly in the north. Ms Barnett's evidence on terrestrial, wetland and freshwater ecology was based on the EclA Report which had identified, mapped and assessed these features in terms of their representativeness, rarity/ distinctiveness, diversity/pattern and ecological context.
219. Ms Barnett summarised the ecological values of the various features as follows:
- a) terrestrial vegetation within the broader Project area comprises predominantly planted and exotic vegetation, with limited native vegetation present and two SEAs within that broader area being avoided. Native forested areas (such as the SEAs) were assessed as High ecological value and other vegetated areas were all assessed as having Low ecological value;
 - b) terrestrial fauna within the Project footprint is generally limited to a range of common native bird species, with the habitat quality overall assessment for native birds being Very Low value;

⁶⁵ Technical noise and vibration specialist report to contribute towards Council's section 42A end-of-hearing response, 21 November 2024

⁶⁶ Wilkening EIC, at [8.20].

- c) The potential for bat commuting and foraging within the wider landscape was noted but there is uncertainty of bat activity near the highway due to noise, light and vibration effects. However, any trees that support roost used by bats should be considered to have Very High value; and
 - d) Most of the various streams and wetlands in the Project area have been affected by historical and ongoing land uses such as transport infrastructure and farming resulting in Low ecological value, or Moderate ecological value where Threatened and Rare species are present.
220. Ms Barnett assessed the overall construction ecological effects on a district level to be Very Low for terrestrial vegetation to Moderate and High for birds and bats, without mitigation. Ecological management for each NoR during construction will be dependent on a pre-construction ecological survey, with an Ecological Management Plan prepared for identified ecological features of value, with birds and bats being the most likely subjects for specific management. Ms Barnett concluded that the construction effects for all elements of local ecology would be Low, and overall operational effects would be Low to Very Low.
221. There were no submissions relating to ecology and the Section 42A report concluded that subject to some minor amendments to the conditions, that most of the adverse effects of the five NoRs on the environment can be adequately avoided, remedied, managed or managed to a minor and acceptable degree.

Finding

222. We accept the conclusions of Ms Barnett and the confirming review from Council specialist Mr Rossaak.

Heritage Effects

223. Messrs Cruickshank and Brown's joint evidence recorded the findings of their heritage assessment of the combined Project area. They noted that the area had two main heritage themes being the invasion of the Waikato by the colonial army and the subsequent settlement of the area following the Waikato wars. In terms of heritage features they noted three items:
- a) The Ramarama Hall (Auckland Council Cultural Heritage Inventory Item (CHI) 15071;
 - b) Part of an avenue of London Plane trees associated with St Stephen's School for Maori Boys (CHI 19790); and
 - c) The Bishop Selwyn Cairn Stone Monument (CHI 1800; Scheduled Site 1537)
224. As noted, of the three items, only the last is recognised in AUP Schedule 14.1 Schedule of Historic Heritage. The Project will avoid items a) and c). We have discussed the effects on b) above in detail.
225. Messrs Cruickshank and Brown's evidence noted that despite the avoidance of all known sites (apart from the London Plane Trees), it is still possible that previously unrecorded archaeological sites may be encountered during the construction phase

of works. Such discoveries are to be managed pursuant to a Historic Heritage Management Plan for each NoR. Messrs Cruickshank and Brown concluded that the adverse effects of the Project on known historic heritage would be negligible.

226. There were no submissions relating to archaeology or built heritage.
227. Ms Eaves undertook a review of the archaeological assessment for Council. Her conclusions aligned with the NZTA experts, finding that effects on historic heritage to be minor or less than minor. Mr Windwood addressed built heritage for Council and reached similar conclusions to Ms Eaves on these aspects of heritage.

Finding

228. We find that effects on heritage by the proposed NoRs have been satisfactorily assessed and that the proposed HHMPs will adequately manage potential effects on the heritage features identified and any other sites currently unknown but discovered as a result of future implementation.

Urban Design and Landscape/Visual Effects

229. Urban design and landscape/visual effects were addressed by single experts for both NZTA and Council. We also consider these two related matters together because they address similar aspects of the interface between the Project and the environment and, more practically, because both urban design and landscape/visual effects are addressed in terms of project implementation through the proposed ULDMF.
230. Ms Lamb-Egar had prepared the Assessment of Landscape, Natural Character and Visual Effects Report which was part of the initial NoRs and also the Landscape Assessment and Urban Design Addendums which addressed matters raised in the section 92 request for further information.
231. Her evidence described the approach to landscape assessment including the recognition of baseline landscape and natural character types and areas and the adoption of 14 representative viewpoints for the assessment of visual effects. The viewpoints were located where the Project is likely to most noticeable such as at bridges, interchanges, the SUP and retaining walls. The urban design assessment examined the Project in terms of changes to urban form, connectivity and meeting the objectives of the Papakura ki Pukekura Urban and Landscape Design Framework (**ULDF**).
232. Ms Lamb-Egar identified key landscape and natural character effects during construction as being more than minor adverse effects on waterway reserves due to NoR 5 being within a floodplain and adjacent to future public open space, and minor adverse effects at St Stephens as we have noted above. The key visual effects during construction were assessed as more than minor adverse effects due to construction works at Ramarama interchange which would be experienced by residents, more than minor adverse effects relating to bridge construction adjacent a public open space (NoR 5), and more than minor adverse effects for NoR 3 and 4 due to removal of trees exposing views of the motorway at St Stephens as noted above.

233. Ms Lamb-Egar assessed operational effects at day 1 of operation and residual effects at year 10, the latter taking into account mitigation planting. She considered that residual effects would be sufficiently avoided or mitigated through the adoption of the ULDMP with less than minor effects on natural character and less than minor to no effects on landscape character acknowledging the area already being influenced by road infrastructure. She expected the proposed extensive planting along the highway would have localised positive effects, with less than minor adverse effects for NoR 2 at the Drury Interchange. Minor adverse residual visual effects remained adjacent to the public open space for NoR 5.
234. Overall, and taking into account either less than minor, or positive, urban design effects (connectivity introduced by the SUP and Drury Interchange), Ms Lamb-Egar considered that the Project will have net positive landscape, natural character, visual and urban design effects with locally adverse effects being sufficiently mitigated with the detailed design meeting ULDMP and UDLF objectives.
235. Ms Skidmore undertook the review of landscape, visual and urban design matters for Council. Ms Skidmore was overall satisfied with the assessments that had been undertaken but identified a number of areas where she had come to different conclusion on the extent of effects and their mitigation. Her closing memo usefully set out matters that had been resolved and those that were still in contention.
236. In relation to matters resolved she noted the changes to the designation boundaries in several locations in response to points raised in submissions (as we have noted above) and a number of changes to the ULDMP conditions for each NoR.
237. In terms of matters still outstanding, we have noted Ms Skidmore's opposition to NZTA's mitigation approach at St Stephen's School entrance above. On other matters, Ms Skidmore:
- a) Maintained her preference that the design of noise barriers be specifically listed in the ULDMP;
 - b) Considered that the potential visual effects of construction sites should also be addressed as a matter in either the ULDMP or CEMP; and
 - c) Recommended additional wording in the ULDMP on the interrelationship between the NoRs, the matter of 'edge treatments', and direct reference being made to Waka Kotahi Urban Design Guidelines: Bridging the Gap (2013).

Findings

238. We accept the agreed position of the experts on the matters noted above and recorded in the final proposed conditions of consent. In relation to the matters still outstanding above we find as follows:
- a) Unlike the ULDMP for previous NoRs, such as in the final conditions NZTA's NoRs 2 and 8 for the Pukekohe Transport Network, the proposed ULDMP in this case does not include any detailed requirements for landscape and urban design details in terms of actual plans to be prepared. The Pukekohe conditions included reference to the "architectural and landscape treatment of

noise barriers” amongst many other details. Having considered the alternatives, including the insertion of all of the Pukekohe details, we have decided to stay with the status quo and rely on the standard NZTA plan methodology for the implementation of NoRs;

- b) We agree with Ms Skidmore’s view that construction yards are part of a local landscape for a sufficiently long time to be given specific mention in either the ULDMP or CEMP condition and have accordingly inserted Ms Skidmore’s suggested wording in the CEMP. We note Ms Lamb-Egar also commented on this matter in her original landscape assessment; and
- c) We also agree that the direction and clarity of the ULDMP would benefit from Ms Skidmore’s additional wording on the interrelationship between overlapping NoRs, edge treatment and the specific reference to Bridging the Gap: NZTA Urban Design Guidelines. The addition of the latter reference to NZTA P39 for highway landscape design and the general 2018 landscape guidelines referred to in the ULDMP assists in mitigating the absence of specific landscape and urban design details referred to in (a) above.

Trees

- 239. Mr Paul prepared the Arboricultural Assessment which formed part of the Project AEE. Mr Paul noted that his assessment of effects was limited to matters that would trigger a District Plan consent requirement under the AUP, with regional consenting requirements being sought at a later stage. His assessment had identified eight trees or groups of trees that will be affected by the Project. Amongst these are the London Plane Trees at St Stephens that we have addressed above.
- 240. Mr Paul identified the key mitigation measures for trees would be delivered through the TMP to assess the impact of the construction on protected trees as listed in the Tree Management Schedule. Opportunities for replanting within the new roading layout of each NoR provides for mitigation or remediation planting opportunities to mitigate or remedy adverse effects arising from the tree removal associated with the Project. Specific conditions to mitigate the loss of Notable Trees are included in the ULDMP condition.
- 241. We have already noted Mr Paul’s advice on the removal of the London Plane trees at St Stephens. In terms of the other removals Mr Paul was satisfied that the effects on trees were appropriately managed pursuant to the proposed ULDMP and TMP conditions.
- 242. Mr Paul advised that there were no arboricultural matters raised in submissions.
- 243. Mr Saxon provided the Council review on arboricultural matters for the Project. In his closing comments, Mr Saxon confirmed that apart from the London Plan tree removal matter, the proposed ULDMP and TMP were suitable measures to manage potential arboricultural effects.

Finding

- 244. We find that, with the exception of the London Plan tree removal matter which we

have reviewed and discussed in detail above, all arboricultural matters have been satisfactorily addressed and that the TMP and ULDMP conditions provide for appropriate assessment and mitigation of protected trees in the future.

ADEQUATE ASSESSMENT OF ALTERNATIVES

Discussion and findings

245. We have set out the statutory requirements for the assessment of alternatives in paragraph 11 and in paragraphs 31 to 36 we reviewed the NZTA submissions and evidence in support of its case that the assessment of alternatives had been adequate. The reporting officers concluded that the “information supplied demonstrates that the RA has satisfied the requirements of section 171(1)(b), in that adequate consideration has been given to alternative sites, routes, or methods of undertaking the work.”⁶⁷
246. There were no substantive submissions or submissions which were supported by expert evidence that made a case for any NoR overall to adopt an alternative route or key element of design. Several of the submissions sought an amendment to a section of a route or design approach in relation to a specific property which we have addressed above in relation to these submissions. As we have also recorded above, NZTA amended the designation boundaries in response to several submissions.
247. We have otherwise found that the assessment of alternatives by NZTA has been adequate. In conclusion, we find that, subject to the modifications we have recommended in relation to submissions and summarised in the section on Modifications to Conditions below, the requirements of section 171(1)(b) have been met.

REASONABLY NECESSARY

Findings

248. We have set out the statutory requirements for the designation being reasonably necessary in paragraph 11 and in paragraphs 37 to 41 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.
249. In conclusion, we find that the requirements of section 171(1)(c) have been met.

LAPSE PERIOD

250. NZTA seeks 20 year lapse periods for NoR 4 (SUP) and NoR 5 (Drury South Interchange Connections). NoRs 1, 2, and 3 are alterations to existing designations and do not have lapse dates as they have already been given effect to. We queried this matter at the hearing and Mr Gribben advised that there was recent case law on the matter in which the High Court had confirmed that lapse dates are not required

⁶⁷ Zhang and An section 42A report at [517]

for alterations to existing designations.⁶⁸

251. In his opening submissions, Mr Gribben noted that the RMA does not provide any guidance on what matters should be considered when determining a longer lapse date. However, there is established case law setting out the key principles that have been identified to guide the exercise of the discretion as follows:⁶⁹

- (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.*

252. Mr Gribben also summarised the factors in favour of a shorter lapse argued in *Beda* as:

- (a) *A designation restricts what affected landowners can do with their land; and*
- (b) *The ability for affected landowners to require the requiring authority to acquire their land under section 185 of the RMA set a high threshold so is not always an adequate remedy.*

253. Mr Gribben pointed to the longer lapse dates being common for larger scale infrastructure projects and that the Supporting Growth Alliance projects, including the Pukekohe network project, which interfaced with the current NoRs, had lapse periods of 20-30 years. He considered that the Project satisfied all of the considerations listed above that supported a longer lapse date and with reference to the evidence of Messrs Smith and Ingoe noted:

- (a) *The works are required in the longer term, to provide for future growth in Auckland and North Waikato that is expected to occur within the upcoming decades – they are not required now;*
- (b) *The proposed lapse period aligns with other strategic transport network projects in the area such as the Pukekohe Arterial Transport Network project;*
- (c) *There is no available funding for constructing the Project and NZTA has no direct control over when funds become available. Taking that into account, it can therefore take up to 10 years for the Project to progress from funding allocation through to regional plan consenting and detailed design, property acquisition to the start of construction; and*

⁶⁸ *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 629.

⁶⁹ *Beda Family Trust v Transit New Zealand (Beda)* [2004] ELHNZ 449 as set out in Opening Submissions at [8.6]

(d) *Reducing the lapse dates will not affect the availability of funding for the Project.*

254. The reporting officers recommended a 15-year lapse period in order to better align with the growth forecasts set out in the FDS. Their recommendation was based on an extensive analysis of the FDS documentation and the anticipated dates for the full build-out of the future urban growth areas. Their interpretation of the phasing of growth was that the infrastructure provided by NoRs 2, 3 and 5 would be prerequisites of the related projects such as Mill Road (Bombay) – Pukekohe East Upgrade and the Drury West Arterial and South Drury Connection.
255. The reporting officers acknowledged the potential effects of ‘planning blight’ related to the long lapse period associated with the Project and considered that while the RMA provided mechanisms (section 176 and 185) to mitigate the effects of such a long lapse period, their view was that such measures were not “particularly helpful”.
256. In his closing submissions, Mr Gribben acknowledged the value of the FDS as a long-term strategic document, but submitted that it is ultimately an indicative document, rather than a prescriptive one, and there can be numerous reasons why the anticipated steps do not occur precisely when forecasted.
257. Beyond the specific issues relating to individual properties addressed above, the lapse period was a matter of concern raised in several of the submissions.⁷⁰ These submissions articulated how the lapse period created uncertainty for the future use and development of their properties, but no submitters provided extensive analysis of how the case law on lapse period should be applied to these NoRs.

Discussion and Finding

258. 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.
259. 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.
260. We also accept Mr Ingoe’s observation that a shorter lapse period is unlikely to affect the timing of the funding.⁷¹
261. Counsel referred to the *Beda* decision which contained the observation that, in recommending a period longer than 5 years, “[t]he exercise of the discretion needs to be underlain by fairness”.⁷² 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?
262. We consider that those mitigation measures must provide for the range of individual circumstances be they residential or business activities, and the plans and aspirations of the property owner, including ongoing occupation and development of

⁷⁰ 74 BRO Tonganui (Mr Brown); CG Vernon KW Trustee Limited (Jeremy Brabant) (Vernon Trustee Ltd); Sain Family Trust (Greenwood Roche); Drury South Ltd (Drury South Limited); The Haribhai Master Trust (Masters); NZ Storage Holding and NZ Agrihub (Agrihub).

⁷¹ Ingoe EIC at [1.10]

⁷² *Beda* at [113]

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 of its decision, it is evident that the Court did not consider 20 years of the designation as proposed by Transit was 'fair' on property owners.

263. The evidence from NZTA, 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:
- a) The Project Information condition requires that, at the latest, and within 12 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.⁷³ 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. Further, there is a proposed condition that provides for exemptions from the s.176 requirements for a wide range of network utility activities.
 - c) Section 185 orders from the Environment Court for land acquisition.
 - d) Early acquisition – we have noted the potential for early acquisition according to procedures addressed by Mr Harrington, although we note that such funding is not available at the current time;⁷⁴
 - e) The Outline Plan 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.
264. Our finding on the lapse periods is to recommend the lapse periods are 20 years for NoRs 4 and 5 as sought by NZTA.

RELEVANT PROVISIONS IN THE POLICY AND PLANNING DOCUMENTS AND PART 2 OF RMA

265. 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

⁷³ Wild EIC at [6.7]

⁷⁴ Harrington EIC, at [5.13]

are to be assessed against the environment envisaged by those planning documents and the environmental outcomes sought by the relevant objectives and policies for the land within which the NoRs are located.

266. Both the NZTA evidence from Mr Ingoe and the section 42A report contained a comprehensive review of the framework established by these documents including the statutory provisions as they relate to various parts of the routes.^{75, 76} By the close of hearing the reporting officers were well aligned with the conclusions of Mr Ingoe on the many planning instruments, except for the matter of the London Plane trees removal. We received little other planning evidence and none which challenged the conclusions of Mr Ingoe. Accordingly, there is limited value in re-citing that material and we simply cross-reference to it in reaching our findings.
267. To summarise, there was a high level of agreement amongst the planners as to the relevant provisions and the extent to which the Project had particular regard to these provisions. Based on his overall summary of the assessment of effects, Mr Ingoe concluded that appropriate regard has been had to the statutory policy framework in considering alternative sites and design, identifying positive effects such as enhanced safety and resilience of the motorway network and increased economic efficiency, identifying actual and potential adverse effects, and developing methods to avoid, remedy and mitigate those adverse effects, all of which was consistent with the purpose of the RMA as contained in Part 2.⁷⁷
268. Consideration of section 171 is subject to Part 2 which is a residual discretion for us to exercise. The reporting officers concluded that Project was generally in accordance with Part 2 and no party argued differently.

Findings

269. In summary, we agree with NZTA and reporting officers that the Projects have had appropriate regard to the provisions of the planning instruments of section 171(1)(a) and are consistent with Part 2.

MODIFICATIONS TO CONDITIONS

270. The modifications to conditions derive from the findings we have made above on the various submissions and environmental effects. For the reasons given in those findings, we have largely found in favour of the conditions presented by NZTA accompanying its closing submissions. Changes supported by this recommendation, are as follows:
- a) The establishment of a project website has become an important element of maintaining project information in southern Auckland NoRs. The time requirement to achieve this is stated as being within six months. We see no reason to regress from this positive step.
 - b) The reporting officers suggested several changes to the SCEMP condition. Ms Wild accepted the addition of the words “and engaged” in PC.6 of NoRs 2-5.

⁷⁵ Ingoe EiC at [30.1] referred to Section 11 of the Project AEE.

⁷⁶ Section 42A report at [Commencing at 447]

⁷⁷ Ingoe EiC at [32.1-32.8]

We understand that other changes were not being pursued by Council, as per the reporting officers' closing memo;

- c) The wording recommended by Ms Skidmore on the interrelationship between NoRs is included in the ULDMP condition;
- d) The reference to the Bridging the Gap document is included in the ULDMP condition as it contains details not found in other documents;
- e) The two conditions referring to documents that the ULDMP is to be prepared in general accordance with are to be combined;
- f) Ms Skidmore's recommendation that 'edge treatments' is to be included, reflecting the importance of designing for integration;
- g) The ULDMP reference to 'retaining mature trees and native vegetation, where practicable' is currently buried in a design detail condition and needs to be recognised as a key measure of achieving the ULDMP objective;
- h) A syntax improvement is addressed in relation to the Historic Heritage condition in the ULDMP;
- i) A focus on tree management is introduced to the ULDMP planting design conditions, and the second element of this set of conditions is elevated to being the first clause to emphasise the ULDMP role in relation to the protection of protected or notable trees in Schedule 3;
- j) Such other minor amendments to conditions as recommended by the Council reporting officers that we find to facilitate an efficient and effective implementation of the Projects;
- k) Ms Skidmore's wording addressing measures to reduce the visibility of construction yards is introduced to the CEMP;
- l) We have repeated the ULDMP wording on the "retention of mature vegetation and native trees, where practicable' within the Tree Management Plan.
- m) The condition on the St Stephens School Planting Plan and Schedule 4 is to be deleted from the conditions for NoRs 3 and 4;
- n) No Tree Management Plan Condition is required for NoR 5 as there are no trees listed in Schedule 3 for NoR 5. The ULDMP condition in relation to the protection of protected or notable trees for NoR 5 also needs amendment in this regard;
- o) The extent of NoRs 2, 3 and 4 is modified by the amendments to designation boundaries as agreed prior to and during the hearing as per the primary evidence of Mr Laing at Figures 7, 10, 11, 12, 13 and 14; and
- p) No amendments were made to the NoR 1 conditions accompanying NZTA's closing submission as these conditions need to be compatible with Stage 1 of the Project, with the exception of the time period for establishing the project

website in condition GC.4 as per (a) above.

RECOMMENDATION

271. 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 THE CONDITIONS** attached to this recommendation.

Dave Serjeant, Chairperson

A handwritten signature in blue ink, appearing to read 'D Serjeant', with a stylized, cursive script.

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

Date: 28 March 2025

APPENDIX A

HEARING DETAILS

Application number(s):	Hearing for five (5) NoR's for Auckland Council being for the Papakura to Bombay Project comprising route protection of the land required to authorise the future construction, operation, maintenance of upgrades of the State Highway 1.
Site address:	As described above
Requiring Authority / Applicant:	New Zealand Transport Agency Waka Kotahi
Hearing dates and venue:	Wednesday 20 and Thursday 21 November 2024 at Franklin The Centre, Pukekohe
Hearing panel:	Dave Serjeant (Chairperson) Nigel Mark-Brown Basil Morrison
Appearances:	<p><u>For the Requiring Authority:</u></p> <p>NZTA represented by: Mathew Gribben and Jack Parker (as Legal Counsel in hearing) and Jennifer Caldwell(as partner in charge), Christopher Smith – Project Director at NZTA Jennifer Wild - Principal Advisor, Communications and Engagement at NZTA Mark Laing - Transportation Planner and Engineer at Aurecon Limited Ian Clark – Transport Planner at Flow Transportation Specialists Quinton Botha – Lead Water Engineer at Aurecon Limited Harry Linford – Associate - Urban Design at Beca Limited Arden Cruickshank – Principal Archaeologist at CFG Heritage Limited and John Brown Director of Plan.Heritage Natarsha Lamb-Egar – Landscape Architect and Lead Design Integrator at Aurecon Limited Treffery Barnett - Technical Director of Freshwater and Coastal Ecology at Bioresearches Matthew Paul – Director and Arboricultural Consultant, Peers Brown Miller Limited Siiri Wilkening – Acoustician and Director at Marshall Day Acoustics Ltd Donald Harrington – Senior Property Acquisition Manager at NZTA Dean Ingoe - Technical Director of Environment and Planning at Aurecon Limited Evan Keating – Principal Planner – Environmental Planning with NZTA -did not provide evidence but answered questions</p>

	<p><u>For the Submitters:</u></p> <p>Tabled Statements</p> <p>The Telecommunications Submitters</p> <p>Auckland Transport</p> <p>Dutton Land Holdings Limited</p> <p>SJ and RE Allen</p> <p>Counties Power</p> <p>Thursday 21 November:</p> <p>Z Energy represented by Sarah Westoby, (Planning); and Matthew Brennan (Corporate)</p> <p>The Haribhai Master Trust represented by Bhupen Master</p> <p>NZ Storage Holdings Ltd/NZ Agrihub Ltd/Sain Family Trust/Puiz Trust represented by:</p> <p>Craig McGarr (Planning)</p> <p>Leo Hills (Transport)</p> <p>Ama Chandrasena (Civil Engineering)</p> <p>Matt Doughney (Corporate)</p> <p>Petar Sain (Corporate)</p> <p>BP Oil New Zealand Ltd represented by Samantha Redward (MS-Teams)</p> <p><u>For the Council:</u></p> <p>Craig Cairncross, Team Leader - Planning: Central South</p> <p>Jimmy Zhang, Senior Policy Planner - Planning: Central South (reporting officer)</p> <p>Andrew An, Policy Planner - Planning: Central South (reporting officer)</p> <p>David Russell, Senior Development Engineer at Auckland Council</p> <p>Rebecca Skidmore, Urban Designer and Landscape Architect at RA Skidmore Urban Design Limited</p> <p>Trent Sunich, Stormwater/Flooding Specialist and Principal Environmental Consultant at SLR Consulting</p> <p>Andrew Rossaak, Principal Environmental Scientist and Science Team Lead at Morphem Environmental Limited</p> <p>Anatole Sergejew, Senior Associate at Traffic Planning Consultants Limited (taking over from Andrew Temperley who completed the original report)</p> <p>Andrew Gordon, Senior Specialist Noise at Auckland Council</p> <p>Myfanwy Eaves, Senior Specialist Archaeology, Auckland Council (with</p> <p>Daniel Windwood, Senior Built Heritage Specialist at Auckland Council</p> <p>Leon Saxon, Senior Consultant Arborist at Arborlab Ltd</p> <p>Bevan Donovan, Hearings Advisor – Auckland</p>
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Hearing adjourned	Thursday, 21 November 2024
Commissioners' site visits	Conducted during the hearing
Hearing Closed:	Monday, 20 January 2025

APPENDIX B

ACRONYMS AND DESCRIPTIONS

Acronym/Term	Description
AAR	Assessment of Alternatives Report
AEE	Assessment of Effects on the Environment
AUP	Auckland Unitary Plan Operative in Part
BPO	Best Practicable Option
CEMP	Construction Environmental Management Plan
Council	Auckland Council
CTMP	Construction Traffic Management Plan
CNVMP	Construction Noise and Vibration Management Plan
DBC	Detailed Business Case
EclA	Ecological Impact Assessment
FUZ	Future Urban Zone
HNZPT	Heritage New Zealand Pouhere Taonga
Network Utility Operator	Has the same meaning as set out in section 166 of the RMA
NIMP	Network Integration Management Plan
NUMP	Network Utilities Management Plan
NoRs	Notices of Requirement
NZTA	New Zealand Transport Agency Waka Kotahi
Outline Plan	An outline plan prepared in accordance with section 176A of the RMA
PBC	Programme Business Case
PPF	Protected Premises and Facilities as defined in New Zealand Standard NZS 6806:2010: Acoustics – Road-traffic noise – New and altered roads.
PWA	Public Works Act 1981
RMA	Resource Management Act 1991
RPS	Regional Policy Statement
SCEMP	Stakeholder Communication and Engagement Management Plan
SUP	Shared User Path
TMP	Tree Management Plan
ULDMP	Urban and Landscape Design Management Plan