

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



## Proposal

### TE TUPU NGĀTAHI – SUPPORTING GROWTH PROGRAMME WARKWORTH PROJECT

NoR 1: Northern Public Transport Hub and Western Link North: New public transport hub and park and ride at the corner of SH1 and a new Western Link North arterial corridor with active mode facilities between the intersection of SH1 and Te Honohono ki Tai to a proposed bridge crossing on Western Link North.

NoR 2: Woodcocks Road – West Upgrade: Upgrade of the existing Woodcocks Road – West corridor between Mansel Drive and Ara Tūhono (Puhoi to Warkworth) to an urban arterial corridor with active mode facilities.

NoR 3: State Highway 1 – South Upgrade: Upgrade of the existing SH1 - South corridor between Fairwater Road and the southern Rural Urban Boundary to an urban arterial corridor with active mode facilities.

NoR 4: Matakana Road Upgrade: Upgrade of the existing Matakana Road corridor between the Hill Street intersection and the northern Rural Urban Boundary to an urban arterial corridor with active mode facilities.

NoR 5: Sandspit Road Upgrade: Upgrade of the existing Sandspit Road corridor between the Hill Street intersection and the eastern Rural Urban Boundary to an urban arterial corridor with active mode facilities.

NoR 6: Western Link - South: New urban arterial corridor with active mode facilities between Evelyn Street and the intersection of SH1 and McKinney Road.

NoR 7: Sandspit Link: New urban arterial corridor with active mode facilities between the intersection of Matakana Road and Te Honohono ki Tai (Matakana Link Road) and Sandspit Road.

NoR 8: Wider Western Link - North: New urban arterial corridor with active mode facilities between Woodcocks Road and the Mahurangi River.

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

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| <b>Application:</b>  | Eight Notices of Requirement for Te Tupu Ngātahi - Supporting Growth Programme / Warkworth Project |
| <b>Site Address:</b> | N/A  |

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| <b>Requiring Authority:</b> | Auckland Transport in conjunction with Te Tupu Ngātahi - Supporting Growth Alliance  |
| <b>Hearing Commenced:</b>   | 13 November 2023 at 9:30am   |
| <b>Hearing Panel:</b>       | Richard Blakey (Chairperson)<br>Mark Farnsworth<br>Vaughan Smith   |
| <b>Appearances:</b>         | <p><u>For the Requiring Authority:</u><br/> Natasha Garvan, Legal<br/> Lisa Bazalo, Legal<br/> Rebekah Te Rito, Legal</p> <p>Chris Scrafton, Strategic Planning and Conditions<br/> Simon Titter, Project Planning, Conditions and Alternatives<br/> Daniel Willcocks, Corporate<br/> Alastair Lovell, Corporate<br/> Philippa White, Engagement<br/> Mark van der Ham, Property<br/> Robert Mason, Engineering and Design<br/> Ross Paterson, Geotechnical<br/> Michelle Seymour, Transport<br/> Benjamin Frost, Urban Design<br/> Heather Wilkins, Landscape and Visual<br/> Matthew Paul, Arboriculture<br/> Michiel Jonker, Ecology<br/> Michael Summerhays, Flooding<br/> Claire Drewery, Noise and Vibration<br/> Hayley Glover, Archaeology and Built Heritage</p> <p><u>For the Submitters:</u><br/> Foodstuffs North Island Limited represented by:<br/> - Douglas Allan, Legal<br/> - David Boersen, Corporate<br/> - John Parlane, Traffic<br/> - Mark Arbuthnot, Planning</p> <p>Middle Hill Ltd and the Tyne Trust represented by<br/> Douglas Allan, Legal</p> <p>Woodcocks Property Limited represented by:<br/> - Bill Loutit, Legal<br/> - Todd Langwell, Transport<br/> - Chris Solleder, Civil Engineering<br/> - Mark Vinall, Planning</p> |

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|  | <p>Ka Waimanawa Limited Partnership, Christine and William Endean, and Stepping Towards Far Limited represented by:</p> <ul style="list-style-type: none"> <li>- Bill Loutit, Legal</li> <li>- Todd Langwell, Transport</li> <li>- Phillip Nicholson, Corporate</li> <li>- Garth Falconer, Urban Design</li> <li>- David Hay and Ian Smallburn, Planning</li> <li>- Treff Barnett, Ecology</li> </ul> <p>Te Tāhuhu o te Mātauranga Ministry of Education represented by Emma Howie, Planning</p> <p>Arvida Limited represented by:</p> <ul style="list-style-type: none"> <li>- Kristen Gunnell, Legal</li> <li>- Justin Marshall, Corporate</li> <li>- Steven Rankin, Civil Engineering</li> <li>- Terry Church, Traffic</li> <li>- Burnette O'Connor, Planning</li> </ul> <p>John Wynyard and The Wynyard Family represented by:</p> <ul style="list-style-type: none"> <li>- Patrick Mulligan, Legal</li> <li>- John Wynyard, Submitter</li> <li>- Kathryn Musgrave, Transport</li> <li>- Steven Rankin, Civil Engineering</li> <li>- Burnette O'Connor, Planning</li> </ul> <p>Grange Ridge Limited represented by:</p> <ul style="list-style-type: none"> <li>- Diana Bell, Planning</li> <li>- Hugh Harvey, Corporate</li> </ul> <p>Mason Heights Gospel Church represented by Diana Bell, Planning</p> <p>Robyn Alexander and Katherine Heatley represented by:</p> <ul style="list-style-type: none"> <li>- Burnette O'Connor, Planning</li> <li>- Robyn Alexander, Submitter</li> </ul> <p>Laroc Farm Limited &amp; ECM Signs Limited &amp; ECM Laser Limited represented by:</p> <ul style="list-style-type: none"> <li>- Burnette O'Connor, Planning</li> <li>- Darcy Sheehan, Corporate</li> </ul> |
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|  | <p>Northland Waste Limited represented by:</p> <ul style="list-style-type: none"> <li>- Burnette O'Connor, Planning</li> </ul> <p>Northwood Developments Ltd represented by:</p> <ul style="list-style-type: none"> <li>- Asher Davidson, Legal</li> <li>- Grant Reddell, Corporate</li> </ul> <p>Marj Taylor represented by:</p> <ul style="list-style-type: none"> <li>- Rick van Barneveld, Agent</li> <li>- Paul Taylor, Witness</li> </ul> <p>Pinglu Chen Jinhua Yang represented by:</p> <ul style="list-style-type: none"> <li>- Anders Chong, Agent</li> <li>- Jinhua (Daisy) Yang, Submitter</li> </ul> <p>Jinhua Yang represented by:</p> <ul style="list-style-type: none"> <li>- Anders Chong, Agent</li> <li>- Jinhua (Daisy) Yang, Submitter</li> </ul> <p>Robert Hugh Alwyn Blair represented by Russell Blair, Agent</p> <p>Sol Solis Trust represented by Rodney Macdonald, Corporate</p> <p>Bevan Morrison</p> <p>Gumfield Property Ltd represented by Bevan Morrison, Corporate</p> <p>One Mahurangi Business Association (OMBA) and Warkworth Area Liaison Group (WALG) represented by:</p> <ul style="list-style-type: none"> <li>- Roger Williams, Member, WALG</li> <li>- Dave Stott, Co-Chairman, OMBA</li> </ul> <p>John William Bryham</p> <p><u>For the Rodney Local Board:</u><br/>Michelle Carmichael, Board Member</p> <p><u>For the Council:</u><br/>Peter Vari, Team Leader<br/>Alison Pye, Project Manager<br/>Vanessa Wilkinson, Reporting Officer</p> |
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|                                  | Mica Plowman, Archaeology<br>Pat Shorten, Geotechnical / Earthworks Engineer<br>Martin Peake, Traffic Engineer<br>Peter Kensington, Landscape Architect<br>Rhys Caldwell, Arboriculture<br>John Stenberg, Urban Designer<br>Matt Conley, Ecology<br>Gerard McCarten, Parks Planning<br>Lee Te, Healthy Waters<br>Peter Runcie, Noise Consultant<br><br>Patrice Baillargeon, Senior Hearing Advisor |
| <b>Hearing adjourned</b>         | 22 November 2023   |
| <b>Commissioners' site visit</b> | 1 November 2023  |
| <b>Hearing Closed:</b>           | 4 March 2024   |

## INTRODUCTION

1. Pursuant to s.168 of the Resource Management Act 1991 (**the RMA**), Auckland Transport (**AT**) as part of Te Tupu Ngātahi - Supporting Growth Alliance (**SGA**), as the Requiring Authority, gave notice to the Auckland Council (**the Council**) to designate land as described above and in further detail below, known as the 'Warkworth Projects', located in Warkworth, under the Auckland Unitary Plan (Operative in Part) (**AUP**). These are comprised of eight new designations.
2. At the request of the Requiring Authority, the Notices of Requirement (**NoRs**) were publicly notified on 9 June 2023. Submissions closed on 7 July 2023 with a total of 115 submissions being received across the eight NoRs.
3. The Warkworth NoRs were referred to Independent Hearing Commissioners Richard Blakey (**Chair**), Mark Farnsworth, and Vaughan Smith (**Panel**), who were appointed and act under delegated authority from the Council under ss.34 and 34A of the RMA, for a hearing and recommendation. The hearing took place over seven days from 13 to 22 November 2023 and was conducted at the Warkworth Town Hall (2 Alnwick Street, Warkworth). There were appearances at the hearing by the Requiring Authority, submitters and Council officers, as listed above.
4. This recommendation assesses the Warkworth NoRs in accordance with s.171 of the RMA. It addresses the issues raised in the submissions and contains the Panel's recommendation to the Requiring Authority under s.171(2) of the RMA.

## OVERVIEW OF THE NOTICES OF REQUIREMENT

5. The Warkworth NoRs seek the route protection of future strategic transport corridors (highway connections, rapid transit and local roading) as part of the Supporting Growth Programme to enable the future construction, operation and

maintenance of transport infrastructure in the northern (Warkworth) area of Auckland. The components of the Warkworth NoRs that are addressed in this recommendation report are described briefly in the 'Proposal' description at the start of this report. Further summary descriptions can be reviewed in the Council's s.42A report.<sup>1</sup>

6. The SGA have sought a range of lapse dates in respect of the NoRs, being 15 years for NoRs 2 - 4; 20 years for NoRs 1, 6 and 8; and 25 years for NoRs 5 and 7. The issue of lapse dates is addressed later in this report.

7. It is also relevant to record here the specific project objectives, as a matter relevant to our consideration under s.171(1)(c), as detailed in the evidence for the SGA, being:<sup>2</sup>

*“... to provide for new or upgraded transport corridors and associated facilities that:*

*(a) Improves connectivity;*

*(b) Are safe (or improve safety in the case of upgrades);*

*(c) Improves access to the PT network (in the case of NoR 1 only);*

*(d) Are efficient, resilient and reliable;*

*(e) Integrate with, and support, planned urban growth;*

*(f) Integrate with, and support, the existing and future transport network; and*

*(g) improves travel choice and contributes to mode shift”.*

8. The designation plans (provided as Attachment A in Form 18 for all of the NoRs) together with the schedule of directly affected properties (provided as Attachment B in Form 18) describe the land that will be directly affected and required for the projects and associated works. An updated set of designation plans were provided with the Requiring Authority's reply, to reflect those changes to the designation boundaries made since notification of all of the NoRs.<sup>3</sup>

9. We also note the overall conditions framework that the SGA proposes to apply across all eight NoRs, which incorporates a number of management plans to address the majority of anticipated environmental effects. These would provide the framework to guide the final design of the various components of the transport corridors as well as avoid, remedy mitigate or manage the adverse effects of the construction activities associated with the implementation of the Project. The following management plans are proposed by the SGA as those to be developed and submitted as part of any Outline Plan of Works (**OPW**) under s.176 of the RMA, in accordance with proposed condition 8:

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<sup>1</sup> Agenda, at pp.17-23

<sup>2</sup> EV07, at [7.2]

<sup>3</sup> EV130, at Appendix C

- Construction Environmental Management Plan (**CEMP**);
  - Construction Traffic Management Plan (**CTMP**);
  - Construction Noise and Vibration Management Plan (**CNVMP**);
  - Ecological Management Plan (**EMP**);
  - Historic Heritage Management Plan (**HHMP**);
  - Network Integration Management Plan (**NIMP**);
  - Network Utilities Management Plan (**NUMP**).
  - Urban and Landscape Design Management Plan (**ULDMP**); and
  - Tree Management Plan (**TMP**).
10. The wording of these management plans, and the conditions generally, were consistent across all the NoRs, but with some variances as required for the circumstances and context of each NoR.
11. A significant aspect of the overall proposal is the preparation of a Stakeholder Communication and Engagement Management Plan (**SCEMP**) across all the NoRs. This is proposed to be prepared prior to the commencement of construction, and provided to the Council for information purposes a minimum of ten days prior to those works.
12. The s.42A report noted its acknowledgement in regard to the use of management plans that:<sup>4</sup>
- “...the NoR process is primarily about route protection rather than implementation and in that regard a management process is accepted as an appropriate method, given that detailed assessment and implementation would occur at the [OPW] stage”.*
13. It went on to emphasise, however, the need for the conditions to establish a robust process for the preparation of those plans, such that they are certain and enforceable and incorporate a clear objective as to their purpose as well as specific measures to avoid or mitigate potentially adverse effects.
14. We address particular aspects related to the conditions and the use of management plans later in this decision.

## **SITE AND LOCALITY**

15. Section 9 of the AEE provided us with a detailed description of the designated routes (individually or collectively **the Project** or **Projects**), with further descriptions provided in supporting specialist reports such as the Landscape and Urban Design assessments. The s.42A report adopted these descriptions<sup>5</sup> and we also do the same for the purpose of this recommendation. The site and locality descriptions were also reinforced by our site visit. We visited all sections of the ‘on-road’ sections of the designations and viewed the ‘off-road’ sections of the designations from available vantage points. In general terms it can be said that the

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<sup>4</sup> Agenda, at pp.41-42

<sup>5</sup> Ibid, at pp.33-34

Warkworth NoRs traverse a variety of contexts, from existing rural road environments for parts of NoR, traversing areas bound by the Future Urban Zone (FUZ), to areas with adjacent residential areas, and in some places, commercial areas. The routes affect a reasonably large number of properties along their respective alignments and we address those effects as raised during the hearing later in this report.

16. It is also relevant to note that NoR 3 affects a section of the 'old' State Highway 1. While the function of this highway is now provided by the new Puhoi to Warkworth motorway, the New Zealand Transport Agency Waka Kotahi (**Waka Kotahi**) remain the road controlling authority. We were advised during the hearing that this responsibility will transfer to AT sometime during 2024.

## SUBMISSIONS

17. As noted above, the NoRs were publicly notified by the Council at SGA's request on 9 June 2023 and closed on 7 July 2023, with 115 submissions having been received. The s.42A report notes that 34 submissions were in support or support with amendments, 53 were in opposition, and 28 were neutral or did not state a position.<sup>6</sup> A summary of the key issues raised in submissions relative to these NoRs can be seen at Appendix 3 to the s.42A report.
18. The s.42A report provides commentary with respect to the four submissions that were received after the closing date. In this regard we note that those that were received within 20 working days of the submission closing date were able to be accepted by the Council under s.37A(4) of the RMA, and the reasons for the acceptance was described in the s.42A report.<sup>7</sup>

## PROCEDURAL MATTERS

19. There were a number of procedural matters that the Panel has addressed both prior to and during the hearing. Some standard matters related to defining the hearing and evidence exchange timetable (Direction 1), and the timing of receipt of the Council's written response and the Requiring Authority's reply (Direction 3). Prior to the commencement of the hearing, the Panel issued Direction 2 in response to a s.42A addendum report relating to geotechnical matters, and sought further information relating to cross-section information pertaining to parts of NoR 4.
20. Following receipt and review of the Requiring Authority's closing legal submissions (**Reply**), the Panel issued Direction 4 on 23 January 2024 to seek further information on a number of matters related to those submissions. In particular, the Direction sought further clarification on the areas of contention with respect to the flood hazard condition, and the Requiring Authority's position with respect to an advice note (to the ULDMP condition). This was responded to way of a supplementary memorandum dated 29 February 2024. As these addressed the

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<sup>6</sup> Agenda, at pp.35-37

<sup>7</sup> Ibid, at p.35



Panel's queries in full, we resolved to close the hearing, and notice to this effect was issued on 4 March 2024 via Minute 1.

21. The Panel thanks the Requiring Authority for the detailed nature of its Reply and the supplementary memorandum and has found these to be a useful reference both in confirming the matters in contention and as a basis for the Panel's consideration of those matters.
22. We also make the note that this Panel has also been appointed to hear and make recommendations in respect of the SGA's notices of requirement in the North-West area (hearing held on 18 September to 12 October 2023) and for areas in North Auckland (hearing scheduled for 17 June – 4 July 2023). In particular, and at the time of preparing this report for the Warkworth NoRs, it has received reply submissions and has closed the hearing for the North-West NoRs, and the matters raised in the course of that hearing have some relevance to those that we must consider for Warkworth (and vice versa). We have endeavoured to take a consistent approach across the respective NoRs, while noting that there are site or area-specific variables that need to be taken into account. Further evidence and legal submissions will be considered in the North Auckland NoRs, and the Panel wishes to emphasise that it may reach different findings on similar topics from that hearing depending on the evidence and legal submissions that it receives.

## RELEVANT STATUTORY CONSIDERATIONS

23. The relevant statutory considerations relevant to our consideration of the NoRs was set out in the application documents and the s.42A report and were further reiterated to the Panel through legal submissions and in various expert witness statements. While the relevant provisions of the RMA were well-canvassed during the hearing, they are central to the recommendations that we must make and so are restated here.
24. The RMA provides that the procedures adopted in processing a notice of requirement are generally those adopted for processing a resource consent application. This includes processes relating to lodgement, requiring further information, notification, receiving and the hearing of submissions. In respect of the Warkworth NoRs, the s.42A report confirmed that all of those procedures have been followed.<sup>8</sup>
25. Section 171 of the RMA states:
  - (1A) *When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.*
  - (1) *When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—*
    - (a) *any relevant provisions of—*
      - (i) *a national policy statement:*

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<sup>8</sup> Agenda, at p.38

- (ii) *a New Zealand coastal policy statement;*
  - (iii) *a regional policy statement or proposed regional policy statement;*
  - (iv) *a plan or proposed plan; and*
- (b) *whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—*
- (i) *the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
  - (ii) *it is likely that the work will have a significant adverse effect on the environment; and*
- (c) *whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
- (d) *any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*
- (1B) *The effects to be considered under subsection (1) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, as long as those effects result from measures proposed or agreed to by the requiring authority.*
26. Section 171(1) is subject to Part 2 of the RMA. Part 2 contains the purpose and principles of the RMA. It has been confirmed by the Environment Court that, in relation to a designation matter:<sup>9</sup>
- “...all considerations, whether favouring or negating the designation, are secondary to the requirement that the provisions of Part II of the RMA must be fulfilled by the proposal”.*
27. After considering these matters, the Council needs to make a recommendation to the requiring authority under s.171(2) of the RMA which states:
- (2) *The territorial authority may recommend to the requiring authority that it –*
    - (a) *confirm the requirement;*
    - (b) *modify the requirement;*
    - (c) *impose conditions;*
    - (d) *withdraw the requirement.*
28. Reasons must be given for the recommendation under s.171(3) of the RMA.
29. It is also important to emphasise this aspect of the Panel's role under s.171(2), being to make a recommendation on the NoRs to the Requiring Authority, rather than a binding decision. This was recognised by many witnesses and submitters whom we heard from during the hearing. While our recommendations support the need for the NoRs endorsing the recommendation of the Council and finding in

<sup>9</sup> Estate of P.A. Moran and Others v Transit NZ W55/99 [1999] NZEnvC 513, at [114]

favour of some submitters, as set out later in this report, it is the Requiring Authority who will make its decision on the NoRs, in accordance with s.172 (*'Decision of the requiring authority'*) which is set out below as follows:

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

30. However, despite the abovementioned decision-making powers, all parties to the NoRs retain appeal rights to the Environment Court under s.174 in respect of the Requiring Authority's eventual decisions.

## **EVIDENCE HEARD**

31. The s.42A report, along with the Council's various specialist assessments, was circulated prior to the hearing and taken as read. The evidence presented at the hearing responded to the issues and concerns identified in the s.42A report, the NoRs themselves, and the submissions made on the NoRs. Expert evidence on behalf of all parties who appeared, along with a number of non-expert statements, were also circulated prior to the hearing and again were taken as read.
32. Due to the breadth and scale of the NoRs a considerable volume of evidence was produced through the Council hearing, including supplementary and/or rebuttal statements of witnesses for the Requiring Authority. This information and evidence is referred to as necessary to explain the points being made in text below. However, we have not summarised all the evidence provided, other than where reference is made to specific evidence as part of our discussion in this report. Not only were the materials pre-circulated to all parties but they were also uploaded to the Council's website and may be read there should that be required.<sup>10</sup> An 'evidence index' has also been prepared to assist with navigation of the evidence file, and we have used the index reference in our referencing of the evidence throughout this recommendation report.
33. The Panel reviewed, and considered, all of the submissions made on the NoRs and the relief sought by the submitters. There are a number of generic themes that emerged along with some unique site-specific matters raised in the evidence, the intent of which is addressed in the discussion to follow.
34. In terms of timing, the Panel observed, prior to the adjournment of the hearing, that it is not bound by any timeframe under s.171 in which to issue its recommendations but would nevertheless undertake to do so as expeditiously as

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<sup>10</sup> This includes the notification materials, submissions and Panel directions.

possible following receipt of the SGA's Reply. This approach is in accordance with our general duty under s.21 but accommodates the fact that this Panel was also required to prepare its recommendations in respect of the North-West NoRs, and would be hearing the North Auckland NoRs in June 2024.

## **ISSUES IN CONTENTION**

### **Introduction**

35. The recommendations made in this report follow the deliberations and the findings reached by the Panel after considering the NoRs, the submissions lodged, the Council's reports, and the legal submissions and evidence presented at the hearing, the response comments provided by Council officers and consultants, and the written reply and associated updated conditions schedule provided by counsel acting on behalf of the Requiring Authority.<sup>11</sup> The recommendations are made in terms of the aforementioned framework provided by s.171 of the RMA.
36. The Panel noted at the outset of the hearing that the consideration of eight NoRs within one hearing and recommendation report would be a reasonably substantial undertaking in terms of ensuring that all issues and individual site effects were able to be addressed to a suitable level of detail. In this regard the Panel recognises the extensive efforts made by the Requiring Authority itself in bringing the NoRs to the application stage and addressing the subsequent further information process; the Council in undertaking its assessments of them; and by submitters and their representatives in reaching an understanding of them for the purposes of making a submission and then preparing evidence and/or statements for the hearing.
37. In overall terms, the NoRs raise a number of issues and a range of impacts for those persons (particularly adjacent residents, businesses and community groups) and environments along their routes.
38. Compounding those matters are the Requiring Authority's proposed lapse dates which range from 15-25 years. This was a significant factor in the concerns raised by submitters affected by the NoRs, due to the immediate effect that the designations were perceived to have on the value and utility of their property and the uncertainty as to when the designations would be implemented along with the associated land acquisition process.
39. The Panel heard from a large number of submitters with respect to the way in which the NoRs could affect their property, either in whole or in part. For properties partly affected (such as through the taking of land along site frontages), such issues are, in the main, proposed to be addressed through management plan conditions to be included in each designation. These follow a standard format, but have some specific components for different NoRs. We have therefore sought to address the issues around the relevant conditions as these represent the primary method by which those effects will be resolved, or at least managed. For those

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<sup>11</sup> Counsel for the Requiring Authority were Natasha Garvan and Lisa Bazalo.

properties that are proposed to be acquired in full (where the designation requires an extensive area of a property and/or where access can no longer be provided), the primary relief will be via the Public Works Act 1981 (**PWA**) (either directly or via an Environment Court order made under s.185 of the RMA).

40. Notwithstanding the existence of numerous issues for specific properties, the Reply makes a general observation that the need for these transport projects received a high level of support from both key stakeholders as well as individual landowners. It goes on to outline the Requiring Authority's general impression that:<sup>12</sup>

*“there has been general acceptance of the need for the Project to support the existing and future growth in Warkworth and improve connectivity and access to [FUZ] land. Very few submitters seriously questioned the type of transport interventions proposed by the Requiring Authority and most submitters who raised concerns with the Project also acknowledged the benefits it will provide to the community”.*

41. We agree with that overview.
42. After our analysis of the NoRs and evidence (including proposed mitigation measures), undertaking a site visit, reviewing the Council's s.42A assessments, reviewing the submissions and concluding the hearing process, the NoRs raise a number of issues for consideration. Identification of these matters has been assisted by the way in which these have been addressed in the Reply, although we have taken the approach of addressing more general or Project-wide issues first, followed by a consideration of the issues for each NoR second.
43. The list of matters in contention that we have determined that we need to make findings on are set out as follows:
- Alignment and extent of designations;
  - Lapse dates;
  - Business and property impacts;
  - Adequacy of engagement;
  - Traffic modelling;
  - Effects of stormwater and flooding;
  - Effects of road noise on future dwellings;
  - Effects on parks, reserves and open space;

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<sup>12</sup> EV130, at [1.4]

- Management plans;
  - Conditions;
  - Site specific schedule; and
  - Specific matters related to each NoR.
44. Further to our commentary above, some of these issues were common across a number of submitters or were site or NoR -specific. We address the former matters first, and the NoR/site specific matters second where these are not otherwise addressed by our findings in respect to the common issues. We should also note that some of the issues in contention appeared to be resolved at least in part through the ongoing evolution of the conditions as proposed by the Requiring Authority, and we record those outcomes as relevant to the issues or sites in question.
45. The Panel acknowledges that its recommendations do not address all of the concerns raised by submitters, and indeed is unable to do so where those concerns relate to the timing of land acquisition (and any associated property valuations). However, it has taken care to ensure its recommendations are in accordance with the scope afforded by s.171(2).
46. The first section in this part of our report addresses the background and rationale for the Warkworth NoRs, being an aspect that was generally understood but provides the contextual backdrop to our analysis of the matters that remained in contention. In this regard, we discuss below the rationale for the project as set out in the evidence, to provide the contextual backdrop to our analysis of the matters that remained in contention.

#### **Approach to long-term designations for large infrastructure projects**

47. The Panel notes that while there were some submitters who queried the overall need for the NoRs, the majority of the evidence it heard recognised the importance of providing for the Projects (as also observed by the Requiring Authority, as referred to above).
48. The s.42A report has helpfully provided a useful summary of the background and context for the NoRs generally, by reference to the NoR notification documents and we adopt that summary here.<sup>13</sup> In particular, it notes the signal within the Council's Auckland Plan 2050 that Auckland could grow by 720,000 people over the next 30 years, generating demand for more than 400,000 additional homes and requiring land for 270,000 more jobs. Around a third of this growth is expected to occur in FUZ areas. The Council's 2017 Future Urban Land Supply Strategy (**FULSS**) was updated in line with AUP zonings, with 15,000 hectares of land

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<sup>13</sup> Agenda, at pp.17-19

allocated for future urbanisation. The FULSS provides for sequenced and accelerated greenfield growth in ten areas of Auckland.

49. The Supporting Growth Programme has been prepared to investigate, plan and deliver the key components of the future transport network necessary to support this planned greenfield growth in Auckland's future urban areas. The Requiring Authority's application documents advise, as re-affirmed through evidence, that the early protection of critical transport routes is necessary to provide certainty for all stakeholders as to the alignment, nature and timing of the future transport network. It was also the Requiring Authority's case that designations also provide increased certainty for AT that it can implement the works provided for by the designations.
50. The AEE provides background as to the rationale for the route protection approach, stating:<sup>14</sup>

*“Warkworth is uniquely located as a satellite town at the northernmost extent of the Auckland region, approximately 60km north of the Auckland city centre, and 30km north of Orewa. The Warkworth FUZ area is less than 5km from the northern extent to the southern extent, and from the eastern extent to the western extent, resulting in compact future urban form”.*

51. The AEE also advises that the proposed project staging is based on the FULSS and the expectation that the Warkworth growth areas are expected to accommodate 17,100 additional people, 8,200 new houses and 4,600 new jobs. It goes on to say that these increases are significant in the context of an area that is currently predominantly rural in character and that:

*“The significant growth anticipated will pose a number of future transport challenges for Warkworth, including exacerbating existing transport problems and resulting in the current network being unsuitable to support this planned future growth”.*

52. On this basis, the AEE states that given the scale and duration of the expected growth, *“the early route protection of these critical transport corridors and infrastructure is necessary to provide the required certainty for AT, Waka Kotahi, stakeholders and the community”.*
53. The rebuttal evidence of Simon Titter, on behalf of the Requiring Authority, provided a further illustration as to the extent of proposed growth in Warkworth. Mr Titter's Figure 1 (Warkworth Indicative Development Pressures) provided a high-level overview of committed and non-committed (pipeline) developments relative to the Warkworth Package. He commented that this overview demonstrated that:<sup>15</sup>

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<sup>14</sup> AEE, at [2.1]

<sup>15</sup> EV08, at [4.6]

*“...there is evidence of development pressure in the Warkworth area across all identified future urban areas. Notably, this includes a number of committed and / or pipeline developments, which are ‘out of sync’ with the anticipated timing of urban growth (for example, Warkworth north-east). However, as noted in the evidence of Mr Lovell<sup>16</sup> the predicted full build-out of Warkworth future urban areas will likely take time to eventuate, and transport projects typically lag behind these developments as they may not necessarily be needed in their full capacity at the initial stage(s) of a development”.*

54. Notwithstanding the actual timing of development, and the associated need for transport infrastructure on the ground, Mr Titter further explained the necessity for those transport corridors to be designated now. This is because of the need to protect those corridors from *“inappropriate development which may prevent or hinder the implementation of the [Projects] in the future, but, and perhaps more importantly, to ensure that there is integration between this urban development and the infrastructure required to support it (i.e transport)”*.<sup>17</sup>
55. Mr Titter went on to note the importance that this corridor protection occurs at the urban development / master planning phase *“where there is the greatest potential to influence and achieve integration, to deliver efficiency in land use, and positive transport, environmental and social outcomes for the Warkworth area and its surrounds”*.<sup>18</sup>
56. The Panel notes that since lodgement of the NoRs the Council has also consulted on, and recently confirmed, its Future Development Strategy (**FDS**). This amends the extent of FUZ and the timelines for the development of land previously defined by the FULSS. This does not appear to signal any significant change to the areas of FUZ within Warkworth but does indicate that development will occur later than previously forecast.
57. We comment further on the above matters with regard to s.171(1)(d) of the RMA later in this report.
58. The Panel accepts the basis for the need for route-protection in view of the provision for growth of Warkworth and the evident growth pressures currently experienced within this area, and that the analysis underpinning its rationale in this regard is considered to be sound. That analysis is therefore relied upon for the purposes of considering the issues that arise from the proposed route-protection and the associated matters of contention, as discussed in the following parts of this report.

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<sup>16</sup> By reference to EV13, at [4.2]

<sup>17</sup> Ibid, at [4.7]

<sup>18</sup> Ibid



## **Alignment and extent of the designations**

### **Introduction**

59. The proposed designations seek to protect routes by way of designation, including land sufficient for the construction, operation and maintenance of the future arterial transport network. The design of the NoRs have focused on developing alignments to a level that is sufficient to inform the proposed designation footprint and to assess an envelope of effects that includes potential construction areas, operational and maintenance requirements and areas required to mitigate effects. This was an approach common to the North-West NoRs and, we understand, to the Te Tupu Ngātahi programme generally.
60. Our discussion of this topic incorporates several inter-related themes that were frequently raised within the evidence of submitters. These related to the Requiring Authority's proposals for what will need to be incorporated within each designation, integration with adjacent development proposals, the maintenance of access during and after construction.

### **What is incorporated in the designations**

61. The proposed designations incorporate the areas expected to be required during construction such as general work areas, construction compounds and laydown areas, construction traffic access and manoeuvring and the regrading of driveways, sediment controls, earthworks (including cut and fill batters), works to relocate or realign network utilities, culvert and bridge works, drainage and stormwater works including new wetlands. While concept plans provided a reasonable level of detail of the facilities to be provided within the proposed road reserve, the extent of the additional areas for construction were somewhat less definitive but were described as being based on anticipated requirements given land characteristics and present understandings of construction techniques. In particular, the evidence for the SGA advised that sufficient width has been provided at the edge of embankments and design elements to provide for appropriate construction areas and access along the corridors.
62. We note at this juncture that while the particular details shown in the concept plans were useful in illustrating the likely and potential form of the completed new roads or upgrades, we are only tasked with making recommendations on the designation maps, which are the outline maps depicting the designations in simple black outline and grey shading. While the concept plans form part of the information to be contained in Schedule 1 to the conditions, condition 1 clarifies that where there is any inconsistency between the concept plan and the requirements of the remainder of the conditions, the conditions and management plans shall prevail.
63. Some submitters considered that the extent of the designation boundaries had not taken into consideration the potential development of adjacent land, or situations where resource consent approvals had been granted for the same or were in the process of being implemented. For example:

- (a) Burnette O'Connor, on behalf of Kilns Limited (NoR 5), told us that s.178(2) approval for The Kilns' subdivision has been granted, and therefore:<sup>19</sup>

*"...enabling the development to proceed within the proposed designation the extent of the designation should be retracted to align with the edge of the development, or preferably to the site boundary".*

- (b) David Hay and Ian Smallburn, on behalf of KA Waimanawa Limited Partnership and others<sup>20</sup> (**KA Waimanawa**) provided planning evidence on the spatial extent of the proposed designation boundaries of NoR 3 as it affects a proposed plan change within land adjacent to the designation.<sup>21</sup>
- (c) Grant Redell, a director of Northwood Developments Limited (**Northwood**), provided commentary<sup>22</sup> on why NoR 4 was not reasonably necessary as it relates to the Northwood property and an approved subdivision adjacent to Matakana Road.
- (d) Douglas Allan and Alex Devine, in their legal submissions for Foodstuffs North Island Limited (**Foodstuffs**), noted that their client sought, in relation to NoR 1, that:<sup>23</sup>

*"the physical extent of the designation be minimised and that the designation be removed as soon as possible from land that has been designated for construction purposes only".*

64. We discuss these submissions in further detail later in this report.
65. The Requiring Authority advised that with respect to the design of the road the concept designs have been developed with some flexibility to integrate with adjacent land. The designations are considered by AT to be of sufficient scope to provide flexibility in road levels and berm areas to accommodate an appropriate tie-in with adjacent land. As the final earthworks levels of any adjoining development are unknown, AT have made assumptions regarding road levels and embankments. The conditions propose that the ULDMP (condition 13) is required to be prepared prior to the start of construction to ensure integration with adjoining land use at the time of detailed design and implementation (in particular, via clause (c)(i)).
66. As referred to earlier, the extent of the proposed designation boundaries was also raised by many submitters across the eight NoRs, and in particular for the road alignments of NoRs.
67. The evidence for the Requiring Authority addressed these submissions by way of explanation of the necessity of the location of the designation in evidence provided

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<sup>19</sup> EV106 at [11]

<sup>20</sup> Stepping Towards Far Limited; Christine and William Endean

<sup>21</sup> EV77 at [3.1]

<sup>22</sup> EV108 at [20 – 27]

<sup>23</sup> EV57 at [3(c)]

by its experts and in some cases by modifying the extent of the designations. It was AT's overall submission that the designations reflect the information available at the present time, as part of the first step in the designation process and ahead of the detailed design that forms part of the second step. In essence:<sup>24</sup>

*"...once funding is confirmed, the Project will progress to Step 2 with detailed design undertaken and outline plan approvals sought for the works. The conditions imposed on the designation at Step 1 will ensure the parameters or envelope of effects are appropriately addressed at Step 2 and the conditions (and their associated management plans) have been carefully designed to anticipate and resolve any effects issues that may arise at the time detailed design is undertaken, including complexities due to changes in the environment".*

68. In this regard, the Panel heard from Robert Mason who provided evidence on behalf of the Requiring Authority in respect of engineering and design. Mr Mason advised that the cross-section designs for the NoRs were based on the requirements of the AT Transport Design Manual (**TDM**) and "*generally incorporate berm and berm planting, footpath, separated cycleway, traffic lanes, solid or flush median (to be determined at detailed design), communications duct for utilities, stormwater management, and street lighting*".<sup>25</sup> The extent to which each NoR, or section of a NoR, would accommodate these facilities was an area of contention particularly in respect of NoR 4 (Matakana Road). Mr Mason explained that localised reductions will be provided in the width of footpaths/cycleways to accommodate bus stops, and in parts of Matakana Road, and Sandspit Road (NoR 5) to respond to constraints of topography and ecological features. In these areas it is proposed that cycleways would be of a bidirectional design, rather than unidirectional elsewhere in the network.
69. The evidence of Mr Willcock also explained AT's land use approval process and he highlights that there are specialist teams within AT who work to assess and input on third party land use developments, including resource consents, ss.176/178 approvals and plan changes, with the intent to promote and ensure integrated land use and transport outcomes. An example of this was the s.178 approval that had been given to The Kilns development, as referred to earlier.
70. Following completion of the works, proposed condition 5 (applicable to all the NoRs) requires the extent of the designation to be reviewed to identify any areas of designated land that are no longer required for the on-going operation, maintenance of the corridor or mitigation of effects. The condition wording as proposed in the Reply was as follows:
- (a) *As soon as reasonably practicable following Completion of Construction the Requiring Authority shall:*

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<sup>24</sup> EV01, at [8.29]

<sup>25</sup> EV23, at [6.5]

- (i) review the extent of the designation to identify any areas of designated land that it no longer requires for the on-going operation, maintenance or mitigation of effects of the Project; and
- (ii) give notice to Auckland Council in accordance with section 182 of the RMA for the removal of those parts of the designation identified above.

71. The above wording reflects the amendment made as a result of discussions in the hearing where it was noted that the original introductory wording of the condition was ambiguous but had also required that the review be carried out within six months.

72. We note in this regard that the evidence of Messrs Hay and Smallburn on behalf of KA Waimanawa et al sought deletion of the phrase “as soon as reasonably practicable”, for the reasons that:<sup>26</sup>

*“... the 6 month period is more than adequate to undertake the required survey, and then prepare the documentation for lodgement with Council. This will create more certainty for landowners and not allow matters to drag on unnecessarily. The term “otherwise practicable” is also vague and open to significant interpretation, making it very difficult to enforce”.*

73. This issue was acknowledged in the Requiring Authority’s Reply, which also noted that the wording of the condition otherwise aligns with the approach adopted in other designations and provides flexibility for the rollback to occur at any time that is reasonably practicable, and that the wording was important to retain flexibility where the roll-back process is subject to third-party delays.

74. The Panel agrees with that approach but has some residual concern at the loss of a six-month ‘backstop’ within the condition. In this regard we recognise that the timing is to some extent outside the control of the Requiring Authority but consider that a six-month limit would provide sufficient flexibility to accommodate this factor. We therefore consider that the introductory wording of the condition should be amended (as we have also recommended for the North-West NoRs) as follows:

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

75. We have incorporated this condition into a broader version of the condition as we will discuss later in respect of the designation lapse topic.

76. The extent of the proposed designation boundaries was also raised by many submitters across the eight NoRs, in particular for the road alignments of NoRs 6, 7 and 8. The evidence of some submitters was that the proposed designation

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<sup>26</sup> EV77, at [10.5]

boundaries extend further than required and they requested that they are reduced.<sup>27</sup>

77. This was a similar issue to one that we heard during the hearing for the North-West NoRs, and during that hearing we invited further comment from the SGA to clarify the manner by which the NoR alignments were derived. A response memorandum from the SGA had set out the key factors utilised by its engineers to determine the proposed road widths and batter slopes and noted that there are a number of factors that are considered in this regard. This response is considered to be of general applicability to the Warkworth NoRs so is referred to here, and we note the summary statement provided in the SGA's memorandum that:<sup>28</sup>

*“The final position of the kerb (horizontally and vertically, and also linearly along the alignment) and the components of the cross section will ultimately determine the level difference at the property boundary. As set out in [section 6 of Mr Mason's evidence], this will also depend on the actual dimensions adopted for the cross-sectional elements, the actual ground profile determined through topographical survey, and the levels adopted for any adjacent development that has been implemented in the interim (noting that there are live examples where we are currently working with the developer on levels). These are matters that will be assessed at the time of detailed design”.*

78. As noted earlier, the evidence on behalf of submitters, with respect to specific issues regarding the alignment and extent of the NoRs in respect of particular sites, will be discussed later in this report.

#### Panel findings and recommendations

79. The Panel considers that the alignments and extents of the designations have been based on an appropriately detailed analysis of technical need and requirements and have been subject to ongoing review in response to submissions. The Panel finds that no changes are required to the designations in this regard (and accepts the amendment to condition 5 to clarify the timing in respect of the review of the designation post-implementation, subject to the further amendments that it recommends in this regard).

#### The lapse periods for the designations

80. As previously noted, the Warkworth NoRs have a range of proposed lapse periods of between 15 and 25 years. The 'standard' lapse period under the RMA is five years under s.184(1), unless, as provided for in s.184(1)(c), *“the designation specified a different period when incorporated in the plan”*.
81. The issue of lapse dates was a significant one during the hearing, and was the most common matter raised within submissions, with concerns raised about

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<sup>27</sup> For example, Arvida Holding Limited; Northwood Developments Limited; Michael & Cindy Lincoln and Robin Alexander.

<sup>28</sup> North-West NoR hearing - EV221, at [9]

uncertainty, the constraint on investment decisions and restrictions on opportunities to add value to properties. This issue relevant to a number of sub-topics relating to uncertainty and potential planning blight which were listed in the Reply as involving the following ‘themes’:

- The *Beda* decision;
- Review of the need for the designations;
- Balancing the uncertainty associated with longer lapse dates versus the certainty of strategic planning; and
- Implications of the FDS on the proposed lapse dates.

82. Our discussion below has addressed these sub-topics, while recognising the overlap between the relevant considerations. The question as to the need for a review condition is one that falls out of our findings in respect of the lapse dates themselves, and so we address this as a separate topic.

83. In general, the Requiring Authority considered that the proposed lapse dates were necessary to account for the uncertainty as to the timing of urbanisation in the Warkworth area and funding timeframes. The AEE had noted that it is not uncommon for infrastructure projects to have a longer lapse period, with reference to recently confirmed projects such as Drury Arterials (AT and Waka Kotahi),<sup>29</sup> Southern Links (Waka Kotahi), the Northern Interceptor Wastewater Pipeline (Watercare) and the Hamilton Ring Road (Waikato District Council and Hamilton City Council). It added that setting an “unrealistically” short lapse period would not be a significant factor in facilitating earlier availability of funding than is planned at the time the NoR is sought.<sup>30</sup>

84. Conversely, submitters and the Council considered that reduced lapse periods were necessary to reduce uncertainty for affected landowners and to avoid the adverse and associated effects of ‘planning blight’. The s.42A report recommended reduced periods and/or in combination with other provisions, as follows:<sup>31</sup>

- *“A shorter lapse period in the order of 10 years for NoRs 1, 2, 3 4, 6, 7 and 8 (being double the period set in section 184 of the RMA) and 15 years for NoR 5; or*
- *Bring forward the priority sequence and corresponding cascade of lapse dates for each of NoRs implementation.*
- *Further revise and improve the conditions to provide more certainty; or introduce new conditions to provide additional information about the*

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<sup>29</sup> We note that the Drury Arterials network designations have lapse periods of 20 years, although the Hearing Panel recommendations in that case was that it be reduced to 15 years, with the Requiring Authorities reverting to 20 years in their decision.

<sup>30</sup> AEE, at [6.1]

<sup>31</sup> Agenda, at p.48

*proposed engagement and/or consultation processes for directly affected parties or other parties which are in the vicinity of the proposed works including in the period between when the designation is confirmed and the construction phase i.e. during the detailed planning and route protection phase”.*

85. The rationale for the lapse dates proposed for the Warkworth projects was explained in Mr Titter’s evidence. He advised that the lapse periods proposed are based on the modelled growth and land use demands in accordance with the FULSS which was subsequently tested through the transport modelling for the Detailed Business Case (**DBC**). In this case the lapse dates reflect the upper end of the DBC staging timing so as to account for uncertainty of the timing of urbanisation and funding timeframes, although he also acknowledged that “*the development rate will be influenced by market attractiveness, the owner / developer willingness to develop the surrounding land and regional growth trends*”.<sup>32</sup> However, Mr Titter also noted that shorter lapse dates would not be a significant factor in funding being made available at an earlier time. Other reasons for which the lapse dates were considered appropriate were noted as follows:
- (a) The Regional Policy Statement (**RPS**) and Auckland-wide infrastructure objectives and policies in the AUP seek to ensure that infrastructure is protected from incompatible subdivision, use and development and reverse sensitivity effects;
  - (b) The approach is common for large-scale infrastructure projects (with reference to those examples referred to above);
  - (c) Shorter lapse dates would risk the designations lapsing prior to implementation, leading to additional costs in respect of RMA processes, being an inefficient use of resources and public funds; and
  - (d) The proposed lapse dates provide for increased certainty to the Requiring Authority that it can implement the projects.
86. Mr Titter went on to describe the way in which the lapse dates would support a number of aspects of the NoRs, which are summarised below:
- (a) Protection of the land required for transport infrastructure to support future growth while recognising the uncertainty associated with the timing of that growth;
  - (b) Enabling the efficient delivery of transport infrastructure at a time and in a way that is integrated with future urbanisation;
  - (c) Providing the Requiring Authority with sufficient time to undertake detailed design, obtain the required resource consents, procure funding, undertake procurement and undertake property and access acquisitions; and

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<sup>32</sup> EV07, at [8.3]

- (d) Providing property owners, businesses and the community certainty on where transport corridors will be located and within what timeframe, enabling people to make informed decisions.
87. Mr Titter also advised that the lapse periods are not considered by the Requiring Authority to be a target, but rather a limit, so that “*if urbanisation were to be confirmed earlier than the lapse date, it is likely the designation will be given effect to at that time to enable appropriate integration with development*”.<sup>33</sup>
88. The latter points were also set out in the Requiring Authority’s opening submissions, which set out the legal considerations regarding lapse dates, highlighting the discretionary nature applicable to determining such dates, with reference to principles set out by the Environment Court in the *Beda Family Trust v Transit NZ* case (***Beda***).<sup>34</sup> Those principles were summarised as follows:<sup>35</sup>
- “(a) *When applying an extended lapse date, the discretion must be exercised in a principled manner, after considering all the circumstances of a particular case;*
  - (b) *There may be circumstances where a longer period than the statutory 5-year lapse period is required to secure the route for a major roading / transport project; and*
  - (c) *In the instance of longer lapse dates, there is a need to balance the prejudicial effects on property owners who are required to endure the effect of planning blight as a result of the project for an indeterminate period*”.
89. Those submissions noted that the Court in *Beda* had outlined those principles in favour of longer or shorter lapse periods.<sup>36</sup> For the former, these were:
- (a) The lapse period reflecting the realistic timeframe within which the project is likely to be constructed;
  - (b) Safeguarding the chosen alignment from inappropriate development in the period before it become fundable;
  - (c) Providing certainty for affected landowners and the local community as to the requiring authorities' future intentions over the longer term; and
  - (d) Providing certainty for the requiring authority that it will be able to fully implement the project when it becomes fundable.
90. Principles in favour of the latter were that a shorter designation recognises that a designation restricts what affected landowners can do with their land; and that “*the ability for affected landowners to require the requiring authority to acquire their*

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<sup>33</sup> EV07, at [8.5]

<sup>34</sup> *Beda Family Trust v Transit New Zealand*, EC Auckland A139/2004, 10 November 2004.

<sup>35</sup> EV01, at [11.21]

<sup>36</sup> *Ibid*, at [11.22] – [11.23]



land under section 185 of the RMA set a high threshold so is not always an adequate remedy".<sup>37</sup>

91. The Requiring Authority's opening submissions made reference to the aforementioned examples of designations involving longer lapse dates (and the Southern Links Project in particular), which "*demonstrates that a 15 or 20-year time period for large strategic infrastructure projects is not extraordinary*".<sup>38</sup> It went on to submit:<sup>39</sup>

*"The Projects satisfy all of the considerations listed above in support a longer lapse date, as set out in the Southern Links Project and Beda decisions. All potential adverse effects will be mitigated or managed through the proposed condition sets, including the ability to use land or develop properties that integrate with the Project"*.

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

- (a) The evidence of Messrs Hay and Smallburn on behalf of KA Waimanawa supported the Council's recommendation that the lapse dates for NoRs 3 and 8 be reduced to 10 and 15 years respectively, noting that if PC 93 is approved, "*the upgrading of the old SH1 through the Plan Change area and the construction of the WWLR Intersection is likely to be completed well within this period, in approximately 5 years*".<sup>40</sup>

- (b) Steve Burris the Technical Manager NX2 (Northern Express Group) stated in respect of the lapse period (for NoR 1):<sup>41</sup>

*"Putting aside the question of whether it is appropriate to rely on the combination of these future projects, the NoR seeks a 20 year lapse period and by doing so, it creates significant uncertainty for the existing transport environment"*.

- (c) Ms O'Connor, on behalf of Arvida Limited, told us:<sup>42</sup>

*"I agree with the Council Officer that shorter lapse dates of 10-years are appropriate and will better align with anticipated land development in this location"*.

...

*"A 10-year lapse period is more appropriate than the 15-years sought for NOR4 and the 25-year period sought for NOR7. This shorter lapse date will better align with known urban land development progressing in the northern part of Warkworth"*.

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<sup>37</sup> EV01, at [11.23]

<sup>38</sup> Ibid, at [11.24]

<sup>39</sup> Ibid, at [11.26]

<sup>40</sup> EV77, at [7.5]

<sup>41</sup> EV53, at [7]

<sup>42</sup> EV86, at [7.1] & [6.12] – [6.13]

93. Ms Wilkinson’s response memorandum noted that she remained of the view that “*the longer the lapse date the worse the effects of planning blight and uncertainty are*”,<sup>43</sup> and that this concern was not entirely assuaged by amendments to the conditions (Project Information, LIP, SCEMP and stakeholder definition). That said, she also acknowledged the importance for route protection for the NoRs in terms of certainty as to future roading infrastructure. She was not entirely in agreement with Mr Titter as to the uncertainties associated with surrounding FUZ land, as this zoning signals an intent for development. While the FDS suggests this development will occur later than previously envisaged, she noted the recent plan changes and other proposed developments in the area (as shown in Mr Titter’s Appendix B) and the extent of the NoRs works that are “*likely to be undertaken by developers wanting to progress and give effect to their plan changes and developments*”,<sup>44</sup> as is reflected in the FDS itself.
94. On that basis, and because the FDS identifies the works associated with the NoRs to be a prerequisite for development (and therefore precede development), Ms Wilkinson considered that shorter lapse periods, in the order of ten years for NoRs 1 – 6 and 8, and 15-years for NoR 7, would be appropriate (being an amendment to her original recommendations). She advised that if these shorter lapse periods are not agreed, then it was her view that each NoR should be subject to a condition requiring a ten-yearly review, which is a matter we discuss separately below.
95. The Reply referred to the reasons provided in its opening submissions (as outlined above) and made further reference to *Beda*. While acknowledging that the outcome in *Beda* was for a shorter lapse period, and that other cases have applied *Beda* in favour of shorter periods, the Reply stated that these cases “*are context specific and can be differentiated on the facts*”.<sup>45</sup> Designations with longer lapse dates were highlighted, including the Waikato Expressway (the subject of the *Beda* decision) which took a number of years to deliver such that the lapse date was required to be extended (though the process set out in s.184).
96. The Reply advised that from the Requiring Authority’s perspective, it would be undesirable to rely on the s.184 rollover process to extend a designation, as this would tie the designations “*to the ‘substantial progress’ test in section 184(2)(b) and puts the designations at risk of lapsing*”, with this creating “*additional uncertainty and would be an inefficient use of resources and expense of public funds*”.<sup>46</sup> The Reply went on to conclude:<sup>47</sup>

*“The reality is that these sorts of strategic Projects usually take a number of years to deliver. As outlined in the rebuttal evidence of Mr Lovell, in addition to protecting the land, designations also enable any interim works to be undertaken (for example design, resource consents and land acquisition). These interim activities generally build towards the full delivery of the Project*

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<sup>43</sup> EV127, at [4.3]

<sup>44</sup> *Ibid*, at [4.10]

<sup>45</sup> EV130, at [19.5]

<sup>46</sup> *Ibid*, at [19.7]

<sup>47</sup> *Ibid*, at [19.8]

over time.<sup>48</sup> *It is therefore important the designations lapse dates realistically reflect the lifespan of each Project*".

97. Common to both sets of projects was the consideration as to whether the now confirmed FDS would have any bearing on the lapse date issue. For Warkworth, the FDS indicates that the timing of development for the majority of Warkworth is not expected to occur until 2045+, except for Warkworth West and South-central where planned development is expected from 2040. The Reply notes that these timeframes "*further support and emphasise the need for the lapse periods sought by [AT]*", and that "*aligning future urban areas with planned infrastructure delivery ensures that development is well coordinated and is able to provide a safe, sustainable environment for communities*".<sup>49</sup> The Panel agrees, and whether the timeframes set out in the FDS are realistic or not (i.e., whether development will occur earlier than estimated), we consider that they lend weight to, and better align with, the longer lapse dates sought by the Requiring Authority.
98. The Reply concluded on the lapse date issue by saying that "*it would be disingenuous to impose shorter lapse dates given the reality of how long these types of projects can take to deliver and the desire to be transparent with the community*", and further:<sup>50</sup>

*"Shorter lapse periods could create a degree of false hope for landowners in respect roading infrastructure that may not occur for another 15 plus years. There are already existing mechanisms within the conditions which require [AT] to keep the community updated (for example, the updated Project Information Condition discussed further below), as well as the designation review process in clause 4(1) of Schedule 1 of the RMA"*.

99. Overall, it was the Requiring Authority's case that it was important that "*the designations lapse dates realistically reflect the lifespan of each Project*".<sup>51</sup>
100. The Panel also notes that the issue of lapse dates was argued by counsel for submitter parties in the hearing for the North-West NoRs, with reference to other court decisions that had addressed the principles set out in *Beda*. One of these was *Meridian 37 Ltd v Waipa District Council*<sup>52</sup> (**Meridian**) where the Environment Court had differentiated between the nature of the project in question in that case and other major projects, including transportation projects of the type before us, with the *Meridian* decision stating (including with reference to the case known as *Hernon*,<sup>53</sup> and with emphasis added):

*"We were directed to two decisions in particular — [Beda] and [Hernon]. We find assistance in both and respectfully agree with the comments of the Court*

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<sup>48</sup> With reference to EV13, at [4.3]

<sup>49</sup> EV130, at [19.23]

<sup>50</sup> *Ibid*, at [19.25]

<sup>51</sup> EV130, at [19.8]

<sup>52</sup> *Meridian 37 Ltd v Waipa District Council* [2015] NZEnvC 119

<sup>53</sup> *Hernon v Vector Gas Limited* [2010] NZEnvC 203

*in Beda, at paras [112] and [113] (while noting that the reference to a major roading project is one example only):*

*“[112] No guidance is given as to the principles that are to be applied in determining a period different to the 5 year period mentioned in the Statute. To extend the period beyond 5 years a territorial authority, and this Court, is thus given a wide discretion.*

*[113] The discretion has to be exercised in a principled manner, after considering all the circumstances of a particular case. There may be circumstances where a longer period than the statutory 5 years is required to secure the route for a major roading project. Such circumstances need to be balanced against the prejudicial effects to directly affected property owners who are required to endure the blighting effects on their properties for an indeterminate period”.*

101. The emphasis in that decision was noted by counsel for the Requiring Authorities for the North-West NoRs, highlighting that the Court had sought to differentiate the project at issue in *Meridian* with the example of a major roading project.
102. We have given careful consideration to the issue of lapse dates, noting that our conclusions inevitably incorporate our findings in respect of the designation review condition (as a factor that was assessed by Ms Wilkinson to be of some moment to her recommendations), but which is assessed in detail below. In short, a majority of the Panel has found that the case for the use of a review condition is persuasive, and we therefore make our overall findings on the lapse dates on the basis of this option as a form of mitigation.
103. In summary, we accept that these are significant transport projects but equally that funding for their implementation is not in place. We consider that the situation is entirely analogous with the reasons expressed for the Southern Links Project - i.e., that the combination of the designations and the proposed lapse dates:
  - will future proof the Warkworth transport network so that it can meet future growth needs;
  - protect the routes from incompatible future land-uses;
  - provide sufficient time to investigate, fund and construct the projects; and
  - provide certainty for landowners about where the future transport corridors will go.
104. This conclusion is reached by all Panel members. However, as alluded to above, it is subject to the recommended inclusion of a review clause, which we discuss in more detail below.
105. In general, the Panel is not convinced that prescribing, or recommending, shorter lapse dates would have any bearing on funding arrangements materialising, or being brought forward, such that the designations may be implemented within a shorter timeframe. Recent and well-publicised decisions with respect to changes

to the Auckland and nation-wide fuel tax levies and associated funding uncertainties in at least the near term would also appear to throw further doubt on the ability for the designations to be implemented any earlier than the SGA has already forecast. We acknowledge in this regard the conclusions of Ms Wilkinson which appears to accept the basis and rationale for the lapse periods as sought, with reference to the improvements to the proposed conditions, and the nature of surrounding zones (in respect of planning blight). For the reasons set out below, Commissioners Farnsworth and Smith do consider that a review clause would provide mitigation of the uncertainty experienced by such landowners. Conversely, Commissioner Blakey does not consider that the inclusion of a review clause would materially reduce concerns relating to the effects of uncertainty for adjacent landowners.

#### Panel findings and recommendations

106. The Panel finds that the proposed 15 to 25-year lapse dates for NoRs 1 – 8 are appropriate, for the reasons set out in the Council’s response memorandum and the Requiring Authority’s Reply, and our discussion above, and subject (by way of a majority finding) to the inclusion of a designation review condition. Except in that respect, we therefore do not make any recommendations to alter the lapse dates proposed by the Requiring Authority for these NoRs.

#### Provision for a designation review condition

##### **Introduction**

107. Having concluded that we accept the rationale for extended designation lapse dates for the Warkworth NoRs, we now consider the question of whether it is appropriate to recommend the requirement for a periodic review of the designations (separate to the designation review required under condition 5 that we have referred to previously).
108. This approach was proposed by submitters in the North-West NoR hearings, and was raised by the Panel in the course of the Warkworth hearing. Ms Wilkinson advised in her response memorandum of her support for a review condition as going “*some way towards mitigating and assisting to address uncertainty, and enable an understanding of progress made, being made or timing of when progress would be made*”.<sup>54</sup> She noted that such a review may also improve understanding for what parts of the designations have been completed and whether their extents have been reduced, and how the works carried out will tie in with remaining work to be undertaken, and the extents and requirements of these.
109. Ms Wilkinson also noted that she did not consider that other existing mechanisms under s.182 (advice as to the removal of a designation, or parts thereof) or the ten-yearly review of district plans and associated designations under s.79 (i.e., including the AUP) would provide a sufficient ability to review the necessity for and the timing and progress of designation-enabled works. She advised in this regard

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<sup>54</sup> EV127, at [4.21]

that notwithstanding the requirements of s.79, “it may be a substantially longer time period before a revised, proposed, plan (including designation review) might be notified, meaning that in reality, reviews occur less than every ten years”.<sup>55</sup> She was therefore of the view that, in order to provide some certainty that the designations would not sit without action of a number of years, and to better mitigate issues as to uncertainty and planning blight, that inclusion of a review clause should be included. Her memorandum included the range of matters that she considered should be incorporated into the condition and provided an amended version of condition 5 to address those matters. Notably, these suggested amendments included a requirement for such reviews to be on ten-yearly intervals.

110. Ms Wilkinson did acknowledge the point that there was no current example of such a review clause within any existing designation in the AUP, and nor was there a specific provision with the RMA providing for such reviews. However, she went on to add that:<sup>56</sup>

*“I am not aware of a section of the RMA that specifically excludes the ability to review a designation. I also note that s171(1)(d) of the RMA requires the consideration of any other matters the territorial authority considers reasonably necessary in order to make a recommendation on the requirement”.*

111. The Reply nevertheless re-stated the ten-year district plan review provision that exists under s.79, and the process whereby that review is required to include an invitation to all requiring authorities with existing designations to give written notice as to whether they require the designation to be rolled over into the proposed plan (per cl.4 of Schedule 1). It went on to also note the following:

- (a) Section 79 therefore already provides a statutory mechanism that requires a requiring authority to review the accuracy, need, relevance, and appropriateness of its designation(s), and which involves a public submission and hearing process (as compared to a s.184 process). The Environment Court has stated “that courtesy of the Schedule 1 process in the roll-over situation, landowners are actually more empowered...”.<sup>57</sup>
- (b) AT has a statutory requirement to achieve a safe, effective and efficient transport system, and to provide integrated transport and land use planning for the Auckland Region. This should provide additional comfort that AT will responsibly review the need for the designations at the appropriate times in the future. Section 182 of the RMA also sets out the process for removing a designation which may be initiated at any time.
- (c) Determining whether a project is required is more complex than determining whether growth in a certain area is confirmed or not and requires

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<sup>55</sup> Ibid, at [4.22]

<sup>56</sup> Ibid, at [4.24]

<sup>57</sup> With reference to *Bunnings Limited v Auckland Transport* [2020] NZEnvC 92 at [83]

consideration of the role of a project in the wider network. On that basis, a cyclical change in growth strategy would not be sufficient to warrant the review, and potential cancellation, of a designation.

- (d) A review process signals uncertainty as to the need for the designation(s) in the first place, and such a review essentially reopens the entire designation process.
  - (e) No such review condition is included on any other designation in the AUP, and given that there is no precedent AT does not consider such a condition to be reasonably necessary, particularly given the existing s.79 process.
112. The Panel is also cognisant of the submissions made in respect of this point in the reply in respect of the North-West NoRs. The additional points made in those submissions were that:
- (a) There is a clear ability to extend the lapse date beyond the default five-year period and it is a question of what is appropriate in the circumstances - this five-year lapse period is the statutory starting point for considering duration and is not intended as a guide for a review timeframe.
  - (b) The SGA disagrees that a five-year review period would be administratively simple, with the potential scope of review being uncertain in terms of the matters to be considered and to what level of detail. They note the uncertainty as to whether the findings of its review would be amenable to review (for example, judicial review proceedings).
  - (c) Section 182 already provides a mechanism for a requiring authority to review the extent of each designation, which is not reliant on external or third-party triggers and can be done at any time without an explicit condition. This also relates to the suggestion that a review process would provide more certainty to a requiring authority as to the long-term route protection of the transport corridors.
  - (d) The SGA disagrees that such reviews will provide more certainty to landowners and occupiers, again noting that the RMA allows for the designation to be amended at any time, including if a legislative / policy shift required a designation review and adjustment. A review condition could potentially add uncertainty by signaling regular changes to the designations, when in practice any changes to the designation boundaries would only be made if and when necessary.
  - (e) There is no need to respond to 'triggers' (such as the FDS or legislative changes), as there is already a statutory process within the RMA for changes to designations in response to such considerations.
113. The Panel has carefully considered the competing positions on this issue, and whether such a review would provide an appropriate and useful 'counterpoint' to

its acceptance of the 15-25 -year lapse dates sought by AT, and which we have endorsed through our previous recommendation on that topic (noting that, for obvious reasons, that the two considerations are intertwined).

114. The Panel has not reached a unanimous finding in respect of this matter. As noted previously, Commissioners Farnsworth and Smith were of the view that a review clause is necessary to address the effect and impact of the extended period of uncertainty for land owners and occupiers beyond a ten-year timeframe. While Commissioners Farnsworth and Smith accept that s.182 provides a mechanism to review the designation extent, the timing of any such review is at the total discretion of the Requiring Authority. Accordingly, Commissioners Farnsworth and Smith consider that the NoRs, with lapse periods of 15 or more years, should be subject to a five-yearly review, as this would provide a level of certainty for land owners and occupiers that progress on the NoRs are being maintained. They recommend that condition 5 is restructured so that the 'completion of construction' clause more logically follows any interim designation review clause. This would be consistent with the approach adopted by the Panel for the North-West NoRs.
115. Commissioner Blakey records that he finds the submissions of the Requiring Authority (in combination with those presented on behalf of the SGA in respect of the North-West NoRs) to be persuasive on the issue. In particular, he acknowledges and accepts the points made by the SGA that:
- (a) the five-year default period can only be viewed as a starting point and cannot be definitive in the case of long-term roading designations such as these;
  - (b) designation review provisions already exist through ss.79 and 182;
  - (c) the requirement to undertake such reviews across all eight NoRs (and potentially more within the region) would be a costly and inefficient imposition on public funds that could otherwise be allocated to the projects themselves; and
  - (d) no precedent for such a review condition was brought to the Panel's attention, and the existence of the same would suggest some uncertainty as to its need in the first place.
116. We set out the Panel's proposed condition wording to address its findings at the end of this topic, in combination with the post-construction amendment discussed below.

#### Findings and recommendations

117. For the reasons set out above, the Panel has reached a majority view that a five-yearly designation review clause should be included in the conditions for the Warkworth NoRs.
118. The wording for this designation review clause is recommended to be included in condition 5, incorporating our aforementioned recommended amendments to the post-construction review provisions. The Panel considers that these changes are



warranted so as to make the purpose, phrasing and requirements of this part of the condition more certain, and incorporate an appropriate timing threshold.

119. The full text of condition 5 is therefore recommended to be amended as follows:

***Designation Review***

*Pre-construction review*

- (a) *The Requiring Authority shall, at five (5) yearly intervals from the confirmation of the designation, undertake a review of the designation. The purpose of the review is to keep stakeholders updated on progress with implementation of the project, and to enable areas of designated land to be removed from the designation if identified as being no longer required.*
- (b) *The review shall involve affected landowners and occupiers and:*
  - (i) *provide an update on the progress or effort made to give effect to the designation and the anticipated date for implementation;*
  - (ii) *review the extent of the designation to identify any areas of designated land that are no longer required for the designation;*  
*and*
  - (iii) *be made publicly available on the project website and be made available to the Council.*

*Post-construction review*

- (c) *As soon as reasonably practicable, but no later than six (6) months, following Completion of Construction the Requiring Authority shall:*
  - (i) *review the extent of the designation to identify any areas of designated land that it no longer requires for the on-going operation, maintenance or mitigation of effects of the Project; and*
  - (ii) *give notice to ~~Auckland~~ the Council in accordance with section 182 of the RMA for the removal of those parts of the designation identified above.*

**Business and property impacts**

120. A central issue in respect of the lapse dates was the potential for ‘planning blight’, which was described in the s.42A report, by reference to the Oxford Dictionary, as being “*the reduction of economic activity or property values in a particular area resulting from expected or possible future development or restriction of development*”.

121. In this regard the Requiring Authority’s opening submissions noted the relevant case law arising from *Tram Lease Ltd v Auckland Transport (Tram Lease)*<sup>58</sup> where the Environment Court found that:

- (a) uncertainties about precise construction commencement dates is not uncommon with large infrastructure projects that take time for detailed

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<sup>58</sup> *Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137

design and funding to be completed, and that the role of a designation is to provide that function for critical strategic infrastructure; and

- (b) effects on property values are inherently subjective and are best addressed via the PWA.

122. It was part of the Requiring Authority's opening submissions that the "*timely provision of project information will assist to increase the level of certainty regarding Project timelines and implementation dates*", and thereby reduce the potential for planning blight,<sup>59</sup> and would outweigh the inefficiencies that would result from a reduction in the lapse period. Relevant measures in this regard were described as:

- (a) The Project Information condition that requires a project website or equivalent to be established within 12 months (subsequently reduced to "*within six months*" through the Reply), with all directly affected owners and occupiers required to be notified once it has been established.
- (b) The identification of stakeholders and engagement methods at least six months prior to the start of detailed design, with a detailed SCEMP required to be prepared prior to construction;
- (c) Commencement of engagement associated with PWA processes approximately two years prior to construction, alongside possible use of AT's early acquisition policies in the case of hardship and processes under s.185.

123. A further point made in the Requiring Authority's opening submissions in respect of planning blight that is relevant to the Warkworth context was that:<sup>60</sup>

*"...land currently in the FUZ may only be used for rural activities, and urban activities such as residential subdivision are generally not provided for and are often non-complying. Therefore, as highlighted by Mr Titter, designations within the FUZ are not 'blighting' land for urban development as the land cannot currently be used for that purpose without a plan change.<sup>61</sup> To the contrary, these transport corridors are necessary to unlock and support the urbanisation of land in the Warkworth region and the section 176/178 RMA process provides an avenue for [AT] to work with those who have an interest in land and consider their proposals in the context of the proposed designations.<sup>62</sup>"*

124. We heard from submitters on this point, for example:

- (a) Ms O'Connor, on behalf of Arvida Limited, stated that:<sup>63</sup>

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<sup>59</sup> EV01, at [11.30]

<sup>60</sup> Ibid, at [11.34]

<sup>61</sup> With reference to EV08, at [6.2]

<sup>62</sup> With reference to EV07, at [6.8]

<sup>63</sup> EV86, at [1.4]

*“Currently the extent of the proposed designation appears to be significantly greater than is potentially required. As for NOR4, there is potential to refine the extent of the designation with some further design work. This should be undertaken now given the lapse period sought and the blight effect on the land.”*

- (b) Mr Rick van Barneveld, for Marj Taylor, regarding the effects of NoR 4 commented that:<sup>64</sup>

*“The extent of the consideration of wide-ranging effects supporting this requirement is commendable but specifically addressing the “long designation” impact on actual people living in the corridor, seems to have been put aside.”*

125. The Council’s response memorandum prepared by Ms Wilkinson restated her view that *“the longer the lapse date, the worse the effects of planning blight and uncertainty are”*,<sup>65</sup> and maintained a recommendation for lapse dates of ten years, including for NoR 5, but altering the recommendation for NoR 7 from ten years to 15 years.<sup>66</sup>
126. The Requiring Authority’s Reply returned to the issue of concerns with respect to the Arvida land in terms of NoR 4, responding to the evidence of Ms O’Connor in particular that the NoRs are a ‘blight’ on that land. The Reply re-stated its opening submission position that land in the FUZ (such as Arvida’s property) can currently only be used for rural activities, and therefore:<sup>67</sup>

*“In that sense, the designations are not ‘blighting’ the land as it cannot presently be used for the types of activities that Arvida is proposing without a plan change. Once a plan change has been confirmed and enabling works have occurred then the designation can be drawn back...”*

127. The Reply also referred to *Tram Lease* and responded to the Panel’s observations during the hearing that business impacts of the type raised in that case (the City Rail Link Project, or **CRL**) have been more publicised and had led to requests for business funding prior to its completion. The emphasis in the Reply was, however, that *Tram Lease* remains the leading case on the relationship between the PWA and RMA, and that the PWA *“is comprehensive and seeks to cover most scenarios that could arise because of land being taken (or used) for a public work”*.<sup>68</sup> From an effects-perspective, we are cognisant of the fact that the construction effects arising for the CRL, which involves extensive tunnelling and deep ‘top-down’ excavations (and therefore aboveground road closures) through the heart of the Auckland CBD over a prolonged length of time, are of a different order of magnitude to those anticipated for the present NoRs.

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<sup>64</sup> EV113 at page 2

<sup>65</sup> EV127, at [4.3]

<sup>66</sup> *Ibid*, at [4.3] and [4.12]

<sup>67</sup> EV130, at [8.2]

<sup>68</sup> *Ibid*, at [18.4]

128. Those differences of scale notwithstanding, the Reply nevertheless emphasised that *Tram Lease* remains the leading case on the interrelationship between the PWA and the RMA, and that “*the statutory regime provided under the PWA is comprehensive and seeks to cover most scenarios that could arise because of land being taken (or used) for a public work*”.<sup>69</sup> The Reply went on to add that the Environment Court in *Tram Lease* confirmed that:<sup>70</sup>

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

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

#### Panel findings and recommendations

130. The Panel accepts the submissions and evidence of the SGA in respect of business and property impacts and does not recommend any changes to the SCEMP condition in this regard.

#### Adequacy of engagement

131. The Panel heard from some submitters who expressed concern about the adequacy of consultation and engagement or where ongoing engagement in respect of the NoRs was requested. This was expressed in particular through the presentation from the Rodney Local Board (Michelle Carmichael) who recommended that feedback from businesses, property owners and the community is genuinely considered, and who indicated that feedback from the community was that consultation had not been sufficient. It was noted that early consultation with all affected parties as a group as opposed to separate consultations would have been preferred (to achieve cooperation and compromises to achieve project goals), and that:<sup>71</sup>

*“As a group property owners would have a big picture view of the project, and possibly be more accepting of using their bare land instead of properties with housing”.*

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<sup>69</sup> *Ibid*, at [18.4]

<sup>70</sup> *Ibid*, at [18.5] with reference to *Tram Lease Ltd v Auckland Council* [2015] NZEnvC 137 at [62]

<sup>71</sup> EV48, at p.31

132. Darcy Sheehan, in respect of his property on Matakana Road and the proposal to build a stormwater pond in the location of a proposed new home, was concerned at their being “*no direct engagement from [SGA] and no meaningful consultation with respect to the significant impacts on the property*” (including following a public meeting in early 2023).<sup>72</sup>
133. Robert Blair provided evidence that queries the extent of the designation in respect of his parent’s property at 289 Matakana Road and the extent of batters encroaching onto the property and impacting on his parents’ dwelling. He was concerned about the lack of consultation that he had received in respect of the designations.
134. Conversely, Rick van Barneveld, for Marj Taylor (170 Matakana Road), advised that “*we acknowledge again the considerate approach of the SGA team*”.<sup>73</sup>
135. The engagement process undertaken by the Requiring Authority was addressed in the evidence of Phillipa White who outlined the engagement that occurred prior to lodgement, and the difficulties in that process as a result of Covid-19 restrictions and associated limitations to meetings and events. However, she noted that other engagement techniques were employed, in addition to writing to affected landowners and providing for interactive feedback. In this regard (and in terms of the approach advanced by the Rodney Local Board), she also noted that:<sup>74</sup>
- “...engagement at the NoR phase was specifically focused on the impact of the designation boundary on individual properties and engaging with those landowners. As the engagement concerned private property effects it would have been inappropriate to share the information widely through open days and drop ins. We received many requests from landowners who wanted to understand the wider effects of the proposed designations on neighbouring properties. This information was available post-lodgement”.*
136. In general terms, Ms White also noted that while the Project team “*has worked hard to present the application in a way that people can access and understand*”, she appreciates that “*there is a lot of material to digest, but due to the nature of the Projects, this level of detail is necessary to meet our statutory requirements*”.<sup>75</sup>
137. The Requiring Authority’s Reply, further noted that:<sup>76</sup>
- (a) Following the DBC engagement process in 2022 a summary of the feedback that was received from potentially affected landowners and the community was published on the website and sent to those who provided feedback or had subscribed for updates in 2022 following that process.
- (b) The SGA has been in discussions with representatives from One Mahurangi

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<sup>72</sup> EV103, at [9]

<sup>73</sup> EV113

<sup>74</sup> EV15, at [10.5]

<sup>75</sup> Ibid, at [10.7]

<sup>76</sup> EV130, at [10.4] – [10.5]

since 2018 and that “*feedback from those meetings has influenced the pre-lodgement and post-lodgement phases of the Project*”.

- (c) With respect to Mr Blair, the Reply confirmed that letters were sent to the property in association with the DBC in April 2022, and for the NoR in March and May 2023, and a meeting was held with Mr Blair and his parents 26 June 2023 at the Warkworth Town Hall.
138. The Reply also highlighted that, in respect of future engagement, the 12-month timeframe has been removed from the LIP condition and the Project Information timeframe under condition 2 has also been reduced to six months. As set out in the evidence of Mr Scrafton, a new definition of ‘Stakeholders’ has also been proposed which specifically references owners and occupiers of adjacent land.
139. The Panel acknowledges that there will remain some parties who remain dissatisfied with the designations and the extent of consultation to-date but the Panel considers that the measures proposed by the Requiring Authority through the conditions (and in particular the Project Information requirement, LIP, and SCEMP) represent a considered and detailed approach to managing those effects which will entail further focused engagement with affected persons. We further recognise that these measures will not be able to be prescribed until the preparation of relevant management plans and the associated detailed design stage. We consider that, based on the amendments presented in the Requiring Authority’s Reply and in response to the Council’s recommendations, that these measures will be responsive to the range of property-specific issues that we heard.
140. We also note here the additional consultation that was afforded to submitters during the hearing at the Panel’s direction, with Chris Scrafton for the Requiring Authority making himself available following submitter presentations to speak with them on a one-to-one basis and provide such additional information as may be relevant to the submitter circumstances. This ranged from specific discussions about the extent of land designated in a particular case, to processes involved with the PWA, including with respect to the Requiring Authority’s hardship policies. The Panel records its appreciation to Mr Scrafton for undertaking this role and while we have not been appraised as to any particular outcomes of that further engagement, we understand that using the hearing to facilitate further discussion has been of assistance to both the submitters and the Requiring Authority.

#### Panel findings and recommendations

141. The Panel accepts the evidence and Reply of the Requiring Authority and considers that the engagement process undertaken has been appropriate, broad in scale and scope, and consistent with good practice. No recommendations in respect of the NoRs arise from this finding.

#### Traffic Modelling

142. The Panel heard some concerns in respect to the veracity of traffic modelling undertaken for the NoRs. For example, Bevan Morrison questioned whether NoR

3 (SH1 South) was really required, and whether the modelling numbers underpinning it have been robustly and independently challenged. He also questioned the assumed number of persons travelling on the forecast bus trips, and where all the vehicle growth would come from.<sup>77</sup>

143. Ms Seymour for the Requiring Authority addressed this in her primary evidence and further reiterated in her rebuttal evidence that the approach to transport modelling used to inform the NoRs is consistent with industry standards and has also included sensitivity testing of key intersections. In particular, she advised that the approach used:<sup>78</sup>

*“... is standard practice in the transport planning field and these land use inputs, provided by the Auckland Forecasting Centre, will be the same starting point for any proposed Council led or private plan changes in Auckland”.*

144. Mr Peake for the Council advised in his response memorandum that the traffic modelling used in the Requiring Authority’s assessments is appropriate, and that future modelling will be required at the design stage to confirm intersection layouts. This would also utilise traffic volumes derived from regional or area-wide models at that time. In terms of potential future increases, he noted that while modelling for more intensive development under PC78 and the MDRS standards has not been specifically undertaken, sensitivity testing has incorporated an additional 20% traffic volume factor.
145. The Reply noted its agreement that this approach is appropriate and standard practice as part of any implementation business case and subsequent detailed design, and that updated modelling would also inform the preparation of the NIMP and ULDMP management plans.
146. The Panel accepts the submissions set out in the Reply and observes that we heard no expert evidence or alternative transport modelling that would suggest that the modelling undertaken is not sufficiently accurate at this stage.

#### Panel findings and recommendations

147. The Panel finds that the transport modelling used to inform the NoRs is appropriate and does not make any recommendations in respect of this issue.

#### **Management plans**

##### **Overview**

148. We have previously noted that the Requiring Authority proposes to use management plans to address the majority of those environmental effects expected to occur during implementation of the Projects, and these have been offered as conditions. The list of proposed management plans are set out in paragraph 9 above, and are also referred to as relevant to particular topics

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<sup>77</sup> EV115, at p.8

<sup>78</sup> EV29, at [3.57]

elsewhere in this report. In general, the management plans would provide the framework to guide the final design of the various components of the transport corridors as well as avoid, remedy mitigate or manage the adverse effects of the construction activities associated with the implementation of the Project.

149. The s.42A report acknowledges that the NoR process is primarily about route protection rather than implementation, and accepts that a management plan process is appropriate, given that detailed assessment and implementation would occur at the outline plan stage. The s.42A report went on to describe the principles that should be incorporated within a management plan condition framework, and notes that these have been adopted in the recommended management plan conditions. It states that “[i]n a number of circumstances Council officers have recommended amendments to the management plans to address certain adverse effects and/or make the management plans more effective”.<sup>79</sup> Ms Wilkinson also raises the issue of certification of those plans, which we address as a separate matter below.
150. The Reply addressed further matters relating to the proposed management plans that arose during the hearing, including in respect of this Panel’s queries, and incorporated the following sub-topics:
- Certification (as noted above);
  - Review of management plans;
  - Delayed implementation of management plans; and
  - References to “as far as practicable” in management plans.
151. The Panel notes that from its further review of the conditions that the definition of certification and the timing of certification actions requires some amendment. We comment on that aspect as an additional sub-topic below.

#### **Management Plan certification**

152. The s.42A report recommended that the management plans required to be provided as part of any application for an outline plan should be certified by the Council. This was for the reasons that:<sup>80</sup>
- (a) It is general practice for the Council to certify management plans that form conditions of designations;
  - (b) A great deal of reliance is being placed on management plans as the principal method to avoid, remedy or mitigate adverse effects on the environment; and

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<sup>79</sup> Agenda, at p.42

<sup>80</sup> Ibid



- (c) It is important that the Council retains the ability to review any management plan for completeness, and to make changes to the management plans without the need for formal review of the conditions.
153. We note here that the proposed conditions incorporate a limited provision for certification, being in respect of a material change to a management plan that was previously approved through the outline plan process, and for a CNVMP Schedule.
154. The evidence of Mr Scafton and Mr Titter addressed this issue and were in agreement that certification at the outline plan stage was not warranted. Mr Titter referred to the fact that the Council will have an opportunity to have input into the management plans (including any changes to these) as part of the outline plan process and did not consider that there was any additional benefit to requiring certification. In his view, such a process “*comes with a risk of unnecessary delay which can give rise to issues for large scale construction projects*”.<sup>81</sup> He further noted that it is not general or good practice for the Council to require the certification of outline plans and its recommendations in this regard appear to be blurring the distinction as to such plans being prepared for resource consents as compared to outline plans for designations.
155. Mark Arbuthnot stated in his evidence on behalf of Foodstuffs North Island Limited that without a certification process, there would be no accountability in respect of the content of the management plans. He therefore sought to “decouple” the submission of the management plans from the outline plan process.<sup>82</sup> However, on this point we agree with the evidence of Mr Scafton that the respective management plan conditions are clear on what content is required to meet each of the management plan objectives.<sup>83</sup> Mr Scafton also noted that the RMA clearly contemplates a two-step process for designations as is proposed by the Requiring Authority.
156. On a related issue, Mr Arbuthnot raised a concern that an outline plan may not be sought (via s.176A(2)), or as a result of the Council ‘waiving’ such a requirement.<sup>84</sup> We further agree on this matter with Mr Scafton who observes that the outline plan condition (condition 8) specifically requires the submission of an outline plan be prepared for each NoR (or stage of a NoR).<sup>85</sup> Therefore, any request by the Requiring Authority to seek a waiver to the requirement to provide an outline plan would be contrary to the terms of condition 8.
157. This matter was addressed in the Reply, and restated the position expressed by Mr Scafton, noting the two instances where certification was already provided for. The Reply also addressed a query raised by the Panel during the hearing as to whether certification may provide some “additional comfort” where no draft management plans had been prepared to date. The Reply observed that such plans would be of limited value due to likely changes in the receiving environment

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<sup>81</sup> EV07, at [48.14]

<sup>82</sup> EV61, at [5.30]

<sup>83</sup> EV06, [5.9]-[5.10]

<sup>84</sup> EV61, at [5.29]

<sup>85</sup> EV06, at [5.3]

at the relevant time. However, the Reply added that “[t]he current management plan approach will ensure that any effects that are crystalised through the detailed design process will be appropriately addressed in the future”.<sup>86</sup>

158. Notwithstanding the above evidence and submissions, the Panel notes that, following a cursory review of Chapter K, that there are existing Waka Kotahi designations (e.g., 6714, 6718 and 6722) that provide for the use of certification in the verification of management plans. However, we are not certain that this approach is widespread, and note the difference in the evidence of the Council and the Requiring Authority on this point.
159. The issue of certification was also raised by the SGA as part of the North-West NoRs, and for that hearing we received legal submissions in reply that further clarified the issue in our minds, and so we refer to them here. It highlighted the reasons for that view with regard to the mechanisms under the RMA, which we summarise as follows:<sup>87</sup>
- (a) The RMA provides for a two-step outline plan process in accordance with s.176A(3)(f), with the management plans being proposed as part of that process. The SGA reply submissions note that “[t]he RMA does not envisage certification through this process and it would be inappropriate to introduce a certification process into the statutorily mandated Outline Plan process”.
  - (b) If the Requiring Authorities decline any of the Council’s recommended changes to the outline plan, then the Council may appeal to the Environment Court. The SGA’s reply further observed on this point that:

*“The Board of Inquiry in the Transmission Gully Proposal considered that this process works well in practice and incentivises parties to resolve matters efficiently. This reflects that when projects are nearing commencement at the Outline Plan stage, parties are in a different mode”.*
  - (c) A party may seek an enforcement order under s.314(1) to cease works or require compliance with a requirement for a designation. In this instance, a breach by the Requiring Authority would make it vulnerable to liability for an offence under s.338.
160. The SGA reply further noted with respect to the *Transmission Gully* proposal that the Board of Inquiry had determined the use of management plans via the outline plan process to be appropriate, and that this “allows for an integrated design response across the entire roading alignment, with individual certification processes likely to jeopardise the holistic process that a designation process entails”.
161. The reply went on to state that there is no case law to suggest that certification is a mandatory requirement and expressed the concern that the Council approach

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<sup>86</sup> EV130, at [16.5]

<sup>87</sup> North-West NoRs - EV288

would “subsume” the substantive decision-making power that the Requiring Authorities have with respect to outline plan processes. It differentiates that position from the certification process that is proposed for those parts of the management plans that sit outside the outline plan process (i.e., Schedules to the CNVMP and where material changes are proposed to a management plan submitted with an outline plan). It concluded by saying that:

*“Once a management plan is in place, it is important that the requiring authorities can make rapid changes to those plans if required while also ensuring that there are checks and balances on that process. Requiring certification for material changes achieves those dual objectives without introducing unnecessary bureaucracy or undermining the statutorily mandated Outline Plan process”.*

162. The Panel has carefully considered the competing position between the Council and the Requiring Authority (and the SGA more generally) and other parties as described above. We acknowledge the Council’s view that the management plans have been designed to function as the principal method to avoid, remedy or mitigate adverse effects on the environment, a position that was not contested. We also observe that while the use of management plans are not specifically envisaged by the RMA, their use is also not precluded, as is evident from the precedent designations noted above.
163. The Panel has not reached a unanimous finding on this issue. The majority view held by Commissioners Blakey and Farnsworth is cognisant of the overall scheme of the RMA in relation to designations, and the broad powers that it affords a requiring authority. In that regard they have some concern with an approach that would seek to assign a form of approval that is at odds with the final decision-making functions of a requiring authority. Such an approach, in their view, does not sit comfortably with the duty of the Council to make recommendations only in respect of an outline plan, and to do so within 20 working days. Clearly, that is not an absolute power, given the appeal process available to the Council should that prove necessary, along with the two certification exceptions provided within the proposed conditions. However, they consider that it is a clear signal that any amendment to the general presumption should be carefully exercised. Commissioners Blakey and Farnsworth have concluded that it is not necessary in the case of these NoRs to exercise, or so recommend, such an amendment.
164. The minority view held by Commissioner Smith notes that the Warkworth NoRs are for projects likely to be implemented up to 25 years in the future. He considers that although an impressive amount of work has been carried out establishing the proposed alignment and designation boundaries based on an assumed road design, it has not been possible to establish with any degree of certainty the effects of the implementation of the designation.
165. Out of necessity, because of the extremely long timeframes, and uncertainty in relation to the future environment and the effects of the implementation of the projects for which only a very preliminary design exists, a management plan

approach has been established by the proposed designation conditions. This approach is by no means unusual, even for relatively short project timeframes.

166. Commissioner Smith notes that there is agreement between the SGA and the Council that the certification of management plans is the norm for resource consents, but each has acknowledged that certification of management plans for designations is not universal. He notes the Council's point that the outline plan process is not a certification process. Under the former, the Council can recommend changes to the outline plan but the Requiring Authority does not have to adopt the changes. The Council's recourse is by way of an appeal to the Environment Court.
167. In contrast, the purpose of certification is to ensure that a management plan addresses the relevant designation conditions and the Council may withhold certification if it considers those conditions have not been addressed. The Council analysis does not go further than that with certification and sole responsibility for the management of effects remains with the Requiring Authority.
168. Neither the Requiring Authority's planning witnesses, nor its legal advisors, consider certification provides a benefit over and above what is provided for by s.176A. The Requiring Authority's concern with the inclusion of certification is the potential for delays from the involvement of the Council. No evidence was presented on the Council's track record in this regard.
169. Commissioner Smith considers that, given lapse periods of 15-25 years, the risk of delay from a certification process is likely to have been overstated. If that is a real concern it would be expedient of the Requiring Authority to develop the management plans well in advance of the date by which they are required to be finalised.
170. If that objection falls away, the main matter in contention is whether the outline plan process can provide an equivalent level of scrutiny to the management plans prepared by the Requiring Authority.
171. Although designation conditions set out the requirements for the management plans, draft plans have not been provided to the Panel. In addition, the preliminary nature of the design of the projects and the long timeframe established by the lapse period for the designations mean that there is no way of determining at this stage what the effects will be (except in a general sense) and whether the management plans finally produced will establish and address those effects.
172. Commissioner Smith therefore agrees with the Council officers that the certification and outline plan processes are quite different and that certification of management plans should occur as an additional matter alongside the consideration of an outline plan. Accordingly, he considers it essential that there be a check on the content of all management plans through a requirement for certification of those plans.

### Panel findings and recommendations

173. Overall, the Panel has reached a majority view that having regard to the guidance provided on the point in *Transmission Gully*, and where no contrary authority has been brought to our attention, that the process as sought by the Requiring Authority will ensure the relevant issues and effects are appropriately addressed and are able to be resolved in an efficient manner. Statutory safeguards also provide additional surety in this regard. The Panel therefore does not recommend any change to the conditions to require certification beyond that which applies to a Schedule to a CNVMP and where material changes are made to a management plan (excluding a SCEMP). The detail of those provisions are addressed below.

### **Definition and timeframes for certification**

174. This section of our report addresses the definition of 'certification' in the proposed conditions, and the timeframes by which a material change or a change to a CNVMP Schedule is 'deemed' to be certified. The Panel's review of this matter arose because we had not been able to discern a basis for the difference in the definition used between the various NoRs, noting that for the Warkworth conditions and Local NoRs it is for 'Certification of material changes to management plans and CNVMP Schedules', while for the Strategic NoRs, the relevant definition in the proposed conditions is simply for 'Certification'. This reflected an approach within the conditions whereby a CNVMP Schedule is proposed to be provided to the Council for 'certification' for the Warkworth and Local NoRs (for AT), whereas it is to be provided for 'information' only in the Strategic NoRs (for Waka Kotahi).
175. Because we could not discern a reasoned basis for the difference in approaches, we have recommended the use of a consistent definition for certification across all the NoRs. In this regard we consider that additional text in the Warkworth (and 'Local') NoRs is superfluous, and given its limited use within the conditions and because we see no obvious reason for two versions across all the NoRs, we have recommended its deletion.
176. This review highlighted a further problem in that the wording for the definition suggests that certification only relates to changes to a CNVMP Schedule, rather than certification of the Schedule in the first instance. We have changed the order of words to assist in making this clearer.
177. We note that in terms of the timeframes provided for certification in condition 23 (CNVMP Schedule) that ten days is potentially tight, but we are also cognisant that this will relate to changes to an existing management plan and/or an addition to a CNVMP (i.e., the Schedule) that has already been assessed through the outline plan process. We have therefore also recommended that the ten-day timeframe be retained in the condition, noting the need for a close working arrangement with the Council during the construction process as is described in the Reply to ensure such changes are addressed in an efficient and timely manner. We have, however, recommended a change to condition 23(c) to align it with the timeframe stated in the definition.

178. In addition, the definition includes a further clause specific to the CNVMP Schedule:

- (c) *five working days from the submission of the material change to a CNVMP Schedule where no written confirmation of certification has been received.*

179. Again, this clause is problematic in our view, as it does not relate to the preparation of the CNVMP Schedule in the first instance. Our review of the various conditions led us to conclude as follows:

- (a) The definition of 'certification' should incorporate the preparation of the CNVMP Schedule in the first instance, and any changes to a management plan and any subsequent change; and
- (b) The timeframes for certification of a CNVMP Schedule and any change need to be aligned with the definition (i.e., at least ten days, rather than five).

180. We have set out those changes to the respective clauses in our recommendations below.

#### Panel findings and recommendations

181. On the basis of the above commentary, the Panel recommends the following changes to the definition of 'Certification' and clause (c) of condition 23:

#### **Acronym/Term**

~~Certification of material changes to management plans and CNVMP Schedules~~

#### **Definition – 'Certification'**

~~Confirmation from the Manager that a CNVMP Schedule (or change thereto) or a material change to a management plan or CNVMP Schedule has been prepared in accordance with the condition to which it relates.~~

~~A CNVMP Schedule (or change thereto) or a material change to a management plan or CNVMP Schedule shall be deemed certified:~~

- (a) ~~where the Requiring Authority has received written confirmation from the Council that the CNVMP Schedule or the material change to the management plan is certified; or~~
- (b) ~~ten (10) working days from the submission of the CNVMP Schedule or the material change to the management plan where no written confirmation of certification has been received; or~~
- (c) ~~five (5) working days from the submission of a material change to a CNVMP Schedule where no written confirmation of certification has been received.~~

### **Condition 23**

...

- (c) *The Schedule shall be submitted to the Manager for certification at least ten (10) ~~5~~ working days (except in unforeseen circumstances) in advance of Construction Works that are covered by the scope of the Schedule and shall form part of the CNVMP.*

### **Reviewing the efficacy of management plans**

182. A further matter raised by the Panel was in respect to the manner by which the efficacy of the management plans, through their implementation, would be considered, and whether an additional condition to provide for, say, a five-yearly review in respect of this.

183. The Reply comments in respect of this matter that the following management plans include requirements for reviews and/or updates, “*and recognises the need to be adaptive to the management of effects, particularly in terms of noise and transport*”.<sup>88</sup> The relevant conditions and their provisions are set out below:

- (a) The CEMP will include methods for amending and updating the CEMP as required (condition 16(b)(xiii));
- (b) The CTMP will include auditing, monitoring and reporting requirements relating to traffic management activities (condition 19(b)(viii)); and
- (c) The CNVMP will address requirements for review and update (condition 22(c)(xiv)).

184. The Reply goes on to say that:<sup>89</sup>

*“Other management plans, such as the NUMP, SCEMP and ULDP, include requirements for third party involvement. Any concerns regarding the achievement of those objectives can be captured through the development of the management plan”.*

185. And further:<sup>90</sup>

*“... if required, a management plan can be updated through either a material change process or a new outline plan process. Additionally, there is also the complaints process and where a complaint is registered and deemed to be valid, this could trigger a review of a management plan”.*

### **Panel findings and recommendations**

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<sup>88</sup> EV130, at [16.8]

<sup>89</sup> Ibid, at [16.9]

<sup>90</sup> Ibid, at [16.11]

186. The Panel accepts the Reply submissions in this regard and considers that the specific review-type clauses included in three of the management plan conditions (that do not include third-party involvement) are appropriate and sufficient, and notes the safeguards provided for across all the plans through the material-change and complaint provisions. No recommendations are therefore made in respect of this matter.

### **Effects of flooding and stormwater**

187. To address flooding and stormwater effects, all the NoRs incorporate a specific 'Flood Hazard' condition (condition 13) that sets out particular flood risk outcomes. At the time of the hearing this condition was as follows (with underlining denoting the Requiring Authority's recommended amendments to the lodged version):<sup>91</sup>
- (a) *The Project shall be designed to achieve the following flood risk outcomes:*
    - (i) *no increase in flood levels in a 1% AEP event for existing authorised habitable floors that are already subject to flooding or have a freeboard less than 150mm;*
    - (ii) *no more than a 10% reduction in freeboard in a 1% AEP event for existing authorised habitable floors with a freeboard of over 150mm;*
    - (iii) *no increase in 1% AEP flood levels for existing authorised community, commercial, industrial and network utility building floors that are already subject to flooding;*
    - (iv) *no more than a 10% reduction in freeboard in a 1% AEP event for existing authorised community, commercial, industrial and network utility building floors;*
    - (v) *no increase of more than 50mm in flood level in a 1% AEP event on land zoned for urban or future urban development where there is no existing dwelling;*
    - (vi) *no new flood prone areas; and*
    - (vii) *no more than a 10% average increase of flood hazard (defined as flow depth times velocity) for main access to authorised habitable dwellings existing at time the Outline Plan is submitted. The assessment shall be undertaken for the 1% AEP rainfall event.*
  - (b) *Compliance with this condition shall be demonstrated in the Outline Plan, which shall include flood modelling of the pre-Project and post-Project 100 year ARI flood levels (for Maximum Probable Development land use and including climate change).*
  - (c) *Where the above outcomes can be achieved through alternative measures outside of the designation such as flood stop banks, flood walls, raising existing authorised habitable floor level and new overland flow paths or varied through agreement with the relevant landowner, the Outline Plan shall include confirmation that any*

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<sup>91</sup> EV07, Appendix C



*necessary landowner and statutory approvals have been obtained for that work or alternative outcome.*

188. The Requiring Authority's opening submissions noted the condition addresses the recommendations of the Council's Healthy Waters department and considers that the modelling approach as outlined in the Assessment of Flood Effects is appropriate at this concept stage of design and the designation process). Accordingly, it was AT's position that flooding effects "*will be appropriately managed during the detailed design stage*".<sup>92</sup>
189. The evidence of Michael Summerhays for the Requiring Authority in respect of stormwater and flooding described the overall intent of the above conditions, as follows:<sup>93</sup>
- 12.1 *"The proposed Flood Hazard conditions are shown in Appendix A as these conditions have been accepted by AT as being appropriate for Warkworth projects. I note that a number of the changes (150mm freeboard, adding other land uses and 1% AEP) were proposed by Auckland Council in their Section 42A reports for both A2B and NW and are consistent in that regard.*
- 12.2 *To manage potential flood hazard effects, the flood hazard Outcomes should be achieved as part of the detailed design and modelling for the Project. These Outcomes have been incorporated into the proposed flood hazard condition.*
- 12.3 *The Project will then need to be designed to include measures that achieve the Outcomes, and compliance with the flood hazard condition will need to be demonstrated in the Outline Plan*".
190. It was Mr Summerhay's conclusion that the conditions "*provide sufficient protection for existing buildings and property with future design and modelling being required to demonstrate achievement of these conditions*".<sup>94</sup>
191. The effects of stormwater and flooding were raised as a particular area of concern by the Rodney Local Board, who noted the effects within Warkworth associated with the weather events in early 2023, including effects on the new Puhoi to Warkworth motorway. The Local Board also questioned the adequacy of the flooding assessment that has been carried out, including areas that the NoRs service (not just the NoR routes themselves).
192. Mr Summerhays' evidence also responded to matters raised in submissions and associated evidence, although issues raised in respect of flooding per se were not advanced by any expert witnesses. During the hearing Mr Summerhays explained why modelling for all the Warkworth NoRs has not been undertaken, and this is

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<sup>92</sup> EV01, at [10.36]

<sup>93</sup> EV41

<sup>94</sup> Ibid, at [13.5]

recorded in the Requiring Authority's Reply.<sup>95</sup> The Reply also referred to his primary evidence summary that:<sup>96</sup>

*"I have considered specific property locations where they were identified and conclude that the proposed flood hazard condition will mean that the effects will be no more than minor."*

193. The response memorandum by Lee Te and Danny Curtis of the Council's Healthy Waters department outlined their general concerns with the conditions in respect of NoRs. It addressed the approach used in the Drury Arterials and Airport to Botany NoRs, noting that it was not anticipated that the Drury conditions would be applied generically throughout the Auckland Region, and that the recommended condition amendments in Airport to Botany are similar to those recommended in respect of Warkworth. The response memorandum went on to note that while Healthy Waters understands the desire of the Requiring Authority for a generic condition set:<sup>97</sup>

*"...it needs to be developed carefully and not taken from conditions that were applied for a particular site and specific circumstances. The reasoning that the conditions were used for other NoRs and Designation is not considered a reasonable reason for it to be adopted. Consistency of conditions should not be the main reason behind using generic conditions"*.

194. The memorandum goes on to say:

*"2.9.5 Considering the lapse time that is being requested for this application (up to 25-years) it is understandable that there is no detailed design currently prepared for these transport corridors; however, in light of no technical solution provided, it is inappropriate to craft detailed flood conditions based solely on 2023 assessment criteria.*

...

*2.9.7 Therefore the recommended amendments to the conditions include using the relevant technical design guide, detailed flood modelling, and consultation with Healthy Waters, to ensure the flood risk identified will be accurate and assessed against the criteria current at that time"*.

195. In terms of the condition amendments, it states:<sup>98</sup>

*"The recommended changes to the conditions are to ensure that flood risk is not increased for people and property, and any effects are mitigated appropriately, and if a generic set of conditions are to be used, they are not specific to any circumstances or environmental characteristics. The recommended changes to conditions address concerns raised by submitters*

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<sup>95</sup> EV130, at [12.3] and [12.4]

<sup>96</sup> EV41, at [1.9]

<sup>97</sup> EV127, at p.70

<sup>98</sup> Ibid, at p.71

*regarding flood risk, modelling and assessments used, and the design of associated structures”.*

196. The changes proposed by Ms Te and Mr Curtis include amendments to all seven flood risk outcomes, and also includes additions to condition (c) (alternative measures), and a new advice note specifying consultation requirements between the Requiring Authority and Healthy Waters. It also proposes changes to the CEMP condition (condition 16) to ensure that flood hazards are managed during the construction stage. The memorandum concludes by saying:<sup>99</sup>

*“... The overall position remains that the NoRs are considered as being reasonably necessary to accommodate future growth within the Warkworth area, subject to appropriate amendments to conditions and resolution of matters of uncertainty which have been noted in this memo”.*

197. The Requiring Authority's Reply acknowledged the comments from Healthy Waters and advised that “[t]he Project Team are continuing to work with Healthy Waters to reach agreement on the proposed conditions”.<sup>100</sup> It went on to say that Mr Summerhays and his team had also undertaken flood mapping for each of the NoR corridors, so as to provide verification of flood effects (including field assessments of existing freeboards). This mapping information has been shared and discussed with Healthy Waters, and as a result, changes have been made to the conditions, as shown in Appendix A to the Reply.
198. The Reply goes on to advise that discussions with Healthy Waters are ongoing, and that AT will update the Panel “*in the new year if any agreements can be reached*”, but in the interim, “[AT] maintains that its proposed condition wording adequately responds to flood risk and it does not support the amendments proposed by Healthy Waters”.<sup>101</sup>
199. It also comments in respect of changes proposed to the CEMP that “*specific wording relating to flood hazard mitigation has been proposed as part of the CEMP and the Council's desired outcomes are already captured by the proposed wording*”.<sup>102</sup>
200. As part of the Panel's request for further commentary on other matters as set out in its Direction 4, it invited the SGA to provide an update as to any further work undertaken in respect of flooding matters and/or further discussions with Healthy Waters. The supplementary memorandum provided a table setting out the wording proposed by AT, and that sought by Healthy Waters, with an explanation of what is agreed and what the points of difference are.<sup>103</sup> In summary, it identifies that there remain reasonably significant disagreements as to the final form of the proposed flood hazard condition.

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<sup>99</sup> Ibid, at p.74

<sup>100</sup> EV130, at [12.8]

<sup>101</sup> Ibid, at [12.11]

<sup>102</sup> Ibid, at [12.12]

<sup>103</sup> EV131, at Appendix A

201. The primary changes to the flood hazard condition as proposed by the Requiring Authority are set out below, with a notation as to whether these are agreed or not with Healthy Waters:
- (a) Clause (a)(i) is altered to refer to 500mm instead of 150mm, to ensure “*no increase in flood levels in a 1% AEP event, for existing authorised habitable floors that have a freeboard less than 500mm*”. [not agreed]
  - (b) Clause (a)(ii) is altered to refer to 300mm to ensure “*no increase in 1% AEP flood levels for existing authorised community, commercial, industrial, and network utility building floors that have a freeboard less than 300 mm*”. [not agreed]
  - (c) Clause (a)(iii) is altered to require a “*maximum of 50mm increase in water level in a 1% AEP event outside and adjacent to the designation boundaries between the pre and post Project scenarios*”. [agreed]
  - (d) Clause (a)(v) is altered to delete reference to ‘vehicle’ (access) and includes a definition for flood hazard (in terms of depth, flow and velocity). [partial agreement].
202. Clauses (b) and (c) are agreed, although Healthy Waters’ preferences are also noted. An advice note sought by Healthy Waters that is not proposed by the Requiring Authority is still recommended to be included by Healthy Waters.
203. The supplementary memorandum goes on to say that:<sup>104</sup>
- “...a number of the amendments previously requested by Healthy Waters are no longer necessary as they have confirmed the wording by [AT] is acceptable. Overall, [AT] considers that its proposed condition wording adequately responds to flood risk and that in relation to the remaining matters of contention the amendments proposed by Healthy Waters are not necessary”.*
204. The Panel has carefully considered the competing position between the Requiring Authority and Healthy Waters in respect of certain aspects of the flood hazard condition. We are, however, concerned that it is dealing with a highly technical matter and one that has significant potential consequences in the event that flood hazard management is not undertaken to the appropriate and necessary standard(s) that will apply at the relevant time. We recognise the expert evidence presented in this regard that underpins the Requiring Authority’s preferred set of conditions but are also cognisant of Healthy Waters’ expertise in the management of flooding issues on a region-wide basis, and the issues they have highlighted with the Requiring Authority’s proposed condition. On this basis we have decided that we favour what appears to us to be the more precautionary approach

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<sup>104</sup> Ibid, at [2.4]

advanced by Healthy Waters, and therefore recommend the adoption of their preferred conditions. This has been a somewhat complicated exercise because Healthy Waters' amendments are based on an earlier version of the conditions, and before the Requiring Authority committed to provide for 300mm/500mm minimum freeboards in their supplementary memorandum.

205. In carefully considering the various versions, we have adopted the following changes on the basis of the comments of the two parties set out in Appendix A to the supplementary memorandum:

- A requirement to maintain minimum freeboards in accordance with the relevant Code of Practice at the time of the outline plan, to ensure these reflect the required guidelines at the relevant plan, given the long horizon at which these may be implemented (new clause, numbered as (a)(i));
- A requirement to not reduce conveyance capacity or to create new overland flow paths (new clause (a)(ii));
- A requirement to divert overland flow paths away from habitable floors and not increase the 1% AEP event downstream (new clause (a)(iii));
- Delete reference to "outside and" as this could be interpreted to include the surrounding environment (clause (a)(iv));
- Include reference to the term "classification" and incorporate the 10% AEP event – while recognising that the 10% AEP event is to be contained within the primary network, its inclusion will ensure that effects on the main access is assessed for these more frequent events (clause (a)(vi)); and
- Include reference to the 10% AEP event to account for the performance of the primary network (clause (a)(vi)) – note that reference to the requested consultation with Healthy Waters is addressed by retention of the advice note.

206. We note that these changes are different to those recommended in respect of the North-West NoRs, and reflect the different environment in which the Warkworth NoRs are located. We also acknowledge the advice of the Requiring Authority that the parties are continuing to work closely on this issue, and that further discussions in that regard will no doubt inform the Requiring Authority's final decision-version of the condition.

#### Panel findings and recommendations

207. For the reasons set out above, the Panel finds that the Healthy Waters version of the conditions is preferred. The following changes, relative to the Requiring Authority's supplementary memorandum version, being an evolution of what was provided with the Reply, is recommended for condition 14 as follows:

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

~~(i) no increase in flood levels in a 1% AEP event for existing authorised habitable floors that are already subject to flooding or have a freeboard less than 500mm;~~

~~(ii) no increase in 1% AEP flood levels for existing authorised community, commercial, industrial and network utility building floors that are already subject to flooding or have a freeboard of less than 300mm;~~

(i) maintain the minimum freeboard requirement outlined in the relevant code of practice at the time the Outline Plan is submitted (currently, Auckland Code of Practice for Land Development for Subdivision, Chapter 4: Stormwater, Version 3.0, January 2022);

(ii) no loss in conveyance capacity or change in alignment of existing overland flow paths, unless provided by other means;

(iii) new overland flow paths shall be diverted away from habitable floors and discharged to a suitable location with no increase in flood levels in a 1% AEP event downstream;

(iv) maximum of 50mm increase in water level in a 1% AEP event ~~outside and~~ adjacent to the designation boundaries between the pre and post Project scenarios.

(v) no new flood prone areas; and

(vi) no increase of flood hazard classification for main access to authorised habitable dwellings existing at time the Outline Plan is submitted. The assessment shall be undertaken for the 10% and 1% AEP rainfall events.

~~Where Flood Hazard is:-~~

~~A. Velocity x depth  $\geq$  0.6; or~~

~~B. Depth  $>$  0.5m; or~~

~~C. Velocity  $>$  2m/s.~~

(b) Compliance with this condition shall be demonstrated in the Outline Plan, which shall include flood modelling of the pre-Project and post-Project in 10% and 1% AEP flood levels (for Maximum Probable Development land use and including climate change).

(c) Where the above outcomes can be achieved through alternative measures outside of the designation such as flood stop banks, flood walls, raising existing authorised habitable floor level and new overland flow paths or varied through agreement with the relevant

*landowner, the Outline Plan shall include confirmation that any necessary landowner and statutory approvals have been obtained for that work or alternative outcome.*

Advice Note:

Consultation with Auckland Council Healthy Waters (or its equivalent) to identify opportunities for collaboration on catchment improvement projects shall be carried out at the detailed design stage.

208. We have also removed the definition for 'ARI' (Annual Recurrence Interval) as this is not a term that is subsequently used in the flood hazard condition itself.

**Effects of road noise on future dwellings**

**Introduction**

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

- Construction noise and vibration;
- Management of traffic noise and vibration for future receivers;
- Noise contours; and
- Low noise road surface (and resurfacing).

210. We address these matters in turn below.

**Construction noise and vibration**

211. The conditions proposed by the Requiring Authority provide for a CNVMP to be established which would identify management measures to achieve the construction noise and vibration standards set out in the conditions. A Schedule to the CNVMP would be prepared if construction noise and vibration levels exceed those standards. Mr Runcie advised that he was generally satisfied with that methodology.
212. However, Mr Runcie expressed concern about the night-time construction vibration standard for Category B buildings provided for in condition 21 which, he noted, is inconsistent with Waka Kotahi's guidelines which sets a lower limit of 1mm/s ppv. In response, Ms Drewery notes that the Waka Kotahi guidelines are not relevant because the requiring authority in this case is AT. No further evidence has been provided by the Requiring Authority's specialists as to why a higher vibration limit is required or appropriate.

**Panel findings and recommendations**

224. In relation to the night-time construction vibration standard for Category B buildings, the Panel prefers Mr Runcie's recommendation that the Waka Kotahi guideline of 1mm/s ppv should be adopted (instead of 2mm/s ppv), and the 'Night-

time' limit for 'Occupied activities sensitive to noise' at Table 21-1 in condition 21 should be adjusted accordingly.

### **Management of traffic noise and vibration for future receivers**

213. The Requiring Authority has assessed traffic noise effects of the projects utilising NZS 6806:2010 Acoustics – Road-traffic-noise – New and altered roads (**NZS6806**). The approach under this standard is to assess noise received at Protected Premises and Facilities (**PPFs**) which are essentially noise sensitive activities. Existing PPFs, and the corresponding Noise Activity Categories, are set out in Schedule 4 of the conditions. The operational noise conditions relate only to those NoRs for which existing PPFs have been identified in Schedule 4. Existing PPFs will be modified, where necessary, to meet the requirements of NZS6806.
214. The AUP does not include standards requiring dwellings built adjacent to heavily trafficked roads to be acoustically treated to mitigate traffic noise effects. In the absence of such a standard, there was no dispute that there is a shared responsibility between the Requiring Authority and developers for noise mitigation for buildings constructed between the lodgement of the NoRs and the completion of construction of the projects (future receivers). The Requiring Authority's responsibility for mitigation comprises the provision of low-noise road surfaces on the roads being constructed as enabled by the NoRs. Based on the design of roads, including the use of low-noise surfaces, the Requiring Authority has produced noise contours to inform the design of future development with the expectation being that the developers of buildings will ensure the design incorporates sufficient noise mitigation measures to produce suitable internal noise environment when the roads are operational.
215. The Panel notes that the Council's recommendations and evidence on shared responsibility at this hearing was at variance with the position expressed at the hearing on the North-West NoRs which sought the inclusion of barriers (where appropriate and practicable) as part of the BPO for noise mitigation by the Requiring Authority. The Panel was sympathetic with that position in its recommendation on the North-West NoRs but, as this was not sought by any party as part of the Warkworth hearing, it has not been identified as a matter of contention.
216. Regarding road traffic vibration, Mr Runcie expressed a concern that there is no condition requiring well-constructed and maintained roads. In relation to this matter, Ms Drewery pointed out that new or upgraded roads are designed to be smooth and even, avoiding vibration generated from passing traffic over uneven surfaces.
217. Mr Runcie considered that the conditions of NoR 1 (Park and Ride facility) should include operational noise limits based on the AUP zoning of the receiver site because that was the basis of the noise assessment for that NoR. He also points out that the design may change between now and the implementation of the NoR and clear noise limits will give certainty to the future noise environment. However, Ms Drewery considered that the predicted worst-case peak hour noise levels are



well below the limits applying to the relevant zone. The Panel considers that there is merit to Mr Runcie's argument and that an additional condition as proposed by Mr Runcie should be included.

#### Panel findings and recommendations

218. Having considered the reporting and evidence presented to it, the Panel finds that:

- (a) There is a shared responsibility for noise mitigation;
- (b) All roads that are the subject of the NoRs should incorporate low-noise surfaces;
- (c) The Requiring Authority should not be responsible for modifying new dwellings built between the lodgement of the NoRs and their construction;
- (d) The noise contours prepared by the Requiring Authority will enable developers to design dwellings to achieve appropriate internal noise levels;
- (e) A specific condition requiring new roads to be designed and maintained so as to avoid adverse vibration from traffic is unnecessary because that is the normal standard for new roads; and
- (f) In relation to noise limits for NoR 1, the following additional condition is recommended to be included (as new condition 29A):

*Noise from the operation of the transport hub and park and ride facility shall comply with the relevant zone noise limits at receivers as set out in the AUP.*

#### **Noise contours**

219. Regarding the noise contours, the only area of disagreement (or uncertainty) was where the contours should be published in order that they could be readily accessed by those designing new buildings. Mr Runcie recommended that the contours form a layer in the Council's GIS as that is a tool used to identify other forms of constraint on development. The Requiring Authority considered that the provision of this information can be managed through the existing condition framework.

220. While the latter will ensure that the contours are kept up to date by the Requiring Authority, in the Panel's view the issue of ready access, or knowing that the information is available and where to find it, remains.

#### Panel findings and recommendations

221. The Panel recommends that the contours be available on a project website that is to be established in accordance with condition 2(a). We recommend the addition of a new clause (v) as follows:

*...The project website or virtual information source shall include these conditions and shall provide information on:*

...

- (v) *how / where to access noise modelling contours to inform the design of development adjacent to the designation;*

222. The Panel also recommends that a layer should be included on the Council's GIS that identifies the area covered by the contours and directing the reader to the project website for the contours themselves (where that information will be kept up-to-date). However, we do not consider it appropriate or permissible to include this by way of a condition, and so leave this as a matter that may be addressed in the future by the Requiring Authority in conjunction with the Council.

### **Low noise road surfacing (and resurfacing)**

225. As noted above, the sole form of noise mitigation offered by the Requiring Authority for future receivers is providing low-noise surface on the roads that are the subject of the NoRs.
226. The Requiring Authority has proposed a condition that enables an alternative surface to be provided when a road is resurfaced if specified traffic-related criteria are not met. Mr Runcie expressed concern with this because the Requiring Authority's condition would enable a road surface to be used which is different to that assumed in the assessment of noise effects. In her primary statement of evidence, Ms Drewery agreed with Mr Runcie, stating that a resurfaced road should have the same low-noise characteristics as the original surface.
227. The Reply reiterated the Requiring Authority's preference for the resurfacing specification to be related to traffic flow and other parameters such as the extent of wear and tear, the concentration of truck traffic and amount of usage by pedestrians. Mr Willcock's explanation for this position is paraphrased as follows:

*"As outlined in Mr Willcock's evidence, the current condition wording allows for the [BPO] to be determined by applying the [AT] Reseal Guidelines which takes into account the whole-of-life cost of assets and are likely to be updated in the future to account for new technology and operating constraints. This allows for innovations and flexibility to work through options as well as ensuring equitable resource allocation.*

*"Both the [AT] Reseal Guidelines and the Asset Management and Systems 2013 guidelines are relevant matters to consider. Auckland Transport must consider its responsibility to future residents, and this goes beyond noise impacts and must take into account cost to ratepayers.*

*"The road surfaces for [AT] corridors are more likely to require the entire road pavement to be upgraded (rather than just the road surface) and this would have significant cost implications which are not justified on an effects basis"<sup>105</sup>*

228. The Panel considers that "going beyond noise impacts", "equitable resource allocation", and taking account of cost to ratepayers, are not appropriate matters for an assessment required under the RMA. Given the importance of the low-noise road surface for mitigating operational noise effects, and the agreement between

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<sup>105</sup> EV130, at [17.38] – [17.40]

Ms Drewery and Mr Runcie, the Panel considers that the Requiring Authority's preferred condition is inappropriate and is recommended to be deleted. The Panel also addressed this matter with the respect to the North-West NoRs and recommends that the wording for condition 29 should be consistent across the NoRs.

#### Panel findings and recommendations

229. The Panel recommends that the Future Resurfacing Works condition be deleted and that the following clause (b) be added to condition 29 (Low Road Noise Surface) as follows:

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

#### **Effects on parks, reserves and open space**

223. The primary issues related to effects on parks, reserves and open space were raised in the Council's memorandum by Gerard McCarten, the Council's Consultant Parks Planner. Mr McCarten had raised issues in respect of the:

- The lack of assessment in the AEE as to effects on these areas;
- The extent of designation encroachments into open space, relative to the general arrangement plans;
- Effects on the Council's ability to undertake improvements or upgrades to affected areas of open space; and
- Some of the NoR roads intersect and/or align with identified greenway routes that could be hindered or severed if not suitably accommodated.

224. The evidence of Mr Titter advised that the alternatives assessment process had sought to minimise or avoid effects on open space and reserves where possible. He also advised of a change to the conditions to enable maintenance and minor renewal of parks without the requirement to obtain written consent under s.176. He also highlighted that the ULDMP condition refers to open space zones requiring consideration with regard to integration of the project with the future urban and landscape context. He went on to address particular issues associated with Jamie Lane Reserve and the Mahurangi River Esplanades and considered that effects on these reserves would be addressed through the relevant ULDMP. His evidence concluded on this issue by stating that "*the amended wording of the SCEMP will address Mr McCarten's concerns regarding engagement*" and that he considered the Council to be "*a key stakeholder and therefore will be engaged with through the SCEMP*".<sup>106</sup>

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<sup>106</sup> EV07, at [41.10]

225. Mr McCarten's response memorandum advised of his agreement with the revised wording of conditions 7 (s.176 approval) and 10 (SCEMP). He also noted the ten-day timeframe provided for notice in condition 10 was offset by the six-month allowance in condition 13 (ULDMP). However, he considered that a number of matters remained outstanding, including:
- Whether the NoR extents are necessary and could be reduced to avoid open space and reserve areas.
  - That the wording for the ULDMP should include:
    - specific reference to the opportunities identified in the Urban Design Assessment for each NoR;
    - reference to the Greenways Plan, to ensure the connections identified in that plan are identified, along with Precinct Plans, Structure Plans and Local Parks Management Plans;
    - additional wording to reference the 'future' urban context;
    - provision for outcomes for green connections and links identified in various Precinct Plans; and
    - provision for future parks and open space land that may be developed in the lifetime of the designations.
226. Mr McCarten also advised that in his view, NoR 2 (Woodcocks Road) would have the greatest potential for adverse effects on public open space and community wellbeing, due to effects on the Falls Road connection identified in the Greenways Plan and Rodney Structure Plan. In this regard he stated that "*the specific outcomes of the UDE for NOR2 includes a cross-corridor active mode connection and I consider this is an important outcome that needs to be ensured*".<sup>107</sup>
227. The Reply advises that the ULDMP requires consideration of how the Project will integrate with the future urban and landscape context (including reinstatement of features to be retained), with "*specific reference to open space zones and adjacent land uses (which would include parks)*".<sup>108</sup> We note that this would be via condition 13(c)(i).
228. In terms of active mode connections for NoR 2, the Reply also notes that:<sup>109</sup>
- "the ULDMP condition also requires details of appropriate walking and cycling connectivity to, and interfaces with, existing or proposed adjacent land uses, public transport infrastructure and walking and cycling connections. The condition also requires the ULDMP to include details of pedestrian and cycle facilities, road crossings and dedicated pedestrian/cycle bridges or underpasses. The changes sought to the conditions are therefore not necessary as Mr McCarten's concerns are already adequately addressed in the conditions"*.
229. With respect to the references to the Urban Design Evaluation (UDE) maps, the

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<sup>107</sup> EV127, at p. 85

<sup>108</sup> EV130, at 14.3]

<sup>109</sup> Ibid, at [14.4]

Reply notes the evidence of Mr Frost who did not consider this to be appropriate as this would “*lock in opportunities that may change as the surrounding landscape and best practice in urban design evolves*”.<sup>110</sup>

230. The Panel has closely reviewed the wording of the ULDMP conditions, including for NoR 2, and considers that the concerns expressed by Mr McCarten have been appropriately addressed, and we therefore have confidence that these will be addressed at the detailed design stage.

#### Panel findings and recommendations

231. The Panel accepts the amendments to the wording of conditions 7, 10 and 13 as contained in the Requiring Authority’s Reply and does not recommend any additional changes in respect of parks and open space areas.

#### ULDMP and reference to the UDE maps

232. In a related point to the above topic, the Panel notes the advice of the Council’s Urban Design specialist, John Stenberg, who recommended that the ULDMP condition require the outcomes and opportunities identified in the UDE be addressed in the detailed design of the future roading projects. Mr Stenberg considered that more specific wording was necessary to achieve appropriate urban design and integration outcomes, as also recommended by Mr McCarten in respect of reserves as noted above, albeit that this would be adopting a “belts and braces” approach.<sup>111</sup> The proposed wording for condition 13 was as follows:

*(c) To achieve the objective, the ULDMP(s) shall provide details of how the project:*

*(i) has considered and developed a response to the outcomes and relevancy of opportunities identified in the Te Tupu Ngātahi Urban Design Evaluation’s Outcomes and Opportunities Plan.*

233. The Reply advised that the Requiring Authority supports the evidence on this matter of Mr Frost, who was of the view that the opportunities identified on the UDE plans may change over time and are best determined at the time of detailed design.

234. We note that the ULDMP condition requires the objective to be achieved (in part) by the current version of clause (i):

*is designed to integrate with the adjacent urban (or proposed urban) and landscape context, including the surrounding existing or proposed topography, urban environment (i.e. centres and density of built form), natural environment, landscape character and open space zones;*

235. Further, having regard to the remaining details that are required to be addressed through the ULDMP, which is then to be provided as part of an outline plan, we do

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<sup>110</sup> Ibid, at [14.5]

<sup>111</sup> EV124, at p.46

not consider that exclusion of reference to the UDE could result in relevant urban design and landscape -related matters being omitted at the outline plan stage. We also observe that they do not prescribe specific outcomes that would warrant their inclusion at this stage, and we agree with the Requiring Authority that these specific details are more appropriately addressed at the relevant time.

#### Panel findings and recommendations

236. The Panel does not recommend any additional changes in respect of the ULDMP condition in this respect.

#### **EIANZ Guidelines**

237. The Panel notes that the conditions specify that the proposed EIANZ Guidelines, for use in the ecological assessment and condition 25 are defined as “*EIANZ guidelines for use in New Zealand: terrestrial and freshwater ecosystems, second edition, dated May 2018*”. The original memorandum by the Council’s ecologist, Mr Conley, had recommended that reference to the EIANZ guidelines be supplemented by “*or any updated version*”, as this could be superseded by the time the designations are given effect to.<sup>112</sup>
238. The evidence of Mr Jonker stated in this regard that:<sup>113</sup>

*“While acknowledging that including updated revisions could have ecological advantages, I am confident that the current version of EIANZ 2018 adequately addresses ecological effects. I further note that the applicant is designating for the effects now rather than for a future state and that any regional consenting will be subject to updated revisions of the EIANZ guidelines”.*

239. Mr Conley’s response memorandum maintained his view that the condition should be amended in accordance with his original recommendation, and he advised in this regard that:<sup>114</sup>

*“2.12 I also consider that, as regional resource consents would require assessment against any future revisions of the guidelines, this enhances the argument to include updates to the guidelines within the definition. Should the condition continue as written, the future ecological survey, and assessments required for regional consents, could be assessed against different guidelines and lead to inconsistencies.*

*“2.13 Furthermore, it is not just the magnitude of effect that could change in the future, ecological values could also change for a particular species or community which would also influence overall level of effect”.*

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<sup>112</sup> Agenda, at p.333

<sup>113</sup> EV32, at [12.6]

<sup>114</sup> EV124, at p.56

240. The Reply acknowledged this issue in part, and amended condition 25 to include the words at (a):

(ii) *Confirming whether the project will or may have a moderate or greater level of ecological effect on ecological species of value, prior to implementation of impact management measures, as determined in accordance with Table 10 of the EIANZ guidelines (or subsequent updated version of the table).*

241. This amendment was for the reason that:<sup>115</sup>

*“Given the narrow application of the EIANZ Guidelines to the conditions (ie they are only used to determine whether the Project will or may have a moderate or greater level of ecological effect), [AT] considers that the specific reference to Table 10 (or updated version of that table) appropriately addresses the Panel’s concerns. These amendments acknowledge that Table 10 may be updated in future versions of the Guidelines and if the threshold for mitigation changes, [AT] will be required to provide mitigation in accordance with those updates”.*

242. While we have some concern that confining the relevant consideration of the EIANZ guidelines to one of its tables, and the potential for a future version to utilise a different form of categorisation, we anticipate that there will likely remain an ability to cross-reference between the existing table and any superseded form of that table within the guidelines. This approach varies from that which we have adopted for the North-West NoRs, where the definition of the EIANZ Guidelines has been recommended to be altered to include “*or updated version*” of the Guidelines in full to address this issue. However, we consider the approach proposed by the Requiring Authority in the present case will achieve a similar and suitable method by which to ensure the most up-to-date ecological knowledge is applied at the time of detailed design.

243. We have also recommended that the various versions of condition 26 (Ecological Management Plan) uses capital letters rather than lower case to more clearly differentiate the condition number from its sub-clauses. This requires a corresponding amendment to conditions 13(g)(iv)A.e and 25(b).

#### Panel findings and recommendations

244. The Panel therefore accepts the amended form of condition 25 proposed by the Requiring Authority and makes no further recommendations in this regard.

#### **Proposed ULDMP Advice Note**

245. The conditions proposed by the Requiring Authority included the aforementioned ULDMP condition, which has its objectives to enable integration of the Project’s permanent works into its surrounding context and manage adverse landscape and visual effects and contribute to a quality urban environment.

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<sup>115</sup> EV130, at [17.30]

246. The condition includes a proposed advice note as follows:<sup>116</sup>

*This designation is for the purpose of construction, operation and maintenance of an arterial transport corridor and is not for the specific purpose of road widening. Therefore, it is not intended that the front yard definition in the [AUP] which applies a set back from a designation for road widening purposes applies to this designation. A set back is not required to manage effects between the designation boundary and any proposed adjacent sites or lots.*

247. The same form of condition and advice note is also proposed for the other NoRs in the North-West NoR packages but was contested as part of the North-West hearings by Kāinga Ora.

248. The Reply was largely silent on this matter but addressed it in its supplementary memorandum (in response to the Panel's queries set out in Direction 4). The supplementary memorandum noted that:<sup>117</sup>

*"We understand that Kāinga Ora have since raised concerns about the advice note being ultra vires during the hearing for the North West Network and the North West Project team have subsequently agreed to delete it. Given Kāinga Ora did not submit on the Warkworth Package, the advice note is not a major point of contention for this Project and Auckland Transport is comfortable with deleting it".*

249. We have addressed this matter in some detail in our reports on the North-West NoRs, and the reason why we do not consider the advice note to be appropriate, nor assist in the administration of the designations. Given the response above, we do not need to consider the matter further, and we have therefore recommended the deletion of the advice note from the ULDMP condition for the Warkworth NoRs.

### **Conditions (not addressed elsewhere)**

#### **ULDMP**

250. The ULDMP condition at 13(e) refers to the invitation of "key stakeholders" to the development of the ULDMP. As with our recommendations in respect of the North-West NoRs, that use of the word "key" is an unnecessary and an uncertain modification of the definition for 'Stakeholder', and the process for identifying stakeholders as set out in condition 4. We therefore recommend deletion of this word from the condition.

251. On review of the detailed specifications component of the ULDMP landscape conditions at condition 13(g)(iv), the Panel also recommends (as for the North-West NoRs) the inclusion of "irrigation" and "plant replacement (due to theft or plants dying)", and these have been added to the Panel's recommended changes to the ULDMP conditions accordingly, as follows:

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<sup>116</sup> Version date: 18 September 2023

<sup>117</sup> EV131, at [4.4]



C. *Detailed specifications relating to the following:*

...

f. irrigation; and

g. plant replacement (due to theft or plants dying).

Construction Environmental Management Plan

252. Condition 16(b) addresses the requirements for the CEMP to achieve the objectives of this plan, and includes:

(iv) *details of the proposed construction yards including temporary screening when adjacent to residential areas; ...*

253. The Panel notes that the phrase “residential areas” is not defined and could conceivably include residential activities outside a residential zone (e.g., in case of a residential unit(s) located in a Business Zone), or may require screening when adjacent to large rural sites that include a residential dwelling. The Panel therefore recommends, as it has for the North-West NoRs, that this requirement is limited to ‘Residential zones’, rather than ‘residential areas’.

254. The Panel also considers that an improvement could be made to the CEMP condition to include an explicit requirement to respond to matters raised in through the SCEMP engagement process, so that the CEMP condition would be amended for those NoRs to read (at (b)):

*... the CEMP shall include:*

...

(xii) *a summary of measures included to respond to matters raised in engagement, if not already covered above;*

255. This addition is consistent with an amendment made to the corresponding condition for the North-West NoRs.

Network Utility Management Plan

256. While we did not hear from utility operators in respect of the present NoRs, the Panel considers that an amendment should be made to the NUMP condition to make the condition more explicit as to what is required as a result of the consultation processes with network utility operators. The change to condition 28 is therefore recommended as follows:

(d) ~~*The development of the NUMP shall consider opportunities to coordinate future work programmes with other Network Utility Operator(s) during detailed design where practicable. The Requiring Authority shall consult with Network Utility Operators during the detailed design phase to consider opportunities to enable, or not preclude, the development of new network utility facilities including access to power and ducting within the Project, where practicable to do so. The consultation undertaken, opportunities considered, and*~~

whether or not they have been incorporated into the detailed design, shall be summarised in the NUMP.

257. This addition is consistent with an amendment that the Panel made to the corresponding condition for the North-West NoRs.

General

258. Other minor changes made to the conditions are of a minor typographical nature.
259. We have shown our changes in 'track-change' format so that the amendments are more easily identified by the parties.

Panel findings and recommendations

260. For the reasons set out above, the Panel recommends the following further amendments to the conditions (relative to the Requiring Authority's Reply version):

- (a) For the ULDM condition, at 13(e):

~~Key s~~Stakeholders shall be invited to participate in the development of the ULDM at least six (6) months prior to the start of detailed design for a Stage of Work.

- (b) For the ULDM condition, at 13(g)(iv):

C. detailed specifications relating to the following:

...

f. irrigation; and

g. plant replacement (due to theft or plants dying).

- (b) For the CEMP condition, at 16(b):

...the CEMP shall include:

...

(iv) details of the proposed construction yards including temporary screening when adjacent to residential ~~areas~~zones; ...

...

(xii) a summary of measures included to respond to matters raised in engagement, if not already covered above;

- (c) For the NUMP condition, at 28:

(d) ~~The development of the NUMP shall consider opportunities to coordinate future work programmes with other Network Utility Operator(s) during detailed design where practicable. The Requiring Authority shall consult with Network Utility Operators during the detailed design phase to consider opportunities to enable, or not preclude, the development of new network utility facilities including access to power and ducting within the Project.~~

where practicable to do so. The consultation undertaken, opportunities considered, and whether or not they have been incorporated into the detailed design, shall be summarised in the NUMP.

## **SITE SPECIFIC ISSUES**

### **Responses to site-specific concerns**

261. As outlined previously, a large number of submissions were received across the overall Warkworth NoR package and we heard from a number of submitters affected by these NoRs as to the way in which the designations would affect their properties. These included the extent of land proposed to be included in the designations, and the effects on the amenity and utility of those land areas (usually frontages and including potential access restrictions) and the length of time that the subject land would be affected by the designations (lapse period).
262. To a significant extent our previous discussion with respect to these matters has sought to address such concerns on a generally Project-wide basis, with reference to specific evidence where that has highlighted the effects of a particular issue on an individual property. The Panel acknowledges the extent of property-specific evidence that it heard throughout the hearing and has taken note of the concerns expressed before it. However, in general, and as previously described, it has reached a view that those matters are able to be appropriately addressed and managed through a combination of the following:
- the Project Information website (condition 2);
  - the LIP (condition 3);
  - the SCEMP and ULDM (conditions 10 and 13 respectively); and
  - the PWA and s.185 of the RMA.
263. The Panel observes that a number of issues raised in submissions, as listed in the s.42A report,<sup>118</sup> had either been addressed through the SGA's evidence, either by revisions to the designation alignments or changes to the conditions, such that those topics were not raised during the hearing.
264. The Panel also recognises that the specific responses as to the management and mitigation, and remediation, of effects on properties will not be known until the detailed design stage, including through the preparation of the SCEMPs and ULDMs. This is, in the Panel's view, not an untypical outcome with respect to road and transport corridor designations with long lapse dates, but the Panel nevertheless recognises that these lapse dates are not themselves typical. However, we have, for the reasons set out earlier, accepted the need and rationale for the lapse dates proposed for these projects, which have recently also been

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<sup>118</sup> Agenda, at pp.36 and 37

determined for the Drury Arterials projects, and those that we have recommended be upheld for the North-West NoRs.

Panel findings and recommendations

265. No further recommendations arise as a result of our discussion and conclusions set out above.

**The use of site specific schedules or conditions**

266. Several witnesses for various submitters had raised concerns with construction effects and sought site-specific management plans or conditions in relation to their properties.<sup>119</sup> This approach was borne out of the same issue arising in respect of the North-West NoR hearings. Mr Scrafton addressed this matter in his rebuttal evidence, and did not support this approach for several reasons that we summarise below:<sup>120</sup>

- (a) In his view, the effects associated with the Projects have been identified and assessed with a suite of conditions proposed to manage those effects.
- (b) The approach in other Te Tupu Ngātahi hearing processes whereby a table of concerns has been raised by submitters has been helpful in terms of distilling outstanding matters to be considered through the hearing process.
- (c) However, it is unclear as to what a schedule of submitter issues appended to the conditions would achieve. Mr Scrafton considers that it would be inappropriate to require the resolution of any outstanding issues prior to implementation of the designation as this would potentially defer decision-making powers to those who have identified issues.
- (d) The changes to the Stakeholder definition that has been recommended through the Requiring Authority's evidence should resolve concerns about who might or might not be identified as a Stakeholder in the future.

267. We discussed with Mr Scrafton the use of site-specific conditions in other designations akin to those sought by submitters in this case, in relation to Drury and Ara Tūhono, and the precedent for this approach that appeared to be established by these examples.

268. Ms Wilkinson's response memorandum also considered that further amendments to the conditions were warranted in order to inter alia incorporate NoR specific or site-specific requirements "*to address and mitigate effects, including effects associated with uncertainty...*".<sup>121</sup>

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<sup>119</sup> Burnette O'Connor on behalf of Northland Waste Limited and Robyn Alexander and Katherine Heatley; Diana Bell on behalf of Mason Heights Gospel Church.

<sup>120</sup> EV05, at [4.11]

<sup>121</sup> EV124, at p.7

269. The Reply referred to Mr Scrafton's evidence in its submission that "*a proliferation of site-specific conditions at this stage in the process is not helpful and moreover, not necessary*".<sup>122</sup>

270. The Reply commented that a key concern raised by submitters in this regard appeared to be based on the potential for issues to be 'lost' between the designations being confirmed, and the implementation of the projects. However, the Reply went on to emphasise that "*the conditions have been framed to ensure that site-specific issues are captured through the engagement process, which will be used to inform the preparation of management plans*".<sup>123</sup> In this way, it is intended that the conditions will provide for a set of outcomes to manage effects to be achieved at the relevant, and more appropriate, point in time. It went on to say that:<sup>124</sup>

*"Further, the inclusion of site-specific conditions for the submitters who appeared at the hearing would not achieve consistent treatment for all affected parties or stakeholders. The better approach is to ensure that the conditions provide the appropriate processes to ensure that site-specific concerns are captured at the relevant point in time, so that the conditions do not inadvertently create a different category of affected party and inconsistent mitigation with no effects-based rationale"*.

271. The Reply illustrated this approach by way of example, with reference to an objective of the ULDMP that is to enable integration of a project's permanent works into the surrounding landscape and urban (or proposed urban) context. In this regard it states that:<sup>125</sup>

*"This ULDMP method specifically dictates a site-specific response at the time of implementation. Another example of this approach is the construction noise and traffic management mitigation measures which will be developed in the context of local receivers and the network at the time of construction"*.

272. We note that there is one exception to the Requiring Authority's position in respect of site-specific provisions, and that is in respect of NoR 1, and the inclusion of a condition related to the creation of a further 'arm' to a proposed intersection. We discuss this later in this report.

273. As with the Requiring Authority, the Panel understands the underlying concern of submitters as to the potential for their particular issue(s) to be lost between the designations being confirmed and the time that the Projects are implemented. Having reviewed the submissions on the need for site-specific measures, it is clear that the site-specific requests highlight issues which submitters deem to be important at this present time. However, we came to an understanding that given the period of time that would elapse before implementation, coupled the potential

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<sup>122</sup> EV130, at [17.3]

<sup>123</sup> Ibid, at [17.4]

<sup>124</sup> Ibid

<sup>125</sup> Ibid, at [17.5]

for change in the 'existing environment' these now issues are likely to become of lesser relevance.

#### Panel findings and recommendations

274. As a result of our considerations, we concur with the Requiring Authority that:
- (a) The amended conditions are now framed to ensure site-specific issues are captured through the engagement process, which will be used to inform the preparation of management plans; and
  - (b) The inclusion of a proliferation of site-specific conditions at this stage in the process would not be a useful addition to the same exercise being carried out at that the SCEMP preparation stage.
275. Accordingly, we have not recommended that further site-specific conditions be included as a schedule to the SCEMP.

#### **NOR-SPECIFIC ISSUES**

276. The following discussion addresses particular aspects of the eight NoRs, where matters of concern to the respective submitters has not been commented on in the preceding discussion related to matters common to all the NoRs.

#### **NoR 1 - Northern Public Transport Hub and Western Link North**

277. NoR 1 involves the development of a new public transport hub and park-and-ride at the corner of SH1 and a new Western Link Road - North arterial corridor with active mode facilities between the intersection of SH1 and Te Honohono ki Tai to a proposed bridge crossing on Western Link North.

#### Foodstuffs North Island Limited

278. The Panel heard from Foodstuffs North Island Limited (**Foodstuffs**) who were supportive of NoR 1 in principle, but who considered that changes are required to facilitate integration with their future development plans for its site and sought greater certainty as to the future incorporation of its proposed 'fourth arm' into the intersection between the Western Link Road – North (**WLR**) and the Transport Hub.<sup>126</sup> A concept plan for this road connection was presented in the evidence of John Parlane, a traffic engineer on behalf of Foodstuffs, which he described in summary as linking the supermarket and bulk retail activities at 12 Hudson Road to both the WLR and the proposed bus station through signalised cross-roads. In his view, this arrangement "*would have significant positive effects for both the customers of the Site and the wider transport network*".<sup>127</sup> Foodstuffs also sought that construction effects on its activities be minimised through conditions, and that

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<sup>126</sup> As noted during the hearing, Commissioner Smith did not partake in considerations relating to the Foodstuffs submission due to a potential perceived conflict of interest.

<sup>127</sup> EV60, at [6.2]

*“the physical extent of the designation be minimised and that the designation be removed as soon as possible from land that has been designated for construction purposes only”.*<sup>128</sup>

279. The Reply advised of the practical and environmental constraints that would need to be worked through by Foodstuffs so as to provide a safe and suitable access from the intersection into their site. These constraints include a number of streams in the area, and the need to bridge both sides of the intersection. However, the Reply went on to acknowledge the wide transport network benefits if access from the WLR can be provided to Foodstuffs’ site, as well as Foodstuffs’ need for greater certainty associated with the need to alter its existing resource consent. This acknowledgement has resulted in the Requiring Authority proposing a site-specific reference in the conditions for NoR 1 (an exception to its general opposition to such conditions, as described earlier), as follows:<sup>129 130</sup>

*The Outline Plan(s) that enables the intersection between the local road serving the Northern Public Transport Hub and the Western Link North shall include design details of a stub to the connection of a fourth arm of the intersection that the owners and occupiers of the site occupied by the Pak’n Save supermarket, being Sec 4 SO 476652 can construct and connect to if they decide to construct access to that site and it has not already been constructed at the time the Outline Plan is prepared.*

*Advice note:*

*For the avoidance of doubt, the Requiring Authority and its contractors are only required to show a stub to the connection of a fourth arm of the intersection on the Outline Plan(s) and they are not required by this condition to construct any part of the stub or the balance of the access to the Supermarket Site.*

280. The Reply notes that the advice note has been proposed in order to reflect the Requiring Authority’s understanding that Foodstuffs will deliver the intersection connection (including the stub) if it decides to proceed with its access plans to the site. It also advises that the condition has been circulated to Foodstuffs for comment and that the Requiring Authority will continue to work with Foodstuffs to agree the wording for the condition. The Panel acknowledges that any amendments arising from that further dialogue will necessarily form part of the Requiring Authority’s decision on the NoR. However, we record that we are in agreement with the text of the condition as presented through the Reply, and do not recommend any changes to it.
281. The Reply goes on to say that it does not support Foodstuffs’ request to append a concept plan for the intersection to the NoR conditions, due to the potential for

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<sup>128</sup> EV57, at [3]

<sup>129</sup> EV130, at [2.4]

<sup>130</sup> We recommend an amendment to the road name in this condition to ‘Western Link Road – North’ to reflect the term used in General Arrangement Plan (Warkworth Overall Layout Plan).

change to the design, and that “*it would be problematic to have outdated concept plans referenced in the conditions, particularly given the constraints in the area*”.<sup>131</sup> It pointed to the fact that Mr Allan, counsel for Foodstuffs, had not been able to identify where concept plans had been used in designations, and that Mr Peake, for the Council, also expressed concern with the use of such plans.<sup>132</sup>

282. Foodstuffs had also raised concerns about the timing of the LIP, and we have previously discussed the changes to that condition which is expected to address that issue.

#### Middle Hill Limited and the Tyne Trust

283. Middle Hill Limited and the Tyne Trust (**Middle Hill**), also represented by Mr Allan, advised of support NoR 1 in principle, and the relief sought by Foodstuffs. However, they also sought that consultation should commence immediately and that stakeholders should be explicitly identified in the relevant SCEMP condition. As previously described, the relief sought in respect of the LIP and SCEMP consultation requirements addresses part of the concerns for Middle Hill, and we agree with the Reply that these changes satisfactorily address concerns relating to future engagement.
284. Middle Hill also sought more certainty in respect of the future local road connecting to the western arm of the Western Link intersection. Mr Allan filed a supplementary memorandum (at the invitation of the Panel) which prescribed a proposed condition to address this matter:<sup>133</sup>

*The final design and Outline Plan(s) for the local road serving the Northern Public Transport Hub shall be in general accordance with General Arrangement Plan - NOR 1 (SGA-DWG-WKW-300-GE-9000 dated 27 March 2023) and in particular shall provide for the local road to extend to the boundary with 63 State Highway 1 Warkworth 0984 (Section 15, SO 495251 - RT 757814) at the location shown on that plan, so as to ensure vehicular access between that land and the Western Link Road.*

285. The Reply advised that it does not agree that there is a need for the site-specific condition sought by Middle Hill. It highlights that the Warkworth North Precinct Plan 2, which sets out the multi-modal transportation connections required for the Warkworth North Precinct, shows a connection to Middle Hill’s site from the WLR.
286. This connection was identified in the Figure 3 included in Mr Peake’s response memorandum.<sup>134</sup> It was Mr Peake’s understanding that the designation would override the Precinct Plan such that there may be no requirement to provide the

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<sup>131</sup> Ibid, at [2.7]

<sup>132</sup> EV127, at p.28

<sup>133</sup> EV112, at [2]

<sup>134</sup> Refer EV127, at p.30 (Figure 3)



road. Accordingly, he recommended that a condition (as proposed by Middle Hill) should be included requiring this connecting road, and that it be constructed to the boundary of the NoR to allow future connections to it (as the NoR concept plans show the road stopping slightly short of this boundary).

287. The Reply also disagreed with Mr Peake that the designation overrides the Precinct Plan, noting that if Middle Hill decides to bring forward its development ahead of the Project, they would be able to rely on the Precinct Plan. It also made the following further comments:

(a) In terms of a site-specific condition, the Reply notes Mr Peake's acknowledgment as to ecological constraints that would need to be addressed in such a connection, which the Requiring Authority considers is just one of the constraints that will need to be worked through in the future.

(b) Unlike the Foodstuffs site, there is already support for access to the Middle Hill site in the AUP, including from an alternate southern connection, and the land use to the west of the public transport hub is not yet confirmed.

288. Accordingly, the Reply considers that the LIP and ULDM conditions "*provide the appropriate mechanism for the parties to engage with one another in relation to access, earthworks and integration matters in the future*".<sup>135</sup> The Panel agrees with that position.

#### One Mahurangi Business Association and Warkworth Area Liaison Group

289. The evidence from the One Mahurangi Business Association and Warkworth Area Liaison Group (**One Mahurangi**) in respect of NoR 1 was that its location should be altered to place it to the south of the existing Pak'n Save site on the eastern side of the WLR. Their evidence (by way of a Powerpoint presentation) was that this location (being Option 4A in the Requiring Authority's Assessment of Alternatives), would keep all retail activities on the same side of the WLR, and would be "*better for pedestrians with less crossings and better for buses with easy left turns*".<sup>136</sup>

290. The Reply comments on 'Option 4A', and that this option was not considered to be preferable to Option 2A for a number of reasons, including proximity of the land to floodplains and wetlands, steeper topography and greater land requirements. It notes that One Mahurangi's concern regarding pedestrian access is associated with the Matakana Link Road intersection, and that this is unrelated to NoR 1. However, it highlights that the Project "*has been designed to provide for a high quality connection and this is secured through the ULDM condition*", and that "*the proposed location for NoR 1 is supported by the Council's Urban Design*

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<sup>135</sup> EV130, at [2.14]

<sup>136</sup> EV116, at p.8

*specialist*".<sup>137</sup> The Reply therefore advises that the relief sought by One Mahurangi is not supported.

#### Panel findings and recommendations

291. Overall, the Panel accepts the position of the Requiring Authority as set out above, and endorses the inclusion of the condition as proposed in respect of the submission by Foodstuffs for NoR 1.

#### NoR 2 - Woodcocks Road – West Upgrade

292. NoR 2 involves the upgrade of the existing Woodcocks Road – West corridor between Mansel Drive and Ara Tūhono (Puhoi to Warkworth) to an urban arterial corridor with active mode facilities.

#### Ministry of Education

293. The Ministry of Education (**Ministry**) was represented by Emma Howie, who presented evidence in respect of the need to protect the Ministry's landholdings affected by NoRs 2, 4, 6 and 8, and the wording of the LIP condition, but noting that the Ministry's primary concern advanced through its submission was with "*the extent of land to be designated through NoR 2 at 96 – 98 & 100 – 138 Woodcocks Road, and sought amendments to the relevant management plans*".<sup>138</sup> Ms Howie's hearing statement referred to a letter from the Requiring Authority that set out its commitment to ongoing engagement (the Reply advises that this engagement has continued following the hearing), and changes to the conditions. Ms Howie stated that, in summary, the amendments set out in the Requiring Authority's opening submissions "*have largely addressed the Ministry's concerns relating to designation extent, engagement and construction traffic effects*", but that "*there is an ongoing concern relating to limitations placed on the Ministry through NoR 2 in how the frontage of its landholding can be developed until such time that the road upgrades are completed by AT*".<sup>139</sup>
294. We understand that the remaining areas of concern for the Ministry related primarily to aspects of the SCEMP, and a request to use the National Planning Standards definition for educational facilities, rather than the AUP version; and a need for the CTMP condition to specifically reference educational facilities.
295. In respect of the SCEMP, the Reply notes that a change to the basis of the definition is not agreed because the current definition in the proposed conditions aligns with that which is within the AUP. That response appears somewhat circular, but the Panel agrees that, because the purpose of a designation is to provide for activities that would otherwise require consent under a district plan, the

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<sup>137</sup> EV130, at [2.17]

<sup>138</sup> EV79, at [1.3]

<sup>139</sup> EV80, at p.3

definition used in the AUP is more appropriate than the National Planning Standards.

296. Ms Howie supported changes to the CTMP but noted that the condition has not addressed the need to avoid heavy trucks travelling past schools during peak times. She drew attention to the SGA's primary evidence in respect of the Airport to Botany NoRs which she advised had included specific reference to education facilities as an example for non-working and non-movement hours. Accordingly, "*the Ministry would support the inclusion of this example in the CTMP condition, as it highlights the issue of needing to avoid truck movements past schools during peak pick up and drop off times*".<sup>140</sup> Ms Howie's proposed amendments to the CTMP condition wording was as follows:

(i) *the estimated numbers, frequencies, routes and timing of traffic movements, including any specific non-working or non-movement hours (for example on roads servicing educational facilities during pick up and drop off times) to manage vehicular and pedestrian traffic near educational facilities schools or to manage traffic congestion;*

297. The Reply advised that the wording of the CTMP already requires "*consideration of any specific non-working or non-movement hours to manage vehicle and pedestrian traffic near educational facilities*", and that this "*is also coupled with requirements to manage the safety of all transport users and identification of detour routes and other methods to ensure the safe management and maintenance of traffic flows...*".<sup>141</sup>

298. The Reply also states that the Airport to Botany NoRs respond to a very different receiving environment, with affected existing school sites within a built-up residential environment within and adjacent to the designations. In contrast, "*Mahurangi College is located some distance from the NoRs and the future school site has not yet been consented*".<sup>142</sup> Accordingly, the Reply advises that the existing CTMP wording is appropriate, and is not proposed to be amended.

299. The Panel accepts the general point made by the Requiring Authority and considers that the inclusion of an education-specific example within the condition is not necessary. However, we are also of the view that the use of 'educational facilities', rather than 'schools' is preferable to reflect the relevant AUP definition and is the more inclusive term. We note that this amendment has been made in the Reply version of the conditions, and so no change needs to be recommended in this regard.

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<sup>140</sup> Ibid

<sup>141</sup> EV130, at [3.5]

<sup>142</sup> Ibid, at [3.6]

### Grange Ridge Limited

300. The evidence of Diana Bell and Hugh Harvey for Grange Ridge Limited advised of overall support in principle for NoR 2 (and NoR 6). However, Ms Bell was concerned as to whether the NIMP condition would address wider network integration and tie into the existing transport network or is just confined to the Warkworth NoRs.
301. While the submitter had suggested that the road upgrade would increase the capacity of Woodcocks Road, Mr Peake's response memorandum advised that "*[t]he upgrade does not increase the capacity of Woodcocks Road as it would continue to be a two-lane road*", and he also noted that it would likely be designed for slower speeds past the proposed school. He also advises that in his view, "*the intersection is outside the scope of NoR 2 and would be addressed as part of upgrades of works east of Mansell Drive that have been identified in the SGA business case*".<sup>143</sup>
302. The Panel adopts Mr Peake's commentary in this regard and considers that no change needs to be recommended to the NoR to address this submission.

### Mason Heights Gospel Church

303. The evidence of Ms Bell on behalf of the Mason Heights Gospel Church (**Gospel Church**) sought changes to various conditions for NoR 2 (the SCEMP and Project Information conditions), condition 15 (existing property access) and the cost associated with the use of the LIP. These changes were not agreed for the reasons set out in the Requiring Authority's opening submissions as they were not considered necessary, and this same reasoning was applied in its Reply in respect of a new sub-section (d) to the ULDM to reference the UDE maps. The Reply noted that the UDE maps simply identify urban design opportunities, and as we have previously noted, in response to Mr Stenberg's recommendations, these do not prescribe specific outcomes that would warrant their inclusion at this stage.
304. The Reply records Ms Bell's agreement that she would be satisfied with a more generic condition with reference to Gospel Church in the CTMP condition but goes on to say that community groups are included in the updated definition of 'Stakeholders', and accordingly prescribes as a matter of course that the Gospel Church would be engaged as part of the SCEMP process.
305. Ms Bell also queried whether the NIMP condition would address wider network integration or is just confined to the Warkworth NoRs. The Reply comments that "*the condition states that the NIMP must be prepared in collaboration with other relevant road controlling authorities to identify how the Project will integrate with the planned transport network in the Warkworth growth area*".<sup>144</sup> Accordingly, it

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<sup>143</sup> Ibid

<sup>144</sup> EV130, at [3.8]

considers that the conditions are therefore clear that it relates to integration with the wider network and is not limited to the Warkworth NoRs. The Panel reads the requirements of the condition in the same way, and therefore does not consider it necessary to recommend any amendment to the condition.

One Mahurangi Business Association and Warkworth Area Liaison Group

306. One Mahurangi also raised concerns regarding NoR 2 with respect with 'good urban design' and safety in respect of the Ministry's future school site. As the Reply notes, however, these matters are already able to be addressed through the ULDMP condition in particular, including the requirement to incorporate appropriate walking and cycling connectivity.
307. More significantly, One Mahurangi proposed an alternative alignment for Woodcocks Road, essentially becoming a straight road running west-south-west to its connection with the proposed intersection that forms part of NoR 8 (Ara Tūhono). This proposal was addressed in the evidence of Mr Titter, who explained that the Assessment of Alternatives process confirmed that the corridor "*should progress through route refinement, as opposed to a new corridor alignment*".<sup>145</sup> The evidence of Ms Seymour acknowledged that One Mahurangi's option provides a direct vehicle link connection to Ara Tūhono, but:<sup>146</sup>

*"it does not replace the need to upgrade Woodcocks Road to provide for walking and cycling facilities, and sufficient space for bus stops and shelters and as such I consider that the upgrade of Woodcocks Road is necessary to provide transport connections for all modes, encouraging travel by active modes and public transport"*.

308. As also explained in Mr Titter's evidence, the approach for the Warkworth Projects has been to upgrade existing roads where possible. The Reply therefore refutes the suggestion by One Mahurangi that their alternative comes at "*no extra cost*"<sup>147</sup> because "*it would require the construction of an entirely new road, in addition to the existing Woodcocks Road upgrade works*".<sup>148</sup>
309. One Mahurangi also sought that Falls Road Reserve be closed to motorised traffic. In this regard, the Reply noted that the evidence of Ms Seymour had confirmed future decisions on Falls Road will be made by AT outside of the present NoR process, but that transport modelling had assumed the long-term closure of this route. This is also consistent with the approach under the 2019 Warkworth Structure Plan.

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<sup>145</sup> EV07, at [19.11]

<sup>146</sup> EV28, at [11.72]

<sup>147</sup> EV116, at p.9

<sup>148</sup> EV130, at [3.14]

310. The Panel accepts the Reply submissions in this regard from the Requiring Authority and does not recommend any changes to the conditions in response to the evidence for One Mahurangi.

#### Panel findings and recommendations

311. Overall, the Panel does not recommend any changes in respect of NoR 2 and recommends that this NoR is confirmed (subject to the changes to the conditions that we have recommended elsewhere).

#### **NoR 3 - State Highway 1 – South Upgrade**

312. NoR 3 involves an upgrade of the existing SH1 - South corridor between Fairwater Road and the southern Rural Urban Boundary (**RUB**) to an urban arterial corridor standard with active mode facilities. It incorporates an intersection between the Wider Western Link (**WWL**) and SH1, which formed part of NoR 3 and NoR 8.

#### KA Waimanawa Partnership Limited and Others

313. The submission and evidence from KA Waimanawa Partnership Limited and Others (**KA Waimanawa**) requested a site-specific condition to align the proposed intersection location with the intersection proposed as part of Private Plan Change 93 'Warkworth South' (**PC93**), that was notified on 26 October 2023.<sup>149</sup>
314. The planning evidence presented on behalf of KA Waimanawa, by David Hay and Ian Smallburn, included a copy of letters from the Requiring Authority that confirmed, based on the agreement of all relevant landowners, that the Requiring Authority is agreeable to the submitters' proposed intersection location, but advised that it sought to preserve flexibility at this stage of the NoR and PC93 process. The designation boundary was expanded (to the north-east at two corners of the intersection) to accommodate both locations. However, the legal submissions and evidence presented to the Panel sought further certainty in this regard. This was expressed in the conclusion to Messrs Hay and Smallburn's evidence as follows:<sup>150</sup>

*"In order to provide certainty of location and better integration of land-use activities, we propose amendments to the conditions, particularly condition 11 [LIP] and the location of the WWLR Intersection should [PC 93] be made operative".*

315. This was reinforced by Mr Loutit's legal submissions on behalf of KA Waimanawa which highlighted that the evidence of its witnesses "*demonstrates that a marginal*

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<sup>149</sup> The further submission period closed on 25 January 2024.

<sup>150</sup> EV77, at [11.3]

*difference in the location of the Intersection would have a significant impact on integration with the wider development*".<sup>151</sup>

316. The issue was acknowledged in the Reply, where it was accepted that it would be inconceivable for the intersection to be located in any other location. Accordingly, the Reply advised that in light of this, "[AT] has agreed to update the designation boundary to align with the boundary sought by KA Waimanawa".
317. The Panel agrees with that amendment and accordingly no recommendations arise in respect of it.

#### One Mahurangi Business Association and Warkworth Area Liaison Group

318. One Mahurangi also raised concerns regarding NoR 3 in respect of the uncertainty of access to Toovey Road and to the Driving Range on SH1, and stated there was a lack of detail around timeframes, and the lack of resolution of pedestrian and cycle access to Grange Road.
319. The Reply comments in response to these matters that condition 15 (Existing Property Access) requires consultation with landowners and occupiers whose access will be altered by the Project prior to the submission of the outline plan. The Requiring Authority therefore considers that these concerns will be addressed through that process. The Panel notes that this condition applies across all the NoRs (with an additional requirement in respect of NoR 1), and provides that:

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

320. While we are generally satisfied that this condition requires specific access issues to be resolved through the outline plan process and will address the concerns raised in One Mahurangi's evidence at the relevant time. Accordingly, we do not recommend any changes in respect of One Mahurangi's evidence.

#### Panel findings and recommendations

321. Overall, the Panel accepts the changes to the intersection location within NoR 3 incorporated within the Requiring Authority's Reply and does not recommend any additional changes in respect of this NoR.
322. NoR 3 is therefore recommended to be confirmed.

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<sup>151</sup> EV70, at [2.4]

## **NoR 4 – Matakana Road Upgrade**

### **General matters**

323. NoR 4 involves the upgrade of the existing Matakana Road corridor between the Hill Street intersection and the northern RUB to an urban arterial corridor with active mode facilities. This NoR attracted the most evidence from submitters, and we address these in the same way as the Reply, by addressing a key theme first, relating to changes to the designation width and the design of cycleways.
324. We have outlined earlier in this report the basis on which the widths of the NoRs have been derived, which in summary are based on AT's TDM but incorporate localised narrowing in response to topography or other physical constraints. A key example is the reduction in width to 17m-20m (from 24m) at the south-western end of Matakana Road. An issue raised was that if this reduced width would still meet the project objectives, then why could that not equally apply further along the route.
325. The Reply responded in this regard by stating that:<sup>152</sup>
- “[AT] considers reductions to the typical 24m cross section are only justifiable in constrained locations. Localised reductions in the corridor width require a departure from standards. Whilst the 17m and 20m reduced cross-sections still provide a connected active mode network, they result in compromises to the project design and do not provide sufficient flexibility to achieve other outcomes if extended for an entire corridor. For example, a 17m cross section has no median or provision for bus stops, means there are narrow roads for buses and heavy vehicles, and only has a cycle lane on one side”.*
326. The Reply noted Mr Mason's evidence that the typical 24m cross-section provides enough room to construct a flush median for turning, footpath and separated cycleways, lane widths appropriate for buses and the provision of bus shelters. It states that “[AT] has reviewed the corridor width along Matakana Road and does not consider that any further reductions that can [sic] be made”.<sup>153</sup>
327. Part of the consideration related to the widths of the designation along Matakana Road (and elsewhere in the Warkworth network) was the width and the design of the cycleway components, and the way in which these would connect to other existing or planned parts of the cycleway network. A further aspect was the way in which bus stops would be integrated with cycleways and footpaths.
328. The overall cycleway network was illustrated in AT's Transport Assessment<sup>154</sup> but the Panel was curious to understand how proposed cycleways would connect to existing cycleways on one side of the road (e.g., along Matakana Link Road and

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<sup>152</sup> EV130, at [5.3]

<sup>153</sup> Ibid, at [5.5]

<sup>154</sup> Section 4.2.3.2



SH1), and where it may be more appropriate to establish bidirectional cycleways as opposed to unidirectional, from the perspective of direct access from properties and to minimise the need for crossing of the road. In this regard, we accept the basis of the Requiring Authority's Reply that such details are appropriately resolved at the detailed design stage, and in this respect any reductions in total designation width, where a bidirectional cycleway is deemed to be preferable to two unidirectional cycleways, that will enable potential reductions in overall land acquisition along the route.

329. In particular, the Reply states that *"this decision is best confirmed at implementation when there will be greater certainty about the zoning and land use, including potentially high demand cycling activities"*,<sup>155</sup> and would be determined through the LIP, NIMP and ULDM conditions. It refers to Mr Peake's analysis in his response memorandum as to the various considerations inherent in the design of cycleways, and the Panel records its appreciation of the detail provided therein. We note Mr Peake's overall conclusion as to the merits of the two options as follows:<sup>156</sup>

*"It is my view that the designation, where able, should be retained as proposed to provide the flexibility in the form of the cycle facility, however, where significant constraints exist (either environmental or property) and the effects of the proposed designation are difficult to avoid, manage or mitigate, then further consideration should be given to an alternative cross-section with bi-directional rather than uni-directional cycling facilities even though a Departure from Standard will be required"*.

330. Mr Peake also recommends that the cycleway facilities on Matakana Road should be bi-directional on the western side of the road for the whole length between Hill Street and the Matakana Link Road roundabout. This did not appear to be opposed in the Reply, but we anticipate that this decision would not be formalised until the design of the route is undertaken, including through the ULDM (per clause (g)(iii)(G)), again noting the Requiring Authority's general position that flexibility should be retained at this designation stage.
331. In terms of the position of bus stops, a diagram was produced during the hearing to illustrate the way in which they would be integrated with cycleways and footpaths.<sup>157</sup> As noted in the Reply, Ms Seymour advised us that their location will be best determined once there is greater certainty on adjacent land use and local roading connections.
332. We address below the particular issues raised by submitters as they relate to the NoR in a south-to-north direction.

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<sup>155</sup> EV130, at [5.8]

<sup>156</sup> EV127, at p.26

<sup>157</sup> EV25A

Robyn Alexander and Katherine Heatley

333. Robyn Alexander and Katherine Heatley sought clarity in relation to the potential effects on the notable trees on the northern part of their property at 3 Matakana Road that fall outside the designation (and were not included in Schedule 3 to the NoR). The trees are a Totara and a Himalayan Cedar (also known as a Liquidamber).
334. Each NoR is subject to condition 27 which requires preparation of a Tree Management Plan (**TMP**). The objective of the TMP is “*to avoid, remedy or mitigate effects of construction activities on trees identified in Schedule 3*”. This schedule identifies those trees that are presently protected by the district plan components of the AUP. For NoR 4, Schedule 3 identified seven different trees or groups of trees (also identified via maps).
335. Ms O'Connor provided planning evidence on behalf of the submitters and noted that while Matthew Paul's evidence for the Requiring Authority was that disturbance of the tree roots will be avoided, it was her view that “*[g]iven that there is not yet a detailed design for construction of the urban upgrade the conditions will need to address this issue and ensure any effects on protected trees will be avoided*”.<sup>158</sup>
336. The Reply advises that the Tree Management Plan condition applies to NoR 4, and neither of the subject trees were included in the Schedule. However, it acknowledged that given the proximity of the Himalayan Cedar tree to the NoR boundary (whereas the Totara is further back from this boundary), this tree has been added to the Schedule. This is described as reference 409, being a 'Liquidamber' (Mature). We are not certain that a Liquidamber is the same as a Himalayan Cedar (as described in Matthew Paul's evidence<sup>159</sup>), and so we recommend that this description within Schedule 3 to NoR 4 is verified as part of the Requiring Authority's decision.

Laroc Farm Limited, ECM Signs Limited and ECM Laser Limited

337. The submission from Laroc Farm Limited, ECM Signs Limited and ECM Laser Limited (**Laroc Farm**) related to the effects of NoR 4 on the property at 76 Matakana Road and 7 Sandspit Road, on the eastern side of Matakana Road (also affected by NoR 5). Planning evidence was presented on behalf of Laroc by Ms O'Connor opposing NoR 4 due to the extent of the designation affecting the frontage of this site and associated impacts on the home occupation businesses operated from the property.
338. The rebuttal evidence of Mr Titter advised that the Project Team reviewed the designation boundary, where it was determined that the full extent of the existing

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<sup>158</sup> EV100, at [23]

<sup>159</sup> EV36, at [9.9]

designation was not required for construction purposes and accordingly was able to be drawn back slightly to avoid the building used for the home occupation business.

339. As recorded in the Reply, Ms O'Connor confirmed that the amendments to the designation boundary addressed the landowner's concerns in relation to the building.
340. A further concern was expressed by the landowner and business operator, Darcy Sheehan, in respect of the stormwater pond location on the southern part of his site, being the proposed location of a future home. His evidence noted that while he understood the need for stormwater devices and management, he did not consider that all alternatives had been sufficiently canvassed and referred to the option of using nearby Kowhai Park.
341. The Reply advises in this regard that:<sup>160</sup>

*"[AT] acknowledges the proposed stormwater location impacts on the landowner's future plans for the site and it remains committed to engaging with the landowner to ensure they are kept up to date and informed on the Project timelines. Appropriate relief will be available through the PWA, as explained in the evidence of Mr van der Ham and discussed further in these submissions below".*

342. The Panel acknowledges the role of the PWA in providing appropriate compensation in this regard, as we have discussed in general terms earlier in this report. In light of the evidence that we heard from Mr Sheehan in terms of his experience of consultation (or perceived lack thereof) on the NoR to-date (as also outlined previously), we would urge the Requiring Authority to ensure that priority is given to its commitment to further engagement in respect of further progress on the designation.

#### Northwood Developments Limited

343. We heard evidence from Grant Reddel, the Director of Northwood Developments Limited (**Northwood**), which owns land at 49 Matakana Road (western side of Matakana Road), the frontage of which would be affected by NoR 4. The subject land has been subdivided and developed in stages, and Mr Reddel was particularly concerned about the effect of the NoR on the last stage (Stage 11), which had received subdivision consent in 2018 and would involve the creation of 25 residential lots.
344. Mr Reddel noted that the first meeting with the Requiring Authority was in March 2023, followed by a further meeting in April 2023 where he advised of the subdivision consent, which hitherto had been considered as vacant land by the

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<sup>160</sup> EV130, at [5.40]

Requiring Authority. His evidence outlined two main concerns, being the failure to investigate alternatives that would avoid the Northwood land, and that the effects had not been properly assessed and mitigated.

345. The evidence of Mr Titter advised that, following the Requiring Authority becoming aware of the layout of Northwood's approved subdivision and the impacts of NoR 4 on this, a review of the alignment was undertaken. This resulted in a refinement to the design of the designation and a reduction in its extent (and impact) on the Northwood property, with a shift of the corridor further east to better align with the existing road and narrowing of the corridor to 17-18m. The details of this were further described in Mr Mason's evidence. The Reply notes that the alignment could not be shifted further to the east as this would impact on the business directly opposite (Laroc Farms), and further reductions, or complete avoidance of this property, are not considered feasible in this location, but that "[AT] maintains that the alternatives assessment has been carried out in accordance with section 171(b) of the RMA".<sup>161</sup>
346. Northwood was also represented by Asher Davidson who presented legal submissions on the issues of concern to Northwood. Ms Davidson considered that the extent of land to be designated has not been sufficiently justified by the Requiring Authority. In summary, Ms Davidson considered that the objective for the NoR is able to be met with a 17m width further south on the road, and such a width could be continued past the Northwood property, and the extent of designated land is already available within the existing road reserve. With reference to an Environment Court decision in *Chen*,<sup>162</sup> it was Ms Davidson's concluding submission that "[AT] has simply not done what it needs to do to justify the use of "coercive powers of public authorities to derogate from private property rights"", and therefore "Northwood seeks that the designation be totally removed from the Property".<sup>163</sup>
347. The Reply addressed Northwood's evidence and concerns by setting out the process by which designations would affect land-use and subdivision consents, in terms of the timing of such consents relative to the confirmation of the NoRs. It stated in summary that:
- (a) Consented developments, such as those held by Northwood, would be subject to the ss.176/178 approval requirements when they come to carry out works within the designation boundary.
  - (b) Where approval to implement previously consented activities is denied by a requiring authority (which the Reply advises is unlikely to be the case for Northwood), the landowner may make a claim under s.185 of the RMA.

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<sup>161</sup> EV130, at [5.51]

<sup>162</sup> *Chen v Auckland Transport* [2022] NZEnvC 220 at [33]

<sup>163</sup> EV107, at [42]

- (c) For consents sought following confirmation of the NoRs, the new designations will form a part of the existing environment analysis and will be required to adequately allow for the projects.
  - (d) Regional consent matters are not authorised by the designations, therefore when it comes to implementation of the projects and regional consents are sought, the consented development in the area and the existing consents will form a part of the existing environment.
348. The Reply also referred to the case law relied on by Ms Davidson in respect of what she considered was an inadequate assessment of alternatives, and stated (in summary):
- (a) The *Macfarlane* case<sup>164</sup> is distinguishable as it was decided under the PWA which required the alternatives to be weighed against the Council's Objectives at the detail design/land acquisition stage rather than the long-term strategic Project Objectives for the NoR itself.
  - (b) The principles arising from the High Court's decision in *Queenstown*<sup>165</sup> were simply summarised in the more recent decision of *Chen*. The principles set out in *Queenstown*, and as reinforced and referenced in *Chen*, are agreed with by the Requiring Authority. However, it is noted that these cases establish that what is reasonably necessary requires a threshold assessment that is proportionate to the circumstances of the case to assess whether the proposed work is clearly justified.
349. Further to the above, the Reply states that the suggestion by Ms Davidson that the primary disabling effect for Northwood is its inability to implement its consent without the Requiring Authority's approval appears to assume a ss.176/178 approval would not be forthcoming. It goes on to advise that following the hearing AT have had a constructive meeting with Northwood following the hearing, including a visit to the site and that "[AT] will continue to engage with Northwood on their proposed land swap and facilitating the subdivision".<sup>166</sup> In addition:<sup>167</sup>
- "[AT] has confirmed to Northwood that it will progress a section 176/178 approval for the subdivision (like that which was approved for the Kilns), and it is not proposing an easement across the lots. The LIP can be used to agree levels for future enabling earthworks and then the designation can be drawn back once these works have been completed"*.
350. The Reply goes on to state that the Requiring Authority's assessment of alternatives has been endorsed in Ms Wilkinson's s.42A report (as we have

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<sup>164</sup> *Macfarlane Investments Ltd v Queenstown-Lakes District Council* [2023] NZEnvC 223

<sup>165</sup> *Queenstown Airport Corp Ltd v Queenstown District Council* [2013] NZHC 2347

<sup>166</sup> EV130, at [5.52]

<sup>167</sup> *Ibid*, at [5.53]

referred to earlier). We note, however, Mr Peake's response memorandum in respect to Northwood's concerns:<sup>168</sup>

*"I concur with the submitter that consideration should be given to an alternative alignment for a 17m wide corridor north of Melwood Drive. However, the Requiring Authority would need to determine whether this is a feasible option and the extent to which the change would reduce the designation boundary on the submitter's property. I note that any alternative alignment would need to tie back into the alignment at Melwood Drive. I have no concerns with the proposed land swap proposed by the submitter, subject to confirmation by the Requiring Authority of the acceptability of the revised alignment".*

351. The Panel acknowledges Mr Peake's comments in this regard, but also accepts the reasoning set out in the Requiring Authority's evidence and submissions as to why the extent of the narrower 17m width for the designation should be as confined (in length) as possible. We consider that the assessment of alternatives may not have been as initially thorough as would be expected in respect of the Northwood land, but we accept that the Requiring Authority has sought to address this through further amendments to the NoR and the further dialogue with the submitter referred to in the Reply.
352. We were further advised as part of the Requiring Authority's supplementary memorandum that it has since provided its written consent under s.178(2) thereby allowing Northwood to carry out the proposed subdivision under consent SUB90068869. It notes that a further ss.176/178 approval will, however, be required for works which are not part of that subdivision consent (such as the construction of a house within the designation area), or if that consent is varied.<sup>169</sup>
353. We anticipate that any additional changes to the designation width and alignment will be formalised as part of the Requiring Authority's decision on the NoR.

Pinglu Chen and Jinhua Yang

354. Pinglu Chen and Jinhua Yang own a property at 98 Matakana Road and were represented by Daisy Yang and Anders Chong. Their submission was in opposition, but this was subsequently amended to support, after meeting with two representatives of the Requiring Authority, although they expressed some concern in respect of various details of the NoR. Those matters were addressed in the Requiring Authority's Reply, which we summarise as follows and which we note are largely common across the various NoRs in terms of their effect on property frontages:

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<sup>168</sup> EV127, at p.35

<sup>169</sup> EV131, with a copy of the consent attached as Appendix C

- (a) The Existing Property Access condition will ensure that access to the property is preserved, although some form of retaining wall will be required. This will include access to the garage.
- (b) Stormwater and flooding effects have been considered and the final transport corridor will be designed to achieve the design outcomes as addressed in the Flood Hazard condition.
- (c) The extent of the designation is required for construction, operation and maintenance of the transport corridor. However, following completion of the works, the conditions provide for the extent of the designation to be reviewed and the designation boundary drawn back to the edge of the final formed corridor.
- (d) The ULDMP requires the provision of details on how the Project provides appropriate walking and cycling connectivity to, and interfaces with, existing or proposed adjacent land uses, public transport infrastructure and walking and cycling connections.
- (e) The site is not subject to the same constraints as evident in the Hill Street – Melwood Drive section of Matakana Road.
- (f) The conditions contain vibration standards that must be complied with during construction and are subject to a CNVMP. Where the vibration standards cannot be achieved, a Schedule to the CNVMP must be prepared and consultation must be carried out with the owners and occupiers of sites subject to the Schedule.
- (g) As previously discussed, the LIP provides a mechanism for those developing or master planning sites affected by, or adjacent to, the designated corridor to engage with the Requiring Authority, who have specialist teams who assess and input on third party land use developments (per ss.176/178) in order to promote and ensure integrated land use and transport outcomes.

355. The Panel is satisfied that the response provided in the Reply has appropriately addressed the concerns of the submitter, and that the conditions will provide a framework for the consideration of effects on this property at the relevant time.

Robert Hugh Alwyn Blair

356. Robert Blair provided evidence that queries the extent of the designation in respect of his parent's property at 289 Matakana Road and the extent of batters encroaching onto the property and impacting on his parents' dwelling. He was concerned about the lack of consultation that he had received in respect of the designations (which we have addressed previously) and queried whether a single cycle lane could be provided in this location to reduce the extent of land required.

357. The Reply, with reference to the evidence of Mr Blair, acknowledged the stress to landowners through the process and referred to AT's hardship policies (per the Early Acquisition Guideline for Property) that enable the consideration of requests from landowners for the early acquisition of land impacted by designations, where certain criteria are met.

### One Mahurangi Business Association and Warkworth Area Liaison Group

358. The evidence of One Mahurangi in respect of NoR 4 was that the extent of land take was too great, and they recommend a combined form of walking and cycling provision on the whole of the west side of Matakana Road from the Hill Street intersection to the combined path at Matakana Link Road. The use of a boardwalk over critical lengths would be *“light on the environment and is much better than fills and retaining walls”*.<sup>170</sup>
359. In this regard, the Reply referred to the evidence of Mr Mason which had advised that while alternative design solutions may be available, the final form of such solutions would be determined at the time of implementation, and that the width of the designations would provide sufficient flexibility for such options to be considered. Mr Mason had also explained that *“the SCEMP and ULDMMP conditions and the application of the LIP will enable engagement with landowners to occur and an integrated outcome to be achieved”*.<sup>171</sup>
360. For the reasons set out earlier in this report, the Panel endorses this overall approach to the management of detail design matters at the time that the designations are implemented, and therefore does not consider it necessary to specify the form that cycling/walking infrastructure should take.

### Panel findings and recommendations

361. Overall, the Panel does not recommend any substantive changes in respect of NoR 4 and recommends that this NoR is confirmed (subject to the changes to the conditions that we have recommended elsewhere). It is, however, recommended that the Requiring Authority ensure that the tree referred to as #409 in Schedule 3 is correctly identified (as between a Liquidamber and Himalayan Cedar).

### NoR 5 – Sandspit Road Upgrade

362. NoR 5 involves the upgrade of the existing Sandspit Road corridor between the Hill Street intersection and the eastern RUB to an urban arterial corridor standard with active mode facilities.
363. The Panel heard from One Mahurangi in respect of this NoR, which noted the adoption by the Requiring Authority of a separate combined structure for walking and cycling past the Kilns site. It noted that the NoR could put the bridge adjacent to Park Lane, which would be easier to build and would protect the property at 126 Sandspit Road on the south side. It also noted that NoR 7 (Sandspit Link) *“is*

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<sup>170</sup> EV116, at p.14

<sup>171</sup> EV130, at [5.68]



*required before Sandspit Road can be upgraded because there is no network available to provide an alternative route”.*<sup>172</sup>

364. The Reply referred to the flood-related evidence of Mr Summerhays in respect of this matter, noting that the alternative alignment suggested by One Mahurangi would be within the existing upstream flood plain. This would displace flood storage volume and require the displaced water to be dispersed elsewhere. It would also require the realignment of a natural stream, unless the full length of the proposed alignment was bridged, which would be cost-prohibitive. In addition, and with reference to Mr Mason’s evidence, the alignment of NoR 5 has been developed to maximise use of the existing road corridor, and minimises earthworks and land acquisition requirements, as well as overall costs.
365. The Panel accepts the evidence and submissions of the Requiring Authority in this regard and agrees that the proposed NoR 5 alignment is preferable to that proposed by One Mahurangi.

#### Panel findings and recommendations

366. Overall, the Panel does not recommend any changes in respect of NoR 5 and recommends that this NoR is confirmed (subject to the changes to the conditions that we have recommended elsewhere).

#### **NoR 6 – Western Link South**

367. NoR 6 involves a new urban arterial corridor with active mode facilities between Evelyn Street and the intersection of SH1 and McKinney Road. There were three main parties who raised concerns in respect of NoR 6, with two of these with overlapping, and somewhat competing, interests. We discuss these in turn below.
368. Woodcocks Property Limited (**WPL**) seek a revised alignment of NoR 6 to minimise the encroachment on their proposed residential subdivision at 6 Lachlan Thompson Drive. The subdivision was declined and is subject to an appeal before the Environment Court. The legal submissions for WPL, by Mr Loutit, seek that the extent of encroachment be addressed by way of a site-specific condition as follows:<sup>173</sup>

*New condition 1A:*

*Where a consent is issued for the subdivision of land at 6 Lachlan Thompson Drive, Warkworth, works required for the construction of the Western Link Road South shall be undertaken in general accordance with the Revised*

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<sup>172</sup> EV116, at p15

<sup>173</sup> EV63, at [3.4], noting that a further stormwater-related condition would be required if the new condition 1A is upheld.

*Alignment illustrated in the Drawing .... The concept plan in Schedule 1 shall be updated to reflect the Revised Alignment.*

*Advice note:*

*Condition 1A is a specific exception to condition 1, which provides for the revised alignment of the Western Link Road South where a subdivision consent is granted for land at 6 Lachlan Thompson Road, Warkworth, the revised alignment of Western Link Road South.*

369. Mr Loutit went on to advise that the intent of the condition was to allow NoR 6 to be refined following a decision on the appeal, so that the alternative alignment would be the one to be constructed. He attached to his submission a copy of an agreement with the owner of industrially-zoned land to the east owned by Gumfields Property Ltd (**GPL**). This agreement stated:

*In the event that [this] Western Link South option to remove or change is not accepted by the Panel and the Panel decides there should be a NOR through his undeveloped industrial land then the following is agreed.*

- 1. That Woodcocks Property and Gumfield Property Limited have agreed to the revised NOR 6 alignment shown in the attached plan (the alternative alignment). This is however, subject to a resource consent being issued to Woodcocks Property for a subdivision of land at 6 Lachlan Thompson Drive. That subdivision application is currently on appeal to the Environment Court by Woodcocks Property.*

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370. The Panel expressed some concern during the hearing that the letter was of a conditional nature, and we asked Mr Loutit as to what reliance the Panel, or the Requiring Authority, could place on it. In particular, it appeared to us that the agreement would have the effect of expanding the designation rather than reducing it, and a conditional agreement would fail to meet the 'agree' test for the alteration of a designation under s.181(3)(b). In that regard, the situation would be at variance to the unconditional landowner agreements provided in respect of NoRs 3 and 8 which had allowed the Requiring Authority to proceed to amend the alignment of the intersection that now forms a part of those NoRs.

371. The Panel received a supplementary submission from WPL after the hearing, proposing a more generic form of the abovementioned condition, and addressing the jurisdictional queries that we had raised, including by reference to the provisions of s.182. It was Mr Loutit's submission that:<sup>174</sup>

*"... it is within the requiring authority's power to recommend the designation as the Wider Designation – it will not change the essential nature of the designation, and will not prejudice any submitters. It is then possible for [AT], in accordance with the conditions to reduce the extent of the designation to*

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<sup>174</sup> EV126

*either the Revised Alignment, or to the Notified Alignment, should WPL's subdivision not go ahead".*

372. It was apparent through the hearing, and confirmed through the Reply, that the Requiring Authority was not opposed to the alternative alignment sought by WPL, but did highlight that the proposed alignment was chosen on the basis that it results in less impact on the adjacent live-zoned industrial land owned by GPL. The Reply also noted that the agreement between WPL and GPL is conditional, and therefore was *"not considered to be appropriate for the NoRs"*.<sup>175</sup> It went on to say, with respect to WPL's supplementary submission that:<sup>176</sup>

*"7.9 In our submission it would be premature to amend the designation boundary to accommodate a non-complying subdivision that was declined consent. The designation boundary should only be amended if the Environment Court approves the subdivision application and unequivocal agreement is reached between the landowners.*

*7.10 [AT] therefore continues to support its preferred alignment for NoR 6 as it will have significantly fewer effects on the surrounding industrial land. However, [AT] will continue to engage and work with the landowners and the SCEMP and LIP conditions provide the mechanisms to do this".*

373. The Panel agrees with the Requiring Authority in this regard and consider that in the absence of an unconditional agreement between the respective landowners, the preferred alignment, which minimises the area of live-zoned industrial land that would be affected by NoR 6, should be preferred. We further accept that the LIP and SCEMP conditions will provide a basis on which the alignment may be altered through further dialogue and engagement (and taking into account the Environment Court's decision on the subdivision appeal).
374. We note in respect of the latter point above that the update on the appeal contained in the minutes of the Council's Regulatory and Community Safety Committee of 5 February 2024 (and 9 April 2024) advises that a hearing of the appeal is on hold pending the decision on the NoR. We appreciate that our findings in this regard would not resolve the submission by WPL one way or the other and establishes something of a circular situation with respect to its concurrent appeal to the resource consent decision. However, we do not think that our recommendations (or for that matter the Requiring Authority's decision) can advance matters in the absence of an unequivocal agreement between the respective landowners.
375. The Reply also addresses a further matter raised by WPL, and the request that the Requiring Authority explore alternative options for stormwater management that reduce or remove the need for the Western Link South Wetland. It notes that

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<sup>175</sup> EV130, at [7.3]

<sup>176</sup> Ibid

this was addressed in the rebuttal evidence of Mr Summerhays, which described the way the LIP condition would provide “*the mechanism to work with [WPL] to assess their preferred stormwater pond option in the future if agreement can be reached with Healthy Waters*”.<sup>177</sup> We consider that this approach is appropriate and note in particular that the LIP condition includes, at (c)(i)D, the requirement for the inclusion of design details related to the “*integration of stormwater infrastructure*”.

376. We heard separately from Mr Morrison for GPL, who raised concerns in respect of stormwater and flooding on his land located adjacent to NoR 6. The evidence on his behalf of Ms Bell sought clarification from AT in respect of the flooding issues she had identified. The Reply noted in this regard that Mr Summerhays had confirmed the indicative nature of the relevant NoR drawings, and that the exact size and outlet locations for stormwater would be worked through at the detailed design stage. It also noted that the ‘Revision C’ concept drawing did not show any specific outlet at the location queried by Ms Bell.

#### Panel findings and recommendations

377. Overall, the Panel does not recommend any changes in respect of NoR 6 and recommends that this NoR is confirmed (subject to the changes to the conditions that we have recommended elsewhere).

#### NoR 7 – Sandspit Link

378. NoR 7 involves a new urban arterial corridor with active mode facilities between the intersection of Matakana Road and Te Honohono ki Tai (Matakana Link Road) and Sandspit Road. We heard from a number of submitters in respect of this NoR, as addressed below.

#### Arvida Limited

379. The thrust of evidence and submissions for Arvida Limited (**Arvida**) in respect of NoR 7 was that, while it supports the alignment of the designation, “*it is concerned that the proposed conditions do not provide Arvida with certainty that access to the severed site will be provided*”.<sup>178</sup> They have sought certainty for access to the south-western corner of the site, and that it would not be affected by the Sandspit Link corridor. Terry Church, the transport engineer for Arvida, recommended in this regard that “*the outline plan, or a site specific schedule provide a note outlining the need for access to be provided to new land parcels created by the designation, and that the access be fit for the purposes of the underlying zoning*”.<sup>179</sup>

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<sup>177</sup> EV130, at [7.11]

<sup>178</sup> EV81, at [2.16]

<sup>179</sup> EV85, at [5.4]

380. The Reply noted that this concern would be addressed through the 'Existing Property Access' condition (no.15) which would provide the mechanism for consultation to occur in respect of access arrangements for this site. It goes on to say that:

*"...in the event an agreement cannot be reached, section 34 of the PWA provides that an owner of land may require severed land to be taken. It is relevant to note that Arvida is proceeding with development plans for this area and access configurations may be able to be confirmed through their Private Plan Change process when further information is available on the proposed internal network and likely development pattern in this area. The LIP will further support this process and therefore the site-specific condition around access proposed in the Supplementary Statement of Ms O'Connor and Mr Church dated 20 November 2023 is not supported".*

381. We have noted this condition in respect of other submitters and are satisfied that it will address the nature of concerns raised in this case by Arvida, and effectively responds to the recommendations of Mr Church.

#### Sol Solis Trust

382. The Sol Solis Trust owns land at 95, 97 and 97A Sandspit Road. Its representative, Roger MacDonald, expressed concerns in respect of the consultation process relating to NoR 7, and the assessment of alternatives process. In particular, he was concerned about the lack of consideration as to the effect of the NoR 7 on his family home, which also accommodates some community uses, and preferred that the route should be located further to the north, through the golf course or through the nearby quarry.

383. The Reply clarified the instances of consultation that occurred with Mr MacDonald since 2018, and referred to Mr Titter's evidence that explained the way in which early engagement informed the alternatives process and the subsequent refinement of the various options considered. The Reply went on to describe the Multi Criteria Analysis (**MCA**) through which the options for NoR 7 were assessed, and which takes into account considerations such as socio-economic impacts (e.g., land use and social), natural environment (e.g., stormwater/flooding ecology and natural hazards, including geotechnical) and construction (e.g., utilities/infrastructure, disruption and costs/risks). The existence of houses/property are noted as a further primary consideration. In respect of the MacDonald property, the Reply advises:<sup>180</sup>

*"Due to the constrained environment and the topography the options to the north or south which avoided the Macdonald's existing properties entirely would have resulted in considerable impacts on either the Quarry or the FUZ land to the south".*

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<sup>180</sup> EV130, at [8.9]

384. Accordingly, it goes on to say that the Requiring Authority disagrees with Mr MacDonald's suggestion that the golf course received greater consideration than individual homes during the MCA process. This was noted in that process as a *"key identifiable feature' in the area alongside a number of other factors, rather than a 'constraint' that needed to be avoided completely"*.<sup>181</sup>
385. The Panel accepts the submission from the Requiring Authority in this regard. This also reflects our understanding of the considerations and scope of inquiry as to the assessment of alternatives, and a matter that was also addressed in the opening submissions for the Requiring Authority<sup>182</sup> and an aspect that we addressed in some detail in our recommendation reports in respect of the North-West NoRs. In summary, as relevant to the present issue for the MacDonald property:
- (a) That determining the response to the problem identified (as set out in the first topic addressed in this report) is a matter for a requiring authority to assess, and this takes place through the business case process, and that this level of analysis is not to be 'second guessed' by decision-makers through the RMA process. Effects at landowner level are then to be addressed through conditions and the fair compensation provisions of the PWA.
  - (b) The RMA does not require a project to be the best and most economical option. That is a matter for a requiring authority to determine, having regard to their own statutory mandates and obligations, while individual economic effects are compensated for through the PWA. At the same time, it is important to recognise the economic benefits of the Projects for a wide range of people and communities (as are acknowledged in our statutory assessment later in this report, with respect to s.171(1B)).
386. The Reply also reiterates the fact (albeit in terms of the submissions by the Wynyard Family for NoR 8) that while there may be routes, sites or methods which may be considered by some (including submitters) to be more suitable is an irrelevant matter for our recommendation.<sup>183</sup>
387. Accordingly, and based on our understanding of the matters relevant to determining the adequacy of the assessment of alternatives, we make no recommendations in respect to NoR 7 with respect to the MacDonald property.

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<sup>181</sup> Ibid, at [8.11]

<sup>182</sup> EV01, at [9.6]

<sup>183</sup> EV130, at [9.9]

John Bryham

388. The evidence presented by John Bryham set out his concerns with the proposed alignment of NoR 7, where he noted inter alia:<sup>184</sup>

*“For us the major impost has always been the alignment. Right from the first meeting us neighbours had with S.G. in the central city in 2018 we pointed out that their alignment went through a stand of 200 year old totara which are covenanted, and didn’t show on their projected map, it has appeared obvious to us that the best route both cost-wise and geologically is over the old worked-out lime pit.”*

389. The Reply advised that the SGA had met with Mr Bryham in September 2018 and more recently in June 2023. It notes that they have also sought to contact Quarry representatives without success until just prior to the commencement of the hearing. From those recent discussions the Requiring Authority understands that the Quarry would be seeking resource consent to continue quarry operations for the next 10-20 years. It further notes that the Requiring Authority is continuing to engage with the Quarry in respect of NoR 7 *“other than to confirm its understanding that the Quarry intends to continue operations at the site for some time not the future”*.<sup>185</sup>

390. Mr Bryham also raised concerns with respect to the geological conditions of the area. The Reply notes with reference to the evidence of Mr Paterson that geological conditions in the area are challenging, but that the geology, slope stability and seismic considerations did form part of the alternatives assessment, and that there are a number of geotechnical solutions available to address potential geotechnical risks (i.e., flatter or steeper batter slopes, slope reinforcement, retaining walls, subsoil drainage, slope buttresses or shear keys). It also noted that the appropriate solutions would be worked through at detailed design stage following intrusive geotechnical investigations.

391. In respect of the Panel’s own queries as to the timing of those investigations, the Reply notes Mr Paterson’s evidence to us that the desktop assessment has utilised the New Zealand Geotechnical Database and that this includes information obtained from previous intrusive geotechnical ground investigations in the area.

One Mahurangi Business Association and Warkworth Area Liaison Group

392. The evidence of One Mahurangi in respect of NoR 7 was that its alignment was different to an earlier suggestion of a route outside of the Quarry, and further that the Quarry and Northland Waste will need access during construction.

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<sup>184</sup> EV118, at p.1

<sup>185</sup> EV130, at [8.16]

393. The route alignment option advanced through the NoR has been addressed above with respect to previous submitters, with the Reply noting that “*alternative routes outside the Quarry were considered during the alternatives process but they were discounted for various reasons*”.<sup>186</sup> It also comments that the concern in respect of access is addressed by the aforementioned Existing Access Condition. We agree with and accept those statements by the Requiring Authority.

#### Panel findings and recommendations

394. Overall, the Panel does not recommend any changes in respect of NoR 7 and recommends that this NoR is confirmed (subject to the changes to the conditions that we have recommended elsewhere).

#### NoR 8 - Wider Western Link - North

395. NoR 8 involves a new urban arterial corridor with active mode facilities between Woodcocks Road and the Mahurangi River.

#### Wynyard Family and John Wynyard

##### *Overview*

396. The Panel heard evidence from the Wynyard Family and John Wynyard (**Wynyard**) that the assessment of alternatives undertaken by the Requiring Authority has not placed sufficient emphasis on the strategic importance of Wynyard’s heavy industry land, has failed to coherently evaluate the use of the land to the west of its current alignment, and has failed to undertake a reassessment of alternatives in light of the Council’s FDS. The witnesses for Wynyard also proposed an amended form of the intersection and roundabout for NoR 8 which would incorporate land within the Waka Kotahi designation (previously acquired from Wynyard) for the Puhoi to Warkworth Motorway (Ara Tūhono) and use less of the remaining Wynyard land.
397. The alternative option, as illustrated in the evidence of Kathryn Musgrave for Wynyard,<sup>187</sup> and as summarised in the Requiring Authority’s Reply, proposes:
- (a) Combining the Ara Tūhono motorway ‘southern interchange’ and WWL arterial intersection into a single intersection (roundabout) in the indicative location of the southern interchange (as signalled by the Warkworth DBC recommended network);
  - (b) Shifting the alignment of NoR 8 to the west of the Wynyard land and into the adjacent Waka Kotahi -owned land / Ara Tūhono designation; and

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<sup>186</sup> Ibid, at [8.19]

<sup>187</sup> EV90, at Figure 3



- (c) Combining the existing stormwater infrastructure servicing Ara Tūhono motorway and future proposed stormwater infrastructure for NoR 8.
398. The rationale for the alternative alignment, as summarised in the legal submissions of Patrick Mulligan on behalf of Wynyard, were that it:
- would have a smaller footprint than the proposed layout;
  - is at least as functional (save for having a cycleway on one side);
  - allows the WWL road to be located further west and closer to Ara Tūhono; and
  - would result in far less of the flat land being required to serve Heavy Industry being taken for the WWL.
399. We note the supplementary evidence of Ms O'Connor described the relief sought by Wynyard being:<sup>188</sup>

*“21. Amend the extent of proposed designation NOR 8 to reflect the alternative put forward by the Submitter’s or other such alternative that minimises the impact on the land.*

*22. If the more efficient alternative is not adopted the Requiring Authority should demonstrate what the surplus land in designation 6769 is needed for. Otherwise, as per the conditions of that designation, the designation has to be rolled back”.*

400. We address the evidence and submissions of Wynyard with respect to the response and sub-topics as set out in the Reply, though not in the same order.

*Evaluation of land to the west of the current alignment*

401. The Panel considers that the first and primary point to address in respect of the Wynyard position appears to be whether the ‘surplus’ land within designation 6769 is in fact available to the Requiring Authority. We did not understand there to be any contention that the alternative put forward by Wynyard would represent a more efficient use of land designated for public roading purposes, but it was not demonstrated that this was a realistic option at this time. Although Waka Kotahi are part of the SGA, there was no agreement from Waka Kotahi before us that would enable the alternative alignment proposed by Wynyard (under s.177). We were provided with a copy of the designation, and relevantly that includes a provision, similar to condition 5 in the present case, that requires Waka Kotahi to give notice to the Council under s.182 for removal of those parts of its designation that are no longer required, at the post-construction stage.<sup>189</sup>

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<sup>188</sup> EV93

<sup>189</sup> EV117, Designation number 6769 at condition D3

402. The Reply provided further detail in respect of this issue, noting that Waka Kotahi have awarded a contract to NX2 to finance, design, construct, manage and maintain the Ara Tūhono motorway for 25 years and has a leasehold interest in the Ara Tūhono Project including the land proposed for the Wynyard alternative alignment. The Reply acknowledged the observation of this Panel that the contractual position is of limited relevance to our consideration of NoR 8. Nevertheless, the Reply highlights that NX2 is contractually responsible for implementing and complying with the resource consents and designation for Ara Tūhono.

403. The Reply also responded to our interest in the details of the resource consent and designation requirements for Ara Tūhono, in addition to the condition 5 designation aspect that we have referred to above. In this regard it goes on to note that the Wynyard alternative alignment includes stream mitigation sites for Ara Tūhono that are required by resource consent condition RC58(g). It advises that condition RC58 also requires monitoring of the mitigation sites and that:<sup>190</sup>

*“...depending on the outcomes achieved there may be a requirement for further mitigation works until the monitoring shows the mitigation sites have achieved replacement of the Culvert Site SEV Units. This means condition D3 of the Ara Tūhono designation relating to designation draw-back does not apply to these areas because the stream mitigation sites are required for the long-term operation, maintenance and mitigation of effects of the State Highway”.*

404. The Reply goes on to note that even if the alternative alignment was pursued, there are a number of other challenges that would need to be overcome. These include the following:

- (a) The WWL is likely to be needed well in advance of the Southern Interchange, by approximately ten years. There is also the possibility that developers could bring forward the delivery of the WWL.
- (b) Section 177 of the RMA would apply and AT could not implement the designation for the WWL unless it had first obtained the written consent of Waka Kotahi which may withhold its consent if it is satisfied that the thing to be done (implementing the designation for the WWL) would prevent or hinder the public work or project or work to which the Ara Tūhono designation relates.
- (c) The design of the Southern Interchange for Ara Tūhono would be inherently linked with the design of the WWL.

405. In respect of (a), we also have regard to the evidence of Ms Seymour that:<sup>191</sup>

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<sup>190</sup> EV130, at [9.7]

<sup>191</sup> EV29, at [3.48]

*“...there may be advantages in terms of staging, and implementation, with the proposed alignment not being tied to the Southern Interchange. The exact location of the Southern Interchange has not been confirmed, and it is considered that further design will need to be undertaken when network performance suggests that the Interchange is required, and funding is available”.*

406. We would further note that, with respect to clause (b) above and the outcomes sought by Ms O'Connor, that it is not the role of AT, as the present Requiring Authority, nor this Panel, to compel Waka Kotahi to 'roll back' parts of its own separate designation. In any event, we acknowledge the point made by the Requiring Authority that ongoing mitigation requirements, including through the terms of its resource consent, mean that the rolling back of the designation at this time would be premature.

#### *Consideration of heavy industrial land*

407. The Reply also responded to the issue regarding the assessment of alternatives undertaken, advising (with reference to the evidence of Mr Titter) that it did consider effects on land use, including on proposed heavy industrial land. It notes that the preferred alignment was selected primarily due to its reduced land use and property impacts, thereby retaining a large developable area for future heavy industrial land. In particular, it refers to Mr Titter's evidence in respect of the 'Land Use Futures' criteria of the MCA framework, and the consideration contained therein as *“to what extent the options would impact on the future development of land, integration with the future land use scenario and the size and shape of potential development parcels to enable appropriate development”*.<sup>192</sup>
408. In this regard, and to the extent that Wynyard considers that the land within the Waka Kotahi is available to the Requiring Authority, and should therefore form part of an alternatives assessment, it is our finding that this land is not presently available for the purpose of implementing this route or meeting the objectives of the Requiring Authority in respect of it.
409. Furthermore, and as discussed in terms of NoR 7, in terms of the adequacy of alternatives, it is the Panel's understanding that the RMA does not entrust to us the policy function of deciding the most suitable site, route or method, and that as set out in the Reply *“the executive responsibility for selecting that site route or method remains with the requiring authority”*.<sup>193</sup>

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<sup>192</sup> EV130, at [9.3]

<sup>193</sup> Ibid, at [9.9]

### *Reasonable necessity*

410. The Reply also responds to Mr Mulligan’s legal submissions in respect of the ‘reasonable necessity’ test. It reiterates its comments made in opening submissions that what is required is whether the work and the designation proposed are reasonably necessary to achieve the objectives, not whether the objectives themselves are necessary. The Reply submits that the Panel should not cast judgement on the merits of the Requiring Authority’s objectives. This is by reference to the Environment Court’s decision in *New Zealand Transport Agency v Waikato Regional Council*.<sup>194</sup>
411. The Reply goes on to say that, in any event, the Requiring Authority considers that the implications of the changes between the FULSS and the FDS are overstated, and that it disagrees with the statement that “*the FDS makes it clear there will be no new or upgraded transport corridors before the designations lapse*”.<sup>195</sup> This is because “*the FDS recognises that Central government and the private sector also deliver infrastructure so the delivery of the [WWL] could be sooner than the timeframes in the FDS*”.<sup>196</sup>
412. Accordingly, the Panel does not consider that there is a reasonable basis on which to make any recommendations to adopt the alternative alignment proposed by Wynyard. We anticipate, however, that given the period of time that will elapse before implementation of NoR 8, that the situation with respect to the subject land will become clearer (i.e., possibly removed from designation 6769, and/or may be no longer required to meet resource consent obligations, and/or form part of implementation of the Southern Interchange) such that an amended form of NoR 8, and its associated intersection arrangement, could occur. This amendment would be provided for through the LIP and NIMP conditions, alongside possible ss.177 and 182 processes.

### One Mahurangi Business Association and Warkworth Area Liaison Group

413. The evidence of One Mahurangi set out a range of concerns with respect to NoR 8, while noting that the NoR is the key to the development of industrially-zoned land and the creation of employment in the area. They supported the Wynyard position to move the alignment to the west, being an area “*already designated for roading purposes but has been ignored by SGA*”.<sup>197</sup> Their evidence noted the position advanced in respect of NoR 2, suggesting a direct route from Woodcocks Road that would save 0.5km each way on trips from the Warkworth South development to both schools and businesses in Woodcocks Road, as well as

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<sup>194</sup> EV01, at [9.14], with reference to *New Zealand Transport Agency v Waikato Regional Council* [2023] NZEnvC 055 at [75]–[76].

<sup>195</sup> EV89, at [42]

<sup>196</sup> EV130, at [9.13]

<sup>197</sup> EV116, at p.18

removing the need to construct a roundabout at the north. In their view, NoR 8 “needs to be redesigned before designation”.<sup>198</sup>

414. We have addressed the issue regarding the suggested use of the Waka Kotahi designation in respect of the Wynyard submission above, including the reasons why we have not recommended that alternative. We have also previously considered the amended alignment proposed by One Mahurangi, and we agree with the Requiring Authority as to the reasons why that is not supported, and we have not recommended any changes in this regard.

#### Panel findings and recommendations

415. Overall, the Panel does not recommend any changes in respect of NoR 8 and recommends that this NoR is confirmed (subject to the changes to the conditions that we have recommended elsewhere).

### **RELEVANT STATUTORY PROVISIONS CONSIDERED**

#### Introduction

416. AT is a requiring authority in terms of s.166 of the RMA and has given notice to the Council under s.168 of its requirement for the works associated with the road construction and improvement projects described as NoRs 1 - 8.
417. We have previously set out the wording of s.171 which sets out the matters to which this Panel must have regard when considering these NoRs and any submissions received, and in making our recommendations to the Requiring Authority. Section 171 is subject to Part 2, which states the purpose and principles of the RMA.
418. Our recommendation in respect of the NoRs are therefore subject to the provisions of s.171 as set out above, and we address the specific clauses of s.171(1) below.

#### **Section 171(1)(a) – Any relevant provisions of a national policy statement, a New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, a regional plan, a district plan or proposed district plan**

419. The Panel notes that s.171(1)(a) requires that we consider the environmental effects of allowing the activity, having particular regard to the various statutory planning documents within the national, regional and local hierarchy. In other words, the environmental effects are to be assessed against the environment envisaged by those planning documents and the environmental outcomes sought by the relevant objectives and policies for the land through which the Warkworth NoR routes are to pass. The analysis within the s.42A report and the evidence for

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<sup>198</sup> Ibid

the Requiring Authority contained a comprehensive review of the framework established by these documents including the statutory provisions as they relate to various parts of the routes.

420. As set out in the Requiring Authority's opening submissions, the assessment of effects on the environment for the NoRs has been limited to matters that trigger district plan consent requirements as these are the only activities to be authorised by the proposed designations.<sup>199</sup> Accordingly, where National Environmental Standard (**NES**) or regional plan consenting requirements are triggered, these will not be authorised by the proposed designations. Resource consents will be required in the future to authorise activities controlled under the NES and regional plan matters of the AUP.
421. Section 7 of the s.42A report identifies the policy and planning provisions from the National Policy Statement on Urban Development (**NPS-UD**), the National Policy Statement on Freshwater Management (**NPS-FM**), and the Regional Policy Statement (**RPS**) and district plan sections of the AUP.
422. Ms Wilkinson's assessment set out in her s.42A report advised that she was in general agreement with the Requiring Authority's assessment of these statutory documents and that the Projects align with the relevant provisions of the national policy statements, policy documents and plans. This was particularly so at the strategic level in terms of the way in which the NoRs will facilitate urban growth and promote land use transport integration. She did note, with respect to the NPS-UD, that evidence, or supporting conditions, would be required to ensure that the projects:<sup>200</sup>
- “... can practically be provided to serve development in a manner that does not compromise the development of adjacent land, provides for the safety of road users, the efficient operation of the network and ultimately a well-functioning urban environment”.*
423. This was noted to be of particular significance in respect of NoRs 1, 6, 7 and 8, and their ability to integrate with urban growth and result in a well-functioning urban environment.
424. Ms Wilkinson advised that she generally agrees with SGA's assessment of the AUP provisions, subject to further evidence in respect of the NPS-UD, recommended amendments to conditions and the implementation of the management plans and processes proposed as part of the NoRs.<sup>201</sup>
425. We adopt Ms Wilkinson's assessments and conclusions for the purpose of this recommendation.
426. Expert planning evidence from the submitters was less comprehensive in its coverage, being focused on particular points of contention, but in some cases

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<sup>199</sup> EV01, at [8.10]

<sup>200</sup> Agenda, at p.115

<sup>201</sup> Ibid, at p.120

brought our attention to specific elements of the planning documents upon which their evidence focussed. We find that the conditions attached to the recommendation address the concerns raised in the submitter evidence about the consistency of the Projects with the relevant provisions.

427. The preceding parts of this report have considered the adverse effects of the NoRs where there were matters remaining in contention between the Requiring Authority, the submitters and the Council (or matters raised by this Panel), and we have made our findings in respect of these matters, having regard to the relevant statutory tests and the conditions proposed by the Requiring Authority and our recommended amendments (set out in Attachment A).

**Section 171(1B) - any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation**

428. Section 171(1B) provides that the effects to be considered under s.171(1) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, as long as those effects result from measures proposed or agreed to by a requiring authority.
429. Positive effects were described at section 10 of the AEE and were referenced by Ms Wilkinson in the s.42A report.<sup>202</sup> To a large extent, these effects form part of the overall rationale for the Warkworth projects and align with the Project objectives. They were noted to include in a s.171(1B) sense a number of general matters (such as supporting and enabling growth and providing improved access to economic and social opportunities and improved resilience in the strategic transport network); supporting transformational mode shift and sustainable outcomes; encouraging land use and transport integration; providing for improved road-user safety; and integrating the transport response with the needs and opportunities of network utility providers. We accept that these positive effects identified by the Requiring Authority relate to the Project as a whole and we have taken these into consideration when balancing any adverse effects on the environment.
430. These positive effects were further highlighted in the evidence of Mr Titter who highlighted safety and transport integration outcomes.<sup>203</sup> He also referred to the evidence of other witnesses for the Requiring Authority who identified a range of positive effects (as well as addressing adverse effects), being the evidence of Michelle Seymour (transportation), Claire Drewery (road noise), Benjamin Frost (urban design), Matthew Paul (arboriculture), Michiel Jonker (ecology), Michael Summerhays (flood management), Heather Wilkins (landscape and visual) and Hayley Glover (archaeological).

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<sup>202</sup> Ibid, at p.43

<sup>203</sup> EV07, at [31.2]

431. We also note that while a number of planning experts appeared for submitters in respect of particular site-specific concerns and issues, they did not generally oppose the NoRs and acknowledged some of the broader positive effects that would arise from their implementation.
432. Overall, the Panel agrees with the conclusions of the Council and Mr Titter that the Warkworth NoRs will provide for a range of positive effects and outcomes as summarised above.

**Section 171(1)(b) – Adequate consideration has been given to alternative sites, routes, or methods of undertaking the work or that it is likely that the work will have a significant adverse effect on the environment.**

433. Pursuant to s.171(1)(b), subject to Part 2 of the RMA, we must have particular regard to whether adequate consideration has been given to alternative sites, routes and methods of undertaking the public work, if the requiring authority does not have an interest in the land sufficient for undertaking the work, or it is likely that the work will have a significant adverse effect on the environment.
434. The consideration of alternatives is a matter of whether we are satisfied that the Requiring Authority has adequately considered alternatives, rather than whether the ‘best’ option has been chosen, or that all possible alternatives have been considered. Therefore, the option chosen by the Requiring Authority is the one that it considers meets the objectives of the Requiring Authority for the Projects. As explained in the Requiring Authority’s opening submissions, the Requiring Authority needs to ensure that it has considered all reasonable options and has not acted arbitrarily or given cursory consideration to the alternatives.
435. We note that a detailed explanation of the assessment of alternatives for the proposed alignments for each NoR was set out in Appendix A of the AEE and in the evidence of Mr Titter. From Mr Titter’s evidence we understand that the assessment of alternatives has been detailed and rigorous.<sup>204</sup> We are further satisfied that the documentation supporting the NoRs and its evidence clearly demonstrate the adequacy of the optioneering process and assessment.
436. The primary issues with respect to alternatives was related to some aspects of designation alignment, as discussed with respect to specific NoRs earlier in this report. Submissions in this regard were addressed by Mr Titter, including by way of a summary statement specifically related to the assessment of alternatives.
437. We also acknowledge the point made in the Requiring Authority’s opening submissions that while some submitters remain concerned with its choice of corridors or alignments, “*no party has seriously challenged the process used to consider alternatives*”.<sup>205</sup> Those submissions also highlighted the agreement of Ms Wilkinson in this regard. The opening submissions went on to state that:<sup>206</sup>

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<sup>204</sup> EV07, at [40.2]

<sup>205</sup> EV01, at [9.10]

<sup>206</sup> Ibid, at [9.12]



*“It is clear that there has been sufficient investigation undertaken, and that [AT] did not act arbitrarily or give only cursory consideration to alternative routes, sites and methods. The alternatives assessment process was robust, transparent and replicable. While some submitters have questioned the adequacy of the assessment in some specific respects<sup>45</sup> the fact remains that the corridors advanced to NoR stage represent appropriate and carefully considered solutions to the issues identified in the Investment Objectives and Project Objectives”.*

438. Overall, and other than those alignment issues discussed in respect of specific NoRs as addressed earlier, we conclude that the evidence from the Requiring Authority in respect of its assessment of alternatives was extensive and generally uncontested other than those instances that we have addressed in respect of two particular NoRs. Accordingly, we find that adequate and appropriate consideration was given to alternative routes and methods.

**Section 171(1)(c) - Whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.**

439. Section 171(1)(c) requires that we must have particular regard to whether the work and designation are ‘reasonably necessary’ for achieving the objectives of the Requiring Authority for which the designation is sought. The project objectives were fully described in the documentation for the NoRs (and have been outlined earlier in this report), the legal submissions and evidence, as was the need for the specific works being reasonably necessary to achieve them.
440. The Requiring Authority’s opening submissions advised of two particular legal considerations related to the question posed by s.171(1)(c), and to which we have previously referred. Firstly, the Panel was advised that the High Court<sup>207</sup> has described the threshold of ‘reasonably necessary’ as falling somewhere between expedient or desirable on the one hand and essential on the other, with the use of ‘reasonably’ allowing some form of tolerance. On this interpretation, a threshold assessment may be made *“that is proportionate to the circumstances of the case to assess whether the proposed work is clearly justified”*.<sup>208</sup> Secondly, what is then required is:<sup>209</sup>

*“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”.*

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<sup>207</sup> By reference to *Queenstown Airport Corporation Limited v Queenstown Lakes District Council* [2013] NZHC 2347 at [93] – [96]

<sup>208</sup> EV01, at [9.13]

<sup>209</sup> *Ibid*, at [9.14], with reference to *New Zealand Transport Agency v Waikato Regional Council* [2023] NZEnvC 055 at [75]–[76]

441. We have previously described the Project objectives, and as noted in the opening submissions, the AEE provides an extensive analysis of how the NoRs are reasonably necessary to achieve meet those objectives.<sup>210</sup> Mr Titter’s evidence referred again to the assessment undertaken in the AEE and advised that he remained “*of the view expressed in the AEE that the work and NoRs are reasonably necessary for achieving the objectives as required under section 171(1)(c) of the RMA*”.<sup>211</sup>
442. The Panel notes that some submitters have questioned whether the extent of the designation is reasonably necessary, including in relation to the extent of land required for operation and/or construction and for stormwater treatment. We have considered these issues previously in this report, and have found the designation extent, as finalised through the Requiring Authority’s amendments, to meet the threshold of ‘reasonably necessary’ as we have understood that test to have been defined by the courts.
443. Accordingly, it is the Panel’s finding that the Warkworth NoRs meet the requirements of s.171(1)(c).

**Section 171(1)(d) Other matters considered reasonably necessary in order to make a recommendation on the requirement.**

444. We were not presented with any specific ‘other matters’ from the Requiring Authority that would be of particular moment to an assessment under s.171(1)(d). Mr Titter’s evidence did refer to the then draft version of the FDS, but he was of the view that this was not an ‘other matter’ that would be reasonably necessary to consider as part of our recommendations, although he advised that the status of the FDS would be monitored and updated would be provided at the hearing if necessary.<sup>212</sup>
445. The s.42A report noted that the AEE had also included an assessment against a range of other legislation, central government and local government plans, strategies and policies. These included the Government Policy Statement on Land Transport for 2021/22 – 2030/31; the Emissions Reduction Plan 2022; Auckland Regional Land Transport Plan 2018-2028; the Auckland Transport Alignment Project 2021-2031 (**ATAP**); and the Warkworth Structure Plan. Ms Wilkinson advised that she generally concurs “*with the assessments and conclusions of the AEE on any other matter and the range of other documents listed in section 23.3 of the AEE*”.<sup>213</sup>
446. The Requiring Authority’s opening submissions also advised, in the context of s.171(1)(d), that other legislation and policy has informed the development of the Warkworth NoRs. The submissions highlighted that:<sup>214</sup>

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<sup>210</sup> AEE, at sections 3.4 and 6

<sup>211</sup> EV07, at [7.4]

<sup>212</sup> Ibid, at [48.26]

<sup>213</sup> Agenda, at p.122

<sup>214</sup> EV01, at [9.20]

*“At a strategic policy level, the objectives of the Supporting Growth Programme are recognised as a priority for Auckland. For example, the [ATAP] identifies the "critical role" of transport in delivering a successful Auckland, which means working towards transport objectives that include "enabling and supporting Auckland's growth".<sup>215</sup> This is what the projects seek to achieve. The objectives being progressed by Te Tupu Ngātahi are also supported by Auckland's strategic policy documents, including the FDS, with funding prioritised for Te Tupu Ngātahi to undertake these initiatives”.*

447. The conclusions of the s.42A report and evidence and submissions of the Requiring Authority in this regard were not challenged through the hearing, and the Panel therefore finds that the range of other legislation, central government and local government plans, strategies and policies identified in the AEE, and including the confirmed FDS (as discussed elsewhere), are relevant ‘other matters’, with which the Projects are generally aligned.

## **PART 2 OF THE RMA**

448. Part 2 of the RMA sets out its purpose and principles at ss. 5 to 8, with the overall purpose being sustainable management as defined in s.5. Our findings as to how the Project fares against the relevant clauses of Part 2 are set out below.
449. In terms of s.5, the Panel recognises that the proposal will generate adverse environmental effects, but subject to compliance with the conditions we are recommending to the Requiring Authority these effects are considered to be no more than minor and will be outweighed by the positive benefits of providing for the community’s social, cultural and economic wellbeing by enabling the development of roading infrastructure proposed in the NoRs. The conditions to be attached to the designation, including the Panel’s recommended amendments, will ensure that adverse effects are avoided or mitigated to the extent that is practicable, and will address the maintenance and enhancement of amenity values and quality of the environment, such as construction traffic and access, noise, infrastructure, property effects and landscape amenity.
450. Overall, therefore, we adopt Mr Titter’s assessment of s.5 that while the NoRs will result in some adverse effects, *“when considering the significant benefits of the transport corridors, and the measures proposed to avoid, remedy and mitigate the adverse effects, the Warkworth Package is consistent with the purpose and principles of the RMA”.*<sup>216</sup>
451. We have had regard to the matters of national importance listed in s.6, and these were addressed in appropriate detail in the AEE, as referred to in the s.42A report. Key points in respect of s.6 were referred to by Mr Titter, who highlighted that:<sup>217</sup>

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<sup>215</sup> With reference to the AT Alignment Project 2021-2031, at 31

<sup>216</sup> EV07, at [52.1]

<sup>217</sup> Ibid

- (a) Section 6(c) would be addressed through measures to appropriately mitigate the actual or potential effects on terrestrial ecology, including Threatened or At-Risk birds, and that potential impacts on natural wetlands will be assessed and managed through future regional consenting processes. In addition, and where possible, efforts have been made to avoid significant ecological areas.
  - (b) Section 6(h) is able to be met through the design measures described by Mr Summerhays to provide resilience to flooding, inundation and climate change through the future detailed design of the transport corridors.
452. Section 7 includes 'other matters' that are relevant to the proposed designations. Key points in respect of s.7 were also addressed by Mr Titter, who stated that:
- (a) The ethic of stewardship (s.7(b)) would be recognised through engagement with key stakeholders, business associations, community groups and the wider community who exercise stewardship over particular resources.
  - (b) The maintenance and enhancement of amenity values (s.7(e)) would be achieved through the development of the concept design through the implementation of the ULDMP.
453. No issues with respect to s.8, which requires all persons exercising functions and powers under the RMA to take the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) into account, were drawn to our attention. It is recorded that AT, and the SGA generally, have established a collaborative working relationship with Mana Whenua, as described in section 11 of the AEE. Mr Titter's evidence advised in this regard that:
- "Manawhenua have been actively involved through the development of the NoRs and will continue to exercise kaitiakitanga through the future phases of the projects. This includes in the preparation of management plans and the involvement of Manawhenua as partners in the detailed design and consenting phases. This ongoing partnership will ensure that appropriate regard has been had to the matters in sections 6(e) 7(a) and 8".*
454. The Panel notes that this continued engagement will be mandated through the requirements contained in the Cultural Advisory Report requirements (condition 11) and in several of the management plan conditions.
455. Overall, the Panel accepts the assessment provided in the s.42A report and the evidence for the Requiring Authority that the purpose and principles of the RMA as set out in Part 2 will be fulfilled by the Projects.

## **CONCLUSIONS AND RECOMMENDATIONS**

456. Section 171 of the RMA provides the means by which the NoRs can be recommended to be confirmed or otherwise by Auckland Transport. In terms of s.171 we consider that the NoRs are appropriate, subject to the conditions we are

recommending be adopted (as Attachment A) by the Requiring Authority and should be confirmed.

457. Overall we conclude in line with the s.42A recommendation report that:
- (a) The notices of requirement and associated works are reasonably necessary for achieving the objectives of the Requiring Authority.
  - (b) Adequate consideration has been given to alternative sites, routes or methods of undertaking the work identified in the NoRs.
  - (c) The notices of requirement are generally consistent with the relevant AUP provisions.
  - (d) The NoRs are generally in accordance with Part 2 of the RMA and relevant national environmental standards and national policy statements.
  - (e) Restrictions, by way of conditions, imposed on the designation can avoid, remedy or mitigate any potential adverse environmental effects.
458. We also concluded that the 15-25 -year lapse periods sought by the Requiring Authority for the NoRs are appropriate (subject to majority findings in relation to the recommended imposition of a designation review clause) given the project's scale and the expected timeframes anticipated in respect of funding, land acquisition and outline plan approval processes to be completed, as well as its actual construction.
459. Many of the issues raised by submissions will be appropriately dealt with at the outline plan stage, which must occur before work commences and is subject to overview by the Council.

## RECOMMENDATION

460. In accordance with section 171(2) of the RMA, and on behalf of the Auckland Council the Commissioners recommend to Auckland Transport that the Notices of Requirement for the following designations:
- NoR 1: Northern Public Transport Hub and Western Link North: New public transport hub and park and ride at the corner of SH1 and a new Western Link North arterial corridor with active mode facilities between the intersection of SH1 and Te Honohono ki Tai to a proposed bridge crossing on Western Link North;
  - NoR 2: Woodcocks Road – West Upgrade: Upgrade of the existing Woodcocks Road – West corridor between Mansel Drive and Ara Tūhono (Puhoi to Warkworth) to an urban arterial corridor with active mode facilities;
  - NoR 3: State Highway 1 – South Upgrade: Upgrade of the existing SH1 - South corridor between Fairwater Road and the southern Rural Urban Boundary to an urban arterial corridor with active mode facilities;

- NoR 4: Matakana Road Upgrade: Upgrade of the existing Matakana Road corridor between the Hill Street intersection and the northern Rural Urban Boundary to an urban arterial corridor with active mode facilities;
- NoR 5: Sandspit Road Upgrade: Upgrade of the existing Sandspit Road corridor between the Hill Street intersection and the eastern Rural Urban Boundary to an urban arterial corridor with active mode facilities;
- NoR 6: Western Link - South: New urban arterial corridor with active mode facilities between Evelyn Street and the intersection of SH1 and McKinney Road;
- NoR 7: Sandspit Link: New urban arterial corridor with active mode facilities between the intersection of Matakana Road and Te Honohono ki Tai (Matakana Link Road) and Sandspit Road; and
- NoR 8: Wider Western Link - North: New urban arterial corridor with active mode facilities between Woodcocks Road and the Mahurangi River,

**be confirmed**, subject to the following conditions set out in **Attachment A**.

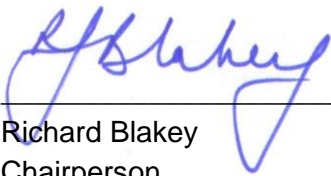
461. Under section 171(3) of the RMA, the reasons for this recommendation are:

- (a) The NoRs satisfy section 171 of the RMA as the designations will avoid, remedy or mitigate adverse environmental effects, subject to the adoption of the recommended conditions set out in Attachment A, and because:
- The designations are in general accordance with to the objectives and policies of the relevant plans, which include:
    - The National Policy Statement for Freshwater Management;
    - The National Policy Statement for Indigenous Biodiversity;
    - The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health;
    - The New Zealand Coastal Policy Statement and the Hauraki Gulf Marine Park Act 2000;
    - Auckland Regional Policy Statement; and
    - Auckland Unitary Plan – Operative in Part,
  - The Requiring Authority has considered alternative sites, routes and methods for undertaking the proposed works;
  - The proposed works are reasonably necessary for achieving the objectives of the Requiring Authority;
  - Subject to the restrictions set out within the recommended conditions (at Attachment A), the designations will avoid, remedy or mitigate adverse environmental effects.

- (b) A 15-25 -year lapse period for the designations is appropriate given the Projects' scale of the proposed works and associated timeframes related to funding, outline plan approvals and construction. This is subject to the imposition of a five-yearly review clause.
- (c) The works proposed by the NoRs is consistent with Part 2 of the RMA in that they represent the sustainable management of natural and physical resources.

## AMENDMENTS TO THE AUCKLAND UNITARY PLAN

462. That the Auckland Unitary Plan be amended as set out in **Attachment A**.



Richard Blakey  
Chairperson



Mark Farnsworth



Vaughan Smith

Date: 17 April 2024

**Attachment A – Warkworth Recommended Conditions**

## Warkworth ~~Proposed~~ Recommended Conditions (NoRs 1 – 8)

### Abbreviations and definitions

| <i>Acronym/Term</i>  | <i>Definition</i>  |
|--|--|
| Activity sensitive to noise  | Any dwelling, visitor accommodation, boarding house, marae, papakāinga, integrated residential development, retirement village, supported residential care, care centre, lecture theatre in a tertiary education facility, classroom in an education facility and healthcare facility with an overnight stay facility  |
| AUP  | Auckland Unitary Plan  |
| BPO or Best Practicable Option   | Has the same meaning as in section 2 of the RMA 1991   |
| CEMP   | Construction Environmental Management Plan   |
| Certification <del>of material changes to management plans and CNVMP Schedules</del> | Confirmation from the Manager that a <u>CNVMP Schedule (or change thereto)</u> or a material change to a <u>management plan</u> <del>or CNVMP Schedule</del> has been prepared in accordance with the condition to which it relates.<br>A <u>CNVMP Schedule (or change thereto)</u> or a material change to a management plan <del>or CNVMP Schedule</del> shall be deemed certified:<br>(a) where the Requiring Authority has received written confirmation from <u>the Council</u> that the <u>CNVMP Schedule or the</u> material change to the management plan is certified; <u>or</u><br>(b) ten <u>(10)</u> working days from the submission of the <u>CNVMP Schedule or the</u> material change to the management plan where no written confirmation of certification has been received; or<br>(c) five <u>(5)</u> working days from the submission of the material change to a CNVMP Schedule where no written confirmation of certification has been received. |
| CNVMP  | Construction Noise and Vibration Management Plan   |
| CNVMP Schedule or Schedule   | A schedule to the CNVMP  |
| Completion of Construction   | When construction of the Project (or part of the Project) is complete and it is available for use  |
| Confirmed Biodiversity Areas   | Areas recorded in the Identified Biodiversity Area Schedule where the ecological values and effects have been confirmed through the ecological survey under Condition 26   |
| Construction Works   | Activities undertaken to construct the Project excluding Enabling Works  |
| Council  | Auckland Council   |
| <u>CMP</u>   | <u>Cultural Monitoring Plan</u>  |
| CTMP   | Construction Traffic Management Plan   |
| Developer  | Any legal entity that intends to master plan or develop land adjacent to the designation   |
| Development Agency   | Public entities involved in development projects   |
| Educational facility   | Facility used for education to secondary level.<br>Includes:   |



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|                              | <p>(a) schools and outdoor education facilities; and</p> <p>(b) accommodation, administrative, cultural, religious, health, retail and communal facilities accessory to the above.</p> <p>Excludes:</p> <p>(c) care centres; and</p> <p>(d) tertiary education facilities.</p>  |
| EMP                          | Ecological Management Plan  |
| EIANZ Guidelines             | Ecological Impact Assessment: EIANZ guidelines for use in New Zealand: terrestrial and freshwater ecosystems, second edition, dated May 2018  |
| Enabling works               | <p>Includes, but is not limited to, the following and similar activities:</p> <p>(a) geotechnical investigations (including trial embankments);</p> <p>(b) archaeological site investigations;</p> <p>(c) formation of access for geotechnical investigations;</p> <p>(d) establishment of site yards, site entrances and fencing;</p> <p>(e) constructing and sealing site access roads;</p> <p>(f) demolition or removal of buildings and structures;</p> <p>(g) relocation of services;</p> <p>(h) establishment of mitigation measures (such as erosion and sediment control measures, temporary noise walls, earth bunds and planting); <u>and</u></p> <p>(i) earthworks associated with enabling works.</p> |
| HHMP                         | Historic Heritage Management Plan   |
| HNZPT                        | Heritage New Zealand Pouhere Taonga   |
| HNZPTA                       | Heritage New Zealand Pouhere Taonga Act 2014  |
| Identified Biodiversity Area | Means an area or areas of features of ecological value where the Project ecologist has identified that the project will potentially have a moderate or greater level of ecological effect, prior to implementation of impact management measures, as determined in accordance with the EIANZ guidelines   |
| LIP                          | Land use Integration Process  |
| Manager                      | The Manager – Resource Consents of the Auckland Council, or authorised delegate   |
| Mana Whenua                  | <p>Mana Whenua as referred to in the conditions are considered to be the following (in no particular order), who at the time of Notice of Requirement expressed a desire to be involved in the Project:</p> <p>(a) Ngāti Manuhiri</p> <p>(b) Ngāti Maru</p> <p>(c) Ngāti Tamatera</p> <p>(d) Ngāti Whanaunga</p> <p>(e) Te Ākitai Waiohua</p> <p>(f) Ngai Tai Ki Tamaki</p> <p>(g) Ngāti Whātua o Kaipara</p> <p>(h) Ngāti Paoa Trust Board</p> <p>(i) Te Kawerau a Maki</p> <p>(j) Te Runanga o Ngāti Whātua</p> <p>(k) Te Patu Kirikiri</p> <p>(l) Ngāti Paoa Iwi Trust.</p>  |

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|   | <b>Note:</b> other iwi not identified above may have an interest in the Project and should be consulted   |
| 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   |
| NOR                                     | Notice of Requirement   |
| NZAA                                    | New Zealand Archaeological Association  |
| Outline Plan                            | An outline plan prepared in accordance with section 176A of the RMA   |
| Project Liaison Person                  | The person or persons appointed for the duration of the Project's Construction Works to be the main point of contact for persons wanting information about the Project or affected by the Construction Works  |
| Protected Premises and Facilities (PPF) | Protected Premises and Facilities as defined in New Zealand Standard NZS 6806:2010: <i>Acoustics – Road-traffic noise – New and altered roads</i>   |
| Requiring Authority                     | Has the same meaning as section 166 of the RMA and, for this Designation is Auckland Transport  |
| RMA                                     | Resource Management Act <del>(1991)</del>   |
| SCEMP                                   | Stakeholder Communication and Engagement Management Plan  |
| Stage of Work                           | Any physical works that require the development of an Outline Plan  |
| Stakeholder                             | Stakeholders to be identified in accordance with Condition 4, which may include as appropriate: <ul style="list-style-type: none"> <li>(a) adjacent owners and occupiers;</li> <li>(b) adjacent business owners and operators;</li> <li>(c) central and local government bodies;</li> <li>(d) community groups;</li> <li>(e) developers;</li> <li>(f) development agencies;</li> <li>(g) educational facilities; and</li> <li>(h) network utility operators.</li> </ul> |
| Start of Construction                   | The time when Construction Works (excluding Enabling Works) start   |
| Suitably Qualified Person               | A person (or persons) who can provide sufficient evidence to demonstrate their suitability, experience and competence in the relevant field of expertise.   |
| <u>TMP</u>                              | <u>Tree Management Plan</u>   |
| ULDMP                                   | Urban and Landscape Design Management Plan  |

| NoR No.                   | No. | Condition  |
|---------------------------|-----|--|
| <b>General conditions</b> |     |  |
| All                       | 1.  | <p><b>Activity in General Accordance with Plans and Information</b></p> <p>(a) Except as provided for in the conditions below, and subject to final design and Outline Plan(s), works within the designation shall be undertaken in general accordance with the Project description and concept plan in Schedule 1.</p> <p>(b) Where there is inconsistency between:</p> <p>(i) the Project description and concept plan in Schedule 1 and the requirements of the following conditions, the conditions shall prevail;</p> <p>(ii) the Project description and concept plan in Schedule 1, and the management plans under the conditions of the designation, the requirements of the management plans shall prevail.</p>   |
| All                       | 2.  | <p><b>Project Information</b></p> <p>(a) A project website, or equivalent virtual information source, shall be established as soon as reasonably practicable and within <u>six (6)</u> months of the designation inclusion in the AUP. All directly affected owners and occupiers shall be notified in writing as soon as reasonably practicable once the website or equivalent information source has been established. The project website or virtual information source shall include these conditions and shall provide information on:</p> <p>(i) the status of the Project;</p> <p>(ii) anticipated construction timeframes;</p> <p>(iii) contact details for enquiries;</p> <p><u>(iv)</u> the implications of the designation for landowners, occupiers and business owners and operators within the designation and information on how/where they can receive additional support following confirmation of the designation;</p> <p><del>(iv)</del><u>(v)</u> <u>how/where to access noise modelling contours to inform the design of development adjacent to the designation;</u></p> <p><del>(v)</del><u>(vi)</u> a subscription service to enable receipt of project updates by email; and</p> <p><del>(vi)</del><u>(vii)</u> when and how to apply for consent for works in the designation under <u>section 176(1)(b)</u> of the RMA.</p> <p>(b) At the start of detailed design for a Stage of Work, the project website or virtual information source shall be updated to provide information on the likely date for Start of Construction, and any staging of works.</p> |
| All                       | 3.  | <p><b>Land use Integration Process (LIP)</b></p> <p>(a) The Requiring Authority shall set up a Land use Integration Process for the period between confirmation</p>  |

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|  |  | <p>of the designation and the Start of Construction. The purpose of this process is to encourage and facilitate the integration of master planning and land use development activity on land directly affected or adjacent to the designation. To achieve this purpose:</p> <ul style="list-style-type: none"> <li>(i) the Requiring Authority shall include the contact details of a nominated contact on the project website (or equivalent information source) required to be established by Condition 2(a)(iii); and</li> <li>(ii) the nominated contact shall be the main point of contact for a Developer or Development Agency wanting to work with the Requiring Authority to integrate their development plans or master planning with the designation.</li> </ul> <p>(b) At any time prior to the Start of Construction, the nominated contact will be available to engage with a Developer or Development Agency for the purpose of:</p> <ul style="list-style-type: none"> <li>(i) responding to requests made to the Requiring Authority for information regarding design details that could assist with land use integration; and</li> <li>(ii) receiving information from a Developer or Development Agency regarding master planning or land development details that could assist with land use integration.</li> </ul> <p>(c) Information requested or provided under Condition 3(b) above may include but not be limited to the following matters:</p> <ul style="list-style-type: none"> <li>(i) design details including but not limited to: <ul style="list-style-type: none"> <li>A. boundary treatment (e.g. the use of retaining walls or batter slopes);</li> <li>B. the horizontal and vertical alignment of the road (levels);</li> <li>C. potential locations for mid-block crossings;</li> <li>D. integration of stormwater infrastructure; and</li> <li>E. traffic noise modelling contours.</li> </ul> </li> <li>(ii) potential modifications to the extent of the designation in response to information received through Condition 3(b)(ii);</li> <li>(iii) the timing of any designation review under Condition 5 or in response to information received through Condition 3(b)(ii);</li> <li>(iv) a process for the Requiring Authority to undertake a technical review of or provide comments on any master planning or development proposal advanced by the Developer or Development Agency as it relates to integration with the Project; and</li> <li>(v) details of how to apply for written consent from the Requiring Authority for any development proposal that relates to land is within the designation under section 176(1)(b) of the RMA.</li> </ul> <p>(d) Where information is requested from the Requiring Authority and is available, the nominated contact shall</p> |
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|     |    | <p>provide the information unless there are reasonable grounds for not providing it.</p> <p>(e) The nominated contact shall maintain a record of the engagement between the Requiring Authority and Developers and Development Agencies for the period following the date in which this designation is included in the AUP through to the Start of Construction for a Stage of Work. The record shall include:</p> <p>(i) details of any requests made to the Requiring Authority that could influence detailed design, the results of any engagement and, where such requests that could influence detailed design are declined, the reasons why the Requiring Authority has declined the requests; and</p> <p>(ii) details of any requests to co-ordinate the forward work programme, where appropriate, with Development Agencies and Network Utility Operators.</p> <p>(f) The record shall be submitted to <u>the</u> Council for information ten working days prior to the Start of Construction for a Stage of Work.</p> |
| All | 4. | <p><b>Stakeholder Communication and Engagement</b></p> <p>(a) At least <u>six (6)</u> months prior to the of detailed design for a Stage of Work, the Requiring Authority shall identify:</p> <p>(i) a list of Stakeholders;</p> <p>(ii) a list of properties within the designation which the Requiring Authority does not own or have occupation rights to; and</p> <p>(iii) methods to engage with Stakeholders and the owners and occupiers of properties identified in (a)(i) – (ii) above.</p> <p>(b) A record of (a) shall be submitted with an Outline Plan for the relevant Stage of Work.</p>   |
| All | 5. | <p><b>Designation Review</b></p> <p><u>Pre-construction review</u></p> <p><u>(a) The Requiring Authority shall, at five (5) yearly intervals from the confirmation of the designation, undertake a review of the designation. The purpose of the review is to keep stakeholders updated on progress with implementation of the project, and to enable areas of designated land to be removed from the designation if identified as being no longer required.</u></p> <p><u>(b) The review shall involve affected landowners and occupiers and:</u></p> <p><u>(i) provide an update on the progress or effort made to give effect to the designation and the anticipated date for implementation;</u></p>  |

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|                         |    | <p><u>(ii) review the extent of the designation to identify any areas of designated land that are no longer required for the designation; and</u></p> <p><u>(iii) be made publicly available on the project website and be made available to the Council.</u></p> <p><u>Post-construction review</u></p> <p><u>(a)(c) As soon as reasonably practicable, but no later than six (6) months</u> following Completion of Construction the Requiring Authority shall:</p> <ol style="list-style-type: none"> <li>i. review the extent of the designation to identify any areas of designated land that it no longer requires for the on-going operation, maintenance or mitigation of effects of the Project; and</li> <li>ii. give notice to <del>Auckland the</del> Council in accordance with section 182 of the RMA for the removal of those parts of the designation identified above.</li> </ol> |
| NoR 2<br>NoR 3<br>NoR 4 | 6. | <p><b>Lapse</b></p> <p>(a) In accordance with section 184(1)(c) of the RMA, this designation shall lapse if not given effect to within 15 years from the date on which it is included in the AUP.</p>  |
| NoR 1<br>NoR 6<br>NoR 8 | 6. | <p><b>Lapse</b></p> <p>(a) In accordance with section 184(1)(c) of the RMA, this designation shall lapse if not given effect to within 20 years from the date on which it is included in the AUP.</p>  |
| NoR 5<br>NoR 7          | 6. | <p><b>Lapse</b></p> <p>(a) In accordance with section 184(1)(c) of the RMA, this designation shall lapse if not given effect to within 25 years from the date on which it is included in the AUP.</p>  |
| All                     | 7. | <p><b>Network Utility Operators and Auckland Council Parks (Section 176 Approval)</b></p> <p>(a) Prior to the start of Construction Works, Network Utility Operators with existing infrastructure and Council in relation to parks located within the designation will not require written consent under section 176 of the RMA for the following activities:</p> <ol style="list-style-type: none"> <li>(i) operation, maintenance and repair works;</li> <li>(ii) minor renewal works to existing network utilities or parks necessary for the on-going provision or security of supply of network utility operations;</li> <li>(iii) minor works such as new service connections; and</li> <li>(iv) the upgrade and replacement of existing network utilities or park facilities in the same location with the same or similar effects as the existing utility or park facility.</li> </ol>     |

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|                                    |           | (b) To the extent that a record of written approval is required for the activities listed above, this condition shall constitute written approval.  |
| <b>Pre-Construction Conditions</b> |           |   |
| <b>All</b>                         | <b>8.</b> | <p><b>Outline Plan</b></p> <p>(a) An Outline Plan (or Plans) shall be prepared in accordance with section 176A of the RMA.</p> <p>(b) Outline Plans (or Plan) may be submitted in parts or in stages to address particular activities (e.g. design or construction aspects), or a Stage of Work of the Project.</p> <p>(c) Outline Plans shall include any management plan or plans that are relevant to the management of effects of those activities or Stage of Work, which may include:</p> <ul style="list-style-type: none"> <li>(i) Construction Environmental Management Plan;</li> <li>(ii) Construction Traffic Management Plan;</li> <li>(iii) Construction Noise and Vibration Management Plan;</li> <li>(iv) Urban and Landscape Design Management Plan;</li> <li>(v) Historic Heritage Management Plan;</li> <li>(vi) Ecological Management Plan;</li> <li>(vii) Tree Management Plan;</li> <li>(viii) Network Utilities Management Plan; and</li> <li>(ix) Network Integration Management Plan</li> </ul>  |
| <b>All</b>                         | <b>9.</b> | <p><b>Management Plans</b></p> <p>(a) Any management plan shall:</p> <ul style="list-style-type: none"> <li>(i) be prepared and implemented in accordance with the relevant management plan condition;</li> <li>(ii) be prepared by a Suitably Qualified Person(s);</li> <li>(iii) include sufficient detail relating to the management of effects associated with the relevant activities and/or Stage of Work to which it relates;</li> <li>(iv) summarise comments received from Mana Whenua and other stakeholders as required by the relevant management plan condition, along with a summary of where comments have: <ul style="list-style-type: none"> <li>A. been incorporated; and</li> <li>B. where not incorporated, the reasons why.</li> </ul> </li> <li>(v) be submitted as part of an Outline Plan pursuant to <a href="#">section</a> 176A of the RMA, with the exception of SCEMPs and CNVMP Schedules;</li> <li>(vi) Once finalised, uploaded to the Project website or equivalent virtual information source.</li> </ul> <p>(b) Any management plan developed in accordance with Condition 9 may:</p> <ul style="list-style-type: none"> <li>(i) be submitted in parts or in stages to address particular activities (e.g. design or construction aspects) a Stage of Work of the Project, or to address specific activities authorised by the designation;</li> </ul> |



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|     |     | <ul style="list-style-type: none"> <li>(ii) except for material changes, be amended to reflect any changes in design, construction methods or management of effects without further process;</li> <li>(c) if there is a material change required to a management plan which has been submitted with an Outline Plan, the revised part of the plan shall be submitted to the Council as an update to the Outline Plan or for Certification as soon as practicable following identification of the need for a revision;</li> <li>(d) Any material changes to the SCEMP(s) are to be submitted to the Council for information.</li> </ul>  |
| All | 10. | <p><b>Stakeholder Communication and Engagement Management Plan (SCEMP)</b></p> <ul style="list-style-type: none"> <li>(a) A SCEMP shall be prepared in consultation with Stakeholders prior to the Start of Construction</li> <li>(b) The objective of the SCEMP is to identify how the public and Stakeholders will be engaged with throughout Construction Works. To achieve the objective, the SCEMP shall include: <ul style="list-style-type: none"> <li>(i) a list of Stakeholders;</li> <li>(ii) a list of properties within the designation which the Requiring Authority does not own or have occupation rights to;</li> <li>(iii) methods to engage with Stakeholders and the owners and occupiers of properties identified in (b)(ii) above;</li> <li>(iv) the contact details for the Project Liaison Person. These details shall be on the Project website, or equivalent virtual information source, and prominently displayed at the main entrance(s) to the site(s);</li> <li>(v) the procedures for ensuring that there is a contact person available for the duration of Construction Works, for public enquiries or complaints about the Construction Works;</li> <li>(vi) methods for engaging with Mana Whenua, to be developed in consultation with Mana Whenua;</li> <li>(vii) methods and timing to engage with landowners and occupiers whose access is directly affected;</li> <li>(viii) methods to communicate key project milestones and the proposed hours of construction activities including outside of normal working hours and on weekends and public holidays, to the parties identified in <del>(b)</del>(i) and (ii) above; and</li> <li>(ix) linkages and cross-references to communication and engagement methods set out in other conditions and management plans where relevant.</li> </ul> </li> <li>(c) Any SCEMP prepared for a Stage of Work shall be submitted to <u>the</u> Council for information ten working days prior to the Start of Construction for a Stage of Work.</li> </ul> |



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| All | 11. | <p><b>Cultural Advisory Report</b></p> <p>(a) At least six (6) months prior to the start of detailed design for a Stage of Work, Mana Whenua shall be invited to prepare a Cultural Advisory Report for the Project.</p> <p>(b) The objective of the Cultural Advisory Report is to assist in understanding and identifying Ngā Taonga Tuku Iho ('treasures handed down by our ancestors') affected by the Project, to inform their management and protection. To achieve the objective, the Requiring Authority shall invite Mana Whenua to prepare a Cultural Advisory Report that:</p> <ul style="list-style-type: none"> <li>(i) identifies the cultural sites, landscapes and values that have the potential to be affected by the construction and operation of the Project;</li> <li>(ii) sets out the desired outcomes for management of potential effects on cultural sites, landscapes and values;</li> <li>(iii) identifies traditional cultural practices within the area that may be impacted by the Project;</li> <li>(iv) identifies opportunities for restoration and enhancement of identified cultural sites, landscapes and values within the Project area;</li> <li>(v) taking into account the outcomes of (i) to (iv) above, identify cultural matters and principles that should be considered in the development of the, and the Cultural Monitoring Plan referred to in Condition 19</li> <li>(vi) identifies and (if possible) nominates traditional names along the Project alignment. Noting there may be formal statutory processes outside the project required in any decision-making.</li> </ul> <p>(c) The desired outcomes for management of potential effects on cultural sites, landscapes and values identified in the Cultural Advisory Report shall be discussed with Mana Whenua and those outcomes reflected in the relevant management plans where practicable;</p> <p>(d) Conditions 11(b) and (c) will cease to apply if:</p> <ul style="list-style-type: none"> <li>(i) Mana Whenua have been invited to prepare a Cultural Advisory Report by a date at least <del>six (6)</del> months prior to start of Construction Works; and</li> <li>(ii) Mana Whenua have not provided a Cultural Advisory Report within six <del>(6)</del> months prior to <del>the</del> start of Construction Works.</li> </ul> |
| All | 12. | <p><b>Network Integration Management Plan (NIMP)</b></p> <p>(a) At least six (6) months prior to the start of detailed design for a Stage of Work, the Requiring Authority shall prepare, in collaboration with other relevant road controlling authorities, a Network Integration Management Plan (NIMP).</p>  |

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|            |            | <p>(b) The objective of the NIMP is to identify how the Project will integrate with the planned transport network <u>within</u> the Warkworth growth area to achieve an effective, efficient and safe land transport system. To achieve the objective, the NIMP shall include details of the:</p> <ul style="list-style-type: none"> <li>(i) project implementation approach and any staging of the Project, including both design, management and operational matters; and</li> <li>(ii) sequencing of the Project with the planned transport network, including both design, management and operational matters.</li> </ul>   |
| <b>All</b> | <b>13.</b> | <p><b>Urban and Landscape Design Management Plan (ULDMP)</b></p> <ul style="list-style-type: none"> <li>(a) A ULDMP shall be prepared prior to the Start of Construction for a Stage of Work.</li> <li>(b) The objective of the ULDMP(s) is to: <ul style="list-style-type: none"> <li>(i) enable integration of the Project's permanent works into the surrounding landscape and urban context; and</li> <li>(ii) ensure that the Project manages potential adverse landscape and visual effects as far as practicable and contributes to a quality urban environment.</li> </ul> </li> <li>(c) To achieve the objective, the ULDMP(s) shall provide details of how the project: <ul style="list-style-type: none"> <li>(i) is designed to integrate with the adjacent urban (or proposed urban) and landscape context, including the surrounding existing or proposed topography, urban environment (i.e. centres and density of built form), natural environment, landscape character and open space zones;</li> <li>(ii) provides appropriate walking and cycling connectivity to, and interfaces with, existing or proposed adjacent land uses, public transport infrastructure and walking and cycling connections;</li> <li>(iii) promotes inclusive access (where appropriate); and</li> <li>(iv) promotes a sense of personal safety by aligning with best practice guidelines, such as: <ul style="list-style-type: none"> <li>A. Crime Prevention Through Environmental Design (CPTED) principles;</li> <li>B. Safety in Design (SID) requirements; and</li> <li>C. Maintenance in Design (MID) requirements and anti-vandalism/anti-graffiti measures.</li> </ul> </li> <li>(v) has responded to matters identified through the Land Use Integration Process (Condition 3)</li> </ul> </li> <li>(d) Mana Whenua shall be invited to participate in the development of the ULDMP(s) to provide input into relevant cultural landscape and design matters including how desired outcomes for management of potential effects on cultural sites, landscapes and values identified and discussed in accordance with Condition 11 may be reflected in the ULDMP</li> </ul> |

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|  |  | <p>(e) <del>Key</del> Stakeholders shall be invited to participate in the development of the ULDMP at least six (6) months prior to the start of detailed design for a Stage of Work.</p> <p>(f) The ULDMP shall be prepared in general accordance with:</p> <ul style="list-style-type: none"> <li>(i) Auckland Transport's Urban Roads and Streets Design Guide;</li> <li>(ii) Waka Kotahi Urban Design Guidelines: Bridging the Gap (2013) or any subsequent updated version;</li> <li>(iii) Waka Kotahi Landscape Guidelines (2013) or any subsequent updated version;</li> <li>(iv) Waka Kotahi P39 Standard Specification for Highway Landscape Treatments (2013) or any subsequent updated version; and</li> <li>(v) Auckland's Urban Ngahere (Forest) Strategy or any subsequent updated version.</li> </ul> <p>(g) The ULDMP(s) shall include:</p> <ul style="list-style-type: none"> <li>(i) a concept plan – which depicts the overall landscape and urban design concept, and explain the rationale for the landscape and urban design proposals;</li> <li>(ii) developed design concepts, including principles for walking and cycling facilities and public transport; and</li> <li>(iii) landscape and urban design details – that cover the following: <ul style="list-style-type: none"> <li>A. road design – elements such as intersection form, carriageway gradient and associated earthworks contouring including cut and fill batters and the interface with adjacent land uses and existing roads (including slip lanes), benching, spoil disposal sites, median width and treatment, roadside width and treatment;</li> <li>B. roadside elements – such as lighting, fencing, wayfinding and signage;</li> <li>C. architectural and landscape treatment of all major structures, including bridges and retaining walls;</li> <li>D. architectural and landscape treatment of noise barriers;</li> <li>E. landscape treatment of permanent stormwater control wetlands and swales;</li> <li>F. integration of passenger transport;</li> <li>G. pedestrian and cycle facilities including paths, road crossings and dedicated pedestrian/ cycle bridges or underpasses;</li> <li>H. historic heritage places with reference to the HHMP (Condition 25);</li> <li>I. re-instatement of construction and site compound areas; and</li> <li>J. re-instatement of features to be retained such as: <ul style="list-style-type: none"> <li>a. boundary features</li> </ul> </li> </ul> </li> </ul> |
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- b. driveways;
  - c. accessways; and
  - d. fences
- (iv) planting details and maintenance requirements:
- A. planting design details including:
    - a. identification of existing trees and vegetation that will be retained with reference to the Tree Management Plan (where relevant). Where practicable, mature trees and native vegetation should be retained;
    - b. street trees, shrubs and ground cover suitable for the location;
    - c. treatment of fill slopes to integrate with adjacent land use, streams, Riparian margins and open space zones;
    - d. planting of stormwater wetlands;
    - e. identification of vegetation to be retained and any planting requirements under the Ecological Management Plan (Conditions 0Aa, Bb, Ce,d and D) and Tree Management Plan (Condition 28);
    - f. integration of any planting requirements required by conditions of any resource consents for the project; and
    - g. re-instatement planting of construction and site compound areas as appropriate.
  - B. a planting programme including the staging of planting in relation to the construction programme which shall, as far as practicable, include provision for planting within each planting season following completion of works in each Stage of Work; and
  - C. detailed specifications relating to the following:
    - a. weed control and clearance;
    - b. pest animal management (to support plant establishment);
    - c. ground preparation (top soiling and decompaction);
    - d. mulching; ~~and~~
    - e. plant sourcing and planting, including hydroseeding and grassing, and use of eco-sourced species;
    - f. irrigation; and
    - e-g. plant replacement (due to theft or plants dying).

***Advice note:***

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|   |  | <del><i>This designation is for the purpose of construction, operation and maintenance of an arterial transport corridor and it is not for the specific purpose of “road widening”. Therefore, it is not intended that the front yard definition in the Auckland Unitary Plan which applies a set back from a designation for road widening purposes applies to this designation. A set back is not required to manage effects between the designation boundary and any proposed adjacent sites or lots.</i></del>  |
| <b>Specific Outline Plan Requirements</b> |  |   |
| <b>NoR 1</b>                              |  | <p><b>Additional Intersection Connection</b></p> <p>The Outline Plan(s) that enables the intersection between the local road serving the Northern Public Transport Hub and the Western Link <u>Road - North</u> shall include design details of a stub to the connection of a fourth arm of the intersection that the owners and occupiers of the site occupied by the Pak'n Save supermarket, being Sec 4 SO 476652 can construct and connect to if they decide to construct access to that site and it has not already been constructed at the time the Outline Plan is prepared.</p> <p><u>Advice note:</u></p> <p><i>For the avoidance of doubt, the Requiring Authority and its contractors are only required to show a stub to the connection of a fourth arm of the intersection on the Outline Plan(s) and they are not required by this condition to construct any part of the stub or the balance of the access to the Supermarket Site.</i></p>  |
| <b>All</b>                                |  | <p><b>Flood Hazard</b></p> <p>For the purpose of Condition 15:</p> <p><del>ARI – means Average Recurrence Interval;</del></p> <p>(a) AEP – means Annual Exceedance Probability;</p> <p>(b) Existing authorised habitable floor – means the floor level of any room (floor) in a residential building which is authorised and exists at the time the outline plan is submitted, excluding a laundry, bathroom, toilet or any room used solely as an entrance hall, passageway or garage;</p> <p>(c) Flood prone area – means potential ponding areas that may flood and commonly comprise of topographical depression areas. The areas can occur naturally or as a result of constructed features.</p> <p>(d) Maximum Probable Development – is the design case for consideration of future flows allowing for development within a catchment that takes into account the maximum impervious surface limits of the current zone or if the land is zoned Future Urban in the AUP, the probable level of development arising from zone changes;</p> <p>(e) Pre-Project development – means existing site condition prior to the Project (including existing buildings and roadways); and</p> |

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|     |     | (f) Post-Project development – means site condition after the Project has been completed (including existing and new buildings and roadways).  |
| All | 14. | <p><b>Flood Hazard</b></p> <p>(a) The Project shall be designed to achieve the following flood risk outcomes:</p> <p><del>(i) no increase in flood levels in a 1% AEP event for existing authorised habitable floors that are already subject to flooding or have a freeboard less than 500mm;</del></p> <p><del>(ii) no increase in 1% AEP flood levels for existing authorised community, commercial, industrial and network utility building floors that are already subject to flooding or have a freeboard of less than 300mm;</del></p> <p><u>(i) maintain the minimum freeboard requirement outlined in the relevant code of practice at the time the Outline Plan is submitted (currently, Auckland Code of Practice for Land Development for Subdivision, Chapter 4: Stormwater, Version 3.0, January 2022);</u></p> <p><u>(ii) No loss in conveyance capacity or change in alignment of existing overland flow paths, unless provided by other means;</u></p> <p><u>(iii) New overland flow paths shall be diverted away from habitable floors and discharged to a suitable location with no increase in flood levels in a 1% AEP event downstream;</u></p> <p>(iv) maximum of 50mm increase in water level in a 1% AEP event <del>outside and</del> adjacent to the designation boundaries between the pre and post Project scenarios.</p> <p>(v) no new flood prone areas; and</p> <p>(vi) no increase of flood hazard <u>classification</u> for main vehicle access to authorised habitable dwellings existing at time the Outline Plan is submitted. The assessment shall be undertaken for the <u>10% and 1% AEP rainfall events</u>.</p> <p><del>Where Flood Hazard is:-</del></p> <p><del>A. Velocity x depth <math>\geq</math> 0.6; or</del></p> <p><del>B. depth <math>&gt;</math> 0.5m; or</del></p> <p><del>C. velocity <math>&gt;</math> 2m/s.</del></p> <p>(b) Compliance with this condition shall be demonstrated in the Outline Plan, which shall include flood modelling of the pre-Project and post-Project <u>in 10% and 1% AEP</u> flood levels (for Maximum Probable Development land use and including climate change).</p> <p><u>(c)</u> Where the above outcomes can be achieved through alternative measures outside of the designation such as flood stop banks, flood walls, raising existing authorised habitable floor level and new overland flow paths or</p> |

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|                                |     | <p>varied through agreement with the relevant landowner, the Outline Plan shall include confirmation that any necessary landowner and statutory approvals have been obtained for that work or alternative outcome.</p> <p><i>Advice note:</i><br/> <u>Consultation with Auckland Council Healthy Waters (or its equivalent) to identify opportunities for collaboration on catchment improvement projects shall be carried out at the detailed design stage.</u></p>  |
| All                            | 15. | <p><b>Existing property access</b></p> <p>Prior to submission of the Outline Plan, consultation shall be undertaken with landowners and occupiers whose vehicle access to their property will be altered by the project. The Outline Plan shall demonstrate how safe reconfigured or alternate access will be provided, unless otherwise agreed with the affected landowner.</p>  |
| <b>Construction conditions</b> |     |   |
| All                            | 16. | <p><b>Construction Environmental Management Plan (CEMP)</b></p> <p>(a) A CEMP shall be prepared prior to the Start of Construction for a Stage of Work.</p> <p>(b) The objective 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. To achieve the objective, the CEMP shall include:</p> <ul style="list-style-type: none"> <li>(i) the roles and responsibilities of staff and contractors;</li> <li>(ii) details of the site or project manager and the Project Liaison Person, including their contact details (phone and email address);</li> <li>(iii) the Construction Works programmes and the staging approach, and the proposed hours of work;</li> <li>(iv) details of the proposed construction yards including temporary screening when adjacent to <del>R</del><u>Residential areas/zones</u>;</li> <li>(v) details of the proposed locations of refuelling activities and construction lighting;</li> <li>(vi) methods for controlling dust and the removal of debris and demolition of construction materials from public roads or places;</li> <li>(vii) methods for providing for the health and safety of the general public;</li> <li>(viii) measures to mitigate flood hazard effects such as siting stockpiles out of floodplains, minimising obstruction to flood flows, actions to respond to warnings of heavy rain;</li> <li>(ix) procedures for incident management;</li> </ul> |



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|     |     | <p>(x) procedures for the refuelling and maintenance of plant and equipment to avoid discharges of fuels or lubricants to watercourses;</p> <p><del>(xi)</del> measures to address the storage of fuels, lubricants, hazardous and/or dangerous materials, along with contingency procedures to address emergency spill response(s) and clean up;</p> <p><del>(xii)</del> <u>a summary of measures included to respond to matters raised in engagement, if not already covered above;</u></p> <p><del>(xi)</del><del>(xii)</del> procedures for responding to complaints about Construction Works; and</p> <p><del>(xii)</del><del>(xiii)</del> methods for amending and updating the CEMP as required.</p>  |
| All | 17. | <p><b>Complaints Register</b></p> <p>(a) At all times during Construction Works, a record of any complaints received about the Construction Works shall be maintained. The record shall include:</p> <p>(i) the date, time and nature of the complaint;</p> <p>(ii) the name, phone number and address of the complainant (unless the complainant wishes to remain anonymous);</p> <p>(iii) measures taken to respond to the complaint (including a record of the response provided to the complainant) or confirmation of no action if deemed appropriate;</p> <p>(iv) the outcome of the investigation into the complaint; and</p> <p>(v) any other activities in the area, unrelated to the Project that may have contributed to the complaint, such as non-project construction, fires, traffic accidents or unusually dusty conditions generally.</p> <p>(b) A copy of the Complaints Register required by this condition shall be made available to the Manager upon request as soon as practicable after the request is made.</p> |
| All | 18. | <p><b>Cultural Monitoring Plan <u>(CMP)</u></b></p> <p>(a) Prior to the start of Construction Works, a <del>Cultural Monitoring Plan</del> <u>CMP</u> shall be prepared by a Suitably Qualified Person(s) identified in collaboration with Mana Whenua.</p> <p>(b) The objective of the <del>Cultural Monitoring Plan</del> <u>CMP</u> is to identify methods for undertaking cultural monitoring to assist with management of any cultural effects during Construction works. To achieve the objective, the <del>Cultural Monitoring Plan</del> <u>CMP</u> shall include:</p> <p>(i) Requirements for formal dedication or cultural interpretation to be undertaken prior to start of</p>   |



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|     |     | <p>Construction Works in areas identified as having significance to Mana Whenua;</p> <ul style="list-style-type: none"> <li>(ii) Requirements and protocols for cultural inductions for contractors and subcontractors;</li> <li>(iii) Identification of activities, sites and areas where cultural monitoring is required during particular Construction Works;</li> <li>(iv) Identification of personnel to undertake cultural monitoring, including any geographic definition of their responsibilities; and</li> <li>(v) Details of personnel to assist with management of any cultural effects identified during cultural monitoring, including implementation of the Accidental Discovery Protocol</li> </ul> <p>(c) If Enabling Works involving soil disturbance are undertaken prior to the start of Construction Works, an Enabling Works <del>Cultural Monitoring Plan</del>CMP shall be prepared by a Suitably Qualified Person identified in collaboration with Mana Whenua. This plan may be prepared as a standalone Enabling Works <del>Cultural Monitoring Plan</del>CMP or be included in the main Construction Works <del>Cultural Monitoring Plan</del>CMP.</p> <p><i>Advice note:</i><br/>Where appropriate, the <del>Cultural Monitoring Plan</del>CMP shall align with the requirements of other conditions of the designation and resource consents for the Project which require monitoring during Construction Works.</p> |
| All | 19. | <p><b>Construction Traffic Management Plan (CTMP)</b></p> <ul style="list-style-type: none"> <li>(a) A CTMP shall be prepared prior to the Start of Construction for a Stage of Work.</li> <li>(b) The objective of the CTMP is to avoid, remedy or mitigate, as far as practicable, adverse construction traffic effects. To achieve this objective, the CTMP shall include: <ul style="list-style-type: none"> <li>(i) methods to manage the effects of temporary traffic management activities on traffic;</li> <li>(ii) measures to ensure the safety of all transport users;</li> <li>(iii) the estimated numbers, frequencies, routes and timing of traffic movements, including any specific non-working or non-movement hours to manage vehicular and pedestrian traffic near educational facilities or to manage traffic congestion;</li> <li>(iv) identification of detour routes and other methods to ensure the safe management and maintenance of traffic flows, including public transport services, pedestrians and cyclists;</li> <li>(v) methods to maintain access to and within property and/or private roads for all transport modes where practicable, or to provide alternative access arrangements when it will not be.</li> </ul> </li> </ul> <p>Engagement with landowners or occupiers whose</p>   |

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|  |  | <p>access is directly affected shall be undertaken in accordance with Condition 10;</p> <p>(vi) the management approach to loads on heavy vehicles, including covering loads of fine material, the use of wheel-wash facilities at site exit points and the timely removal of any material deposited or spilled on public roads;</p> <p>(vii) methods that will be undertaken to communicate traffic management measures to affected road users (e.g. residents / public / stakeholders / emergency services);</p> <p>(viii) auditing, monitoring and reporting requirements relating to traffic management activities shall be undertaken in accordance with the New Zealand Guide to Temporary Traffic Management or any subsequent version;</p> <p>(ix) details of minimum network performance parameters during the construction phase, including any measures to monitor compliance with the performance parameters; and</p> <p>(x) details of any measures proposed to be implemented in the event of thresholds identified in (ix) <u>above</u> being exceeded.</p> <p>(c) Particular consideration is to be given to the Hill Street intersection (being the intersection of State Highway 1, Hill Street, Elizabeth Street, Matakana Road, Sandspit Road and Millstream Place.</p> |
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| <b>All</b>                                  | <b>20.</b>    | <p><b>Construction Noise Standards</b></p> <p>(a) Construction noise shall be measured and assessed in accordance with NZS6803:1999 Acoustics – Construction Noise and shall comply with the noise standards set out in the following table as far as practicable:</p> <p><b>Table 20-1 Construction Noise Standards</b></p> <table border="1"> <thead> <tr> <th>Day of week</th> <th>Time period</th> <th>LAeq(15min)</th> <th>LAfmax</th> </tr> </thead> <tbody> <tr> <td colspan="4"><b>Occupied activity sensitive to noise</b></td> </tr> <tr> <td rowspan="4">Weekday</td> <td>0630h - 0730h</td> <td>55 dB</td> <td>75 dB</td> </tr> <tr> <td>0730h - 1800h</td> <td>70 dB</td> <td>85 dB</td> </tr> <tr> <td>1800h - 2000h</td> <td>65 dB</td> <td>80 dB</td> </tr> <tr> <td>2000h - 0630h</td> <td>45 dB</td> <td>75 dB</td> </tr> <tr> <td rowspan="4">Saturday</td> <td>0630h - 0730h</td> <td>55 dB</td> <td>75 dB</td> </tr> <tr> <td>0730h - 1800h</td> <td>70 dB</td> <td>85 dB</td> </tr> <tr> <td>1800h - 2000h</td> <td>45 dB</td> <td>75 dB</td> </tr> <tr> <td>2000h - 0630h</td> <td>45 dB</td> <td>75 dB</td> </tr> <tr> <td rowspan="4">Sunday and Public Holidays</td> <td>0630h - 0730h</td> <td>45 dB</td> <td>75 dB</td> </tr> <tr> <td>0730h - 1800h</td> <td>55 dB</td> <td>85 dB</td> </tr> <tr> <td>1800h - 2000h</td> <td>45 dB</td> <td>75 dB</td> </tr> <tr> <td>2000h - 0630h</td> <td>45 dB</td> <td>75 dB</td> </tr> <tr> <td colspan="4"><b>Other occupied buildings</b></td> </tr> <tr> <td rowspan="2">All</td> <td>0730h – 1800h</td> <td>70 dB</td> <td></td> </tr> <tr> <td>1800h – 0730h</td> <td>75 dB</td> <td></td> </tr> </tbody> </table> | Day of week | Time period | LAeq(15min) | LAfmax | <b>Occupied activity sensitive to noise</b> |  |  |  | Weekday | 0630h - 0730h | 55 dB | 75 dB | 0730h - 1800h | 70 dB | 85 dB | 1800h - 2000h | 65 dB | 80 dB | 2000h - 0630h | 45 dB | 75 dB | Saturday | 0630h - 0730h | 55 dB | 75 dB | 0730h - 1800h | 70 dB | 85 dB | 1800h - 2000h | 45 dB | 75 dB | 2000h - 0630h | 45 dB | 75 dB | Sunday and Public Holidays | 0630h - 0730h | 45 dB | 75 dB | 0730h - 1800h | 55 dB | 85 dB | 1800h - 2000h | 45 dB | 75 dB | 2000h - 0630h | 45 dB | 75 dB | <b>Other occupied buildings</b> |  |  |  | All | 0730h – 1800h | 70 dB |  | 1800h – 0730h | 75 dB |  |
|---|---------------|--|-------------|-------------|-------------|--------|---|--|--|--|---------|---------------|-------|-------|---------------|-------|-------|---------------|-------|-------|---------------|-------|-------|----------|---------------|-------|-------|---------------|-------|-------|---------------|-------|-------|---------------|-------|-------|----------------------------|---------------|-------|-------|---------------|-------|-------|---------------|-------|-------|---------------|-------|-------|---------------------------------|--|--|--|-----|---------------|-------|--|---------------|-------|--|
| Day of week                                 | Time period   | LAeq(15min)  | LAfmax      |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
| <b>Occupied activity sensitive to noise</b> |               |  |             |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
| Weekday                                     | 0630h - 0730h | 55 dB  | 75 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
|   | 0730h - 1800h | 70 dB  | 85 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
|   | 1800h - 2000h | 65 dB  | 80 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
|   | 2000h - 0630h | 45 dB  | 75 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
| Saturday                                    | 0630h - 0730h | 55 dB  | 75 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
|   | 0730h - 1800h | 70 dB  | 85 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
|   | 1800h - 2000h | 45 dB  | 75 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
|   | 2000h - 0630h | 45 dB  | 75 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
| Sunday and Public Holidays                  | 0630h - 0730h | 45 dB  | 75 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
|   | 0730h - 1800h | 55 dB  | 85 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
|   | 1800h - 2000h | 45 dB  | 75 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
|   | 2000h - 0630h | 45 dB  | 75 dB       |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
| <b>Other occupied buildings</b>             |               |  |             |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
| All   | 0730h – 1800h | 70 dB  |             |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |
|   | 1800h – 0730h | 75 dB  |             |             |             |        |   |  |  |  |         |               |       |       |               |       |       |               |       |       |               |       |       |          |               |       |       |               |       |       |               |       |       |               |       |       |                            |               |       |       |               |       |       |               |       |       |               |       |       |                                 |  |  |  |     |               |       |  |               |       |  |

|   |                          | (b) Where compliance with the noise standards set out in Table 20-1 is not practicable, the methodology in Condition 24 shall apply.   |              |         |             |              |   |  |  |  |  |                          |             |             |                       |           |           |                          |                       |           |           |                     |                    |                                  |  |
|---|--------------------------|--|--------------|---------|-------------|--------------|---|--|--|--|--|--------------------------|-------------|-------------|-----------------------|-----------|-----------|--------------------------|-----------------------|-----------|-----------|---------------------|--------------------|----------------------------------|--|
| All   | 21.                      | <p><b>Construction Vibration Standards</b></p> <p>(a) Construction vibration shall be measured in accordance with ISO 4866:2010 Mechanical vibration and shock – Vibration of fixed structures – Guidelines for the measurement of vibrations and evaluation of their effects on structures and shall comply with the vibration standards set out in the following table as far as practicable.</p> <p><b>Table 21-1 Construction Vibration Standards</b></p> <table border="1"> <thead> <tr> <th>Receiver</th> <th>Details</th> <th>Category A*</th> <th>Category B**</th> </tr> </thead> <tbody> <tr> <td colspan="4"><b>Occupied activity sensitive to noise</b></td> </tr> <tr> <td rowspan="2">Occupied activities sensitive to noise</td> <td>Night-time 2000h - 0630h</td> <td>0.3mm/s ppv</td> <td>2.1mm/s ppv</td> </tr> <tr> <td>Daytime 0630h - 2000h</td> <td>2mm/s ppv</td> <td>5mm/s ppv</td> </tr> <tr> <td>Other occupied buildings</td> <td>Daytime 0630h - 2000h</td> <td>2mm/s ppv</td> <td>5mm/s ppv</td> </tr> <tr> <td>All other buildings</td> <td>At all other times</td> <td colspan="2">Tables 1 and 3 of DIN4150-3:1999</td> </tr> </tbody> </table> <p>* Category A criteria adopted from Rule E25.6.30.1 of the AUP<br/> ** Category B criteria based on DIN 4150-3:1999 building damage criteria for daytime</p> <p>(b) Where compliance with the vibration standards set out in Table 21-1 is not practicable, the methodology in Condition 24 shall apply.</p> | Receiver     | Details | Category A* | Category B** | <b>Occupied activity sensitive to noise</b> |  |  |  | Occupied activities sensitive to noise | Night-time 2000h - 0630h | 0.3mm/s ppv | 2.1mm/s ppv | Daytime 0630h - 2000h | 2mm/s ppv | 5mm/s ppv | Other occupied buildings | Daytime 0630h - 2000h | 2mm/s ppv | 5mm/s ppv | All other buildings | At all other times | Tables 1 and 3 of DIN4150-3:1999 |  |
| Receiver                                    | Details                  | Category A*  | Category B** |         |             |              |   |  |  |  |  |                          |             |             |                       |           |           |                          |                       |           |           |                     |                    |                                  |  |
| <b>Occupied activity sensitive to noise</b> |                          |  |              |         |             |              |   |  |  |  |  |                          |             |             |                       |           |           |                          |                       |           |           |                     |                    |                                  |  |
| Occupied activities sensitive to noise      | Night-time 2000h - 0630h | 0.3mm/s ppv  | 2.1mm/s ppv  |         |             |              |   |  |  |  |  |                          |             |             |                       |           |           |                          |                       |           |           |                     |                    |                                  |  |
|   | Daytime 0630h - 2000h    | 2mm/s ppv  | 5mm/s ppv    |         |             |              |   |  |  |  |  |                          |             |             |                       |           |           |                          |                       |           |           |                     |                    |                                  |  |
| Other occupied buildings                    | Daytime 0630h - 2000h    | 2mm/s ppv  | 5mm/s ppv    |         |             |              |   |  |  |  |  |                          |             |             |                       |           |           |                          |                       |           |           |                     |                    |                                  |  |
| All other buildings                         | At all other times       | Tables 1 and 3 of DIN4150-3:1999   |              |         |             |              |   |  |  |  |  |                          |             |             |                       |           |           |                          |                       |           |           |                     |                    |                                  |  |
| All   | 22.                      | <p><b>Construction Noise and Vibration Management Plan (CNMVP)</b></p> <p>(a) A CNMVP shall be prepared prior to the Start of Construction for Stage of Work.</p> <p>(b) A CNMVP shall be implemented during the Stage of Work to which it relates.</p> <p>(c) The objective of the CNMVP is to provide a framework for the development and implementation of the Best Practicable Option for the management of construction noise and vibration effects to achieve the construction noise and vibration standards set out in Conditions 21 and 22 to the extent practicable. To achieve the objective, the CNMVP shall be prepared in accordance with Annex E2 of the New Zealand Standard NZS6803:1999 ‘Acoustics – Construction Noise’ (NZS6803:1999) and shall as a minimum, address the following:</p> <ul style="list-style-type: none"> <li>(i) description of the works and anticipated equipment/processes;</li> <li>(ii) hours of operation, including times and days when construction activities would occur;</li> </ul>   |              |         |             |              |   |  |  |  |  |                          |             |             |                       |           |           |                          |                       |           |           |                     |                    |                                  |  |

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|            |            | <ul style="list-style-type: none"> <li>(iii) the construction noise and vibration standards for the project;</li> <li>(iv) identification of receivers where noise and vibration standards apply;</li> <li>(v) a hierarchy of management and mitigation options, including any requirements to limit night works and works during other sensitive times, including Sundays and public holidays as far practicable;</li> <li>(vi) methods and frequency for monitoring and reporting on construction noise and vibration;</li> <li>(vii) procedures for communication and engagement with nearby residents and stakeholders, including notification of proposed construction activities, the period of construction activities, and management of noise and vibration complaints.</li> <li>(viii) contact details of the Project Liaison Person;</li> <li>(ix) procedures for the regular training of the operators of construction equipment to minimise noise and vibration as well as expected construction site behaviours for all workers;</li> <li>(x) procedures and requirements for the preparation of a Schedule to the CNVMP (Schedule) for those areas where compliance with the noise Condition 21 and/or vibration standards Condition 22 Category B will not be practicable</li> <li>(xi) identification of trigger levels for undertaking building condition surveys, which shall be Category B day time levels;</li> <li>(xii) procedures and trigger levels for undertaking building condition surveys before and after works to determine whether any cosmetic or structural damage has occurred as a result of construction vibration;</li> <li>(xiii) methodology and programme of desktop and field audits and inspections to be undertaken to ensure that the CNVMP, Schedules and the best practicable option for management of effects are being implemented; and</li> <li>(xiv) requirements for review and update of the CNVMP.</li> </ul> |
| <b>All</b> | <b>23.</b> | <p><b>Schedule to a CNVMP</b></p> <p>(a) A Schedule to the CNVMP (Schedule) shall be prepared prior to the start of the construction to which it relates by a Suitably Qualified Person, in consultation with the owners and occupiers of sites subject to the Schedule, when:</p> <ul style="list-style-type: none"> <li>(i) construction noise is either predicted or measured to exceed the noise standards in Condition 21, except where the exceedance of the <math>L_{Aeq}</math> criteria is no greater than 5 decibels and does not exceed: <ul style="list-style-type: none"> <li>A. 0630 – 2000: 2 period of up to 2 consecutive weeks in any 2 months; or</li> </ul> </li> </ul>  |

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|     |     | <p>B. 2000 - 0630: 1 period of up to 2 consecutive nights in any 10 days.</p> <p>(ii) construction vibration is either predicted or measured to exceed the Category B standard at the receivers in Condition 22.</p> <p>(b) The objective of the Schedule is to set out the Best Practicable Option measures to manage noise and/or vibration effects of the construction activity beyond those measures set out in the CNVMP. To achieve the objective, the Schedule shall include details such as:</p> <p>(i) construction activity location, start and finish dates;</p> <p>(ii) the nearest neighbours to the construction activity;</p> <p>(iii) the predicted noise and/or vibration level for all receivers where the levels are predicted or measured to exceed the applicable standards and predicted duration of the exceedance;</p> <p>(iv) for works proposed between 2000h and 0630h, the reasons why the proposed works must be undertaken during these hours and why they cannot be practicably undertaken during the daytime;</p> <p>(v) the proposed mitigation options that have been selected, and the options that have been discounted as being impracticable and the reasons why;</p> <p>(vi) the consultation undertaken with owners and occupiers of sites subject to the Schedule, and how consultation has and has not been taken into account; and</p> <p>(vii) location, times and types of monitoring.</p> <p>(c) The Schedule shall be submitted to the Manager for certification at least <del>ten (10) 5</del>-working days (except in unforeseen circumstances) in advance of Construction Works that are covered by the scope of the Schedule and shall form part of the CNVMP.</p> <p>(d) Where material changes are made to a Schedule required by this condition, the Requiring Authority shall consult the owners and/or occupiers of sites subject to the Schedule prior to submitting the amended Schedule to the Manager for certification in accordance with (c) above. The amended Schedule shall document the consultation undertaken with those owners and occupiers, and how consultation outcomes have and have not been taken into account.</p> |
| All | 24. | <p><b>Historic Heritage Management Plan (HHMP)</b></p> <p>(a) A HHMP shall be prepared in consultation with <u>the</u> Council, HNZPT and Mana Whenua prior to the Start of Construction for a Stage of Work.</p> <p>(b) The objective of the HHMP is to protect historic heritage and to remedy and mitigate any residual effects as far</p>   |

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|  |  | <p>as practicable. To achieve the objective, the HHMP shall identify:</p> <ul style="list-style-type: none"> <li>(i) any adverse direct and indirect effects on historic heritage sites and measures to appropriately avoid, remedy or mitigate any such effects, including a tabulated summary of these effects and measures;</li> <li>(ii) methods for the identification and assessment of potential historic heritage places within the Designation to inform detailed design;</li> <li>(iii) known historic heritage places and potential archaeological sites within the Designation, including identifying any archaeological sites for which an Archaeological Authority under the HNZPTA will be sought or has been granted;</li> <li>(iv) any unrecorded archaeological sites or post-1900 heritage sites within the Designation, which shall also be documented and recorded;</li> <li>(v) roles, responsibilities and contact details of Project personnel, Council and HNZPT representatives, Mana Whenua representatives, and relevant agencies involved with heritage and archaeological matters including surveys, monitoring of Construction Works, compliance with AUP accidental discovery rule, and monitoring of conditions;</li> <li>(vi) specific areas to be investigated, monitored and recorded to the extent these are directly affected by the Project;</li> <li>(vii) <del>the</del> proposed methodology for investigating and recording post-1900 historic heritage sites (including buildings) that need to be destroyed, demolished or relocated, including details of their condition, measures to mitigate any adverse effects and timeframe for implementing the proposed methodology, in accordance with the HNZPT Archaeological Guidelines Series No.1: Investigation and Recording of Buildings and Standing Structures (November 2018), or any subsequent version;</li> <li>(viii) methods to acknowledge cultural values identified through Condition 11 where archaeological sites also involve ngā taonga tuku iho (treasures handed down by our ancestors) and where feasible and practicable to do so;</li> <li>(ix) methods for avoiding, remedying or mitigating adverse effects on historic heritage places and sites within the Designation during Construction Works as far as practicable. These methods shall include, but are not limited to: <ul style="list-style-type: none"> <li>A. security fencing or hoardings around historic heritage places to protect them from damage during construction or unauthorised access;</li> </ul> </li> </ul> |
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|     |     | <p>B. measures to mitigate adverse effects on historic heritage sites that achieve positive historic heritage outcomes such as increased public awareness and interpretation signage; and</p> <p>C. training requirements and inductions for contractors and subcontractors on historic heritage places within the Designation, legal obligations relating to unexpected discoveries and the AUP Accidental Discovery Rule (E11.6.1) The training shall be undertaken prior to the Start of Construction, under the guidance of a Suitably Qualified Person and Mana Whenua representatives (to the extent the training relates to cultural values identified under Condition 11).</p> <p>(c) Electronic copies of all historic heritage reports relating to historic heritage investigations (evaluation, excavation and monitoring), shall be submitted to the Manager within 12 months of completion.</p> <p><b>Advice note:</b><br/> <i>Accidental Discoveries</i><br/> <i>The requirements for accidental discoveries of heritage items are set out in Rule E11.6.1 of the AUP.</i></p>   |
| All | 25. | <p><b>Pre-Construction Ecological Survey</b></p> <p>(a) At the start of detailed design for a Stage of Work, an updated ecological survey shall be undertaken by a Suitably Qualified Person. The purpose of the survey is to inform the detailed design of ecological management plan by:</p> <p>(i) confirming whether the species of value within the Identified Biodiversity Areas recorded in the Identified Biodiversity Area Schedule 2 are still present; and</p> <p>(ii) confirming whether the project will or may have a moderate or greater level of ecological effect on ecological species of value, prior to implementation of impact management measures with the level of effect to be determined in accordance with Table 10 of the EIANZ guidelines (or subsequent updated version of the table).</p> <p>(b) If the ecological survey confirms the presence of ecological features of value in accordance with Condition 26(a)(i) and that effects are likely in accordance with Condition 26(a)(ii) then an Ecological Management Plan (or Plans) shall be prepared in accordance with Condition 26 <del>Aa</del>, <del>Bb</del>, <del>Cc</del> or <del>Dd</del> for these areas (Confirmed Biodiversity Areas).</p> |



NoR 2  
NoR 3  
NoR 4  
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NoR 8

26.  
26Aa.

### Ecological Management Plan (EMP)

- (a) An EMP shall be prepared for any Confirmed Biodiversity Areas (confirmed through Condition 26) prior to the Start of Construction for a Stage of Work.
- (b) The objective of the EMP is to minimise effects of the Project on the ecological features of value of Confirmed Biodiversity Areas as far as practicable. The EMP shall set out the methods which may include:
  - (i) If an EMP is required in accordance with Condition 26(b) for the presence of long tail bats, the EMP may include:
    - A. measures to minimise, disturbance from construction activities within the vicinity of any active long tail bat roosts (including maternity) that are discovered through survey until such roosts are confirmed to be vacant of bats;
    - B. details of how the timing of any construction work in the vicinity of any maternity long tail bat roosts will be limited to outside the bat maternity period (between December and March) where reasonably practicable;
    - C. details of areas where vegetation is to be retained where practicable for the purposes of the connectivity of long tail bats;
    - D. details of how bat connectivity (including suitable indigenous or exotic trees or artificial alternatives) will be provided and maintained. This could include:
      - a. identification of areas and timeframes for establishment of advance restoration / mitigation planting (including suitable indigenous or exotic trees or artificial alternatives) taking into account land ownership, accessibility and the timing of available funding;
      - b. details of measures to manage the effects of light spill on bat connectivity as far as practicable.
    - E. where mitigation to minimise effects is not practicable, details of any offsetting proposed.
- (c) The EMP shall be consistent with any ecological management measures to be undertaken in compliance with conditions of any regional resource consents granted for the Project.

Advice note:

*Depending on the potential effects of the Project, the regional consents for the Project may include the following monitoring and management plans:*

- (i) *Stream and/or wetland restoration plans;*
- (ii) *Vegetation restoration plans; and*



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|     |               | (iii) Fauna management plans (eg avifauna, herpetofauna, bats).  |
| All | 26 <u>Bb.</u> | <p><b>Ecological Management Plan (EMP)</b></p> <p>(a) An EMP shall be prepared for any Confirmed Biodiversity Areas (confirmed through Condition 26) prior to the Start of Construction for a Stage of Work.</p> <p>(b) The objective of the EMP is to minimise effects of the Project on the ecological features of value of Confirmed Biodiversity Areas as far as practicable. The EMP shall set out the methods which may include:</p> <p>(i) If an EMP is required in accordance with Condition 25(b) for the presence of threatened or at risk birds (excluding wetland birds):</p> <p>A. how the timing of any Construction Works shall be undertaken outside of the bird breeding season (September to February) where practicable;</p> <p>B. where Pipit are identified as being present, how the timing of any Construction Works shall be undertaken outside of the Pipit bird breeding season (August to February) where practicable; and</p> <p>C. where works are required within the area identified in the Confirmed Biodiversity Area during the bird breeding season (including Pipits), methods to minimise adverse effects on Threatened or At-Risk birds; and</p> <p>D. details of grass maintenance if Pipit are present.</p> <p>(c) The EMP shall be consistent with any ecological management measures to be undertaken in compliance with conditions of any regional resource consents granted for the Project.</p> <p><i>Advice note:</i><br/> <i>Depending on the potential effects of the Project, the regional consents for the Project may include the following monitoring and management plans:</i></p> <p>(i) Stream and/or wetland restoration plans;</p> <p>(ii) Vegetation restoration plans; and</p> <p>(iii) Fauna management plans (eg avifauna, herpetofauna, bats).</p> |
| All | 26 <u>Ce.</u> | <p><b>Ecological Management Plan (EMP)</b></p> <p>(a) An EMP shall be prepared for any Confirmed Biodiversity Areas (confirmed through Condition 26) prior to the Start of Construction for a Stage of Work.</p> <p>(b) The objective of the EMP is to minimise effects of the Project on the ecological features of value of Confirmed Biodiversity Areas as far as practicable. The EMP shall set out the methods which may include:</p>   |

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|  |  | <p>(i) If an EMP is required in accordance with Condition 25(b) for the presence of threatened or at risk wetland birds:</p> <ul style="list-style-type: none"> <li>A. how the timing of any Construction Works shall be undertaken outside of the bird breeding season (September to February) where practicable;</li> <li>B. where works are required within the Confirmed Biodiversity Area during the bird season, methods to minimise adverse effects on Threatened or At-Risk wetland birds;</li> <li>C. undertaking a nesting bird survey of Threatened or At-Risk wetland birds prior to any Construction Works taking place within a 50m radius of any identified Wetlands (including establishment of construction areas adjacent to Wetlands). Surveys should be repeated at the beginning of each wetland bird breeding season and following periods of construction inactivity;</li> <li>D. what protection and buffer measures will be provided where nesting Threatened or At-Risk wetland birds are identified within 50m of any construction area (including laydown areas). Measures could include: <ul style="list-style-type: none"> <li>a. a 20-m buffer area around the nest location and retaining vegetation. The buffer areas should be demarcated where necessary to protect birds from encroachment. This might include the use of marker poles, tape and signage;</li> <li>b. monitoring of the nesting Threatened or At-Risk wetland birds by a Suitably Qualified and Experienced Person. Construction works within the 20m nesting buffer areas should not occur until the Threatened or At-Risk wetland birds have fledged from the nest location (approximately 30 days from egg laying to fledging) as confirmed by a Suitably Qualified and Experienced Person;</li> <li>c. minimising the disturbance from the works if construction works are required within 50-m of a nest, as advised by a Suitably Qualified and Experienced Person;</li> <li>d. adopting a 10m setback where practicable, between the edge of Wetlands and construction areas (along the edge of the stockpile/laydown area); and</li> </ul> </li> </ul> |
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|       |                   | <p>e. minimising light spill from construction areas into Wetlands.</p> <p>E. <del>d</del>Details on any mitigation required to address any potential operational disturbance.</p> <p>(c) The EMP shall be consistent with any ecological management measures to be undertaken in compliance with conditions of any regional resource consents granted for the Project.</p> <p><i>Advice note:</i><br/> <i>Depending on the potential effects of the Project, the regional consents for the Project may include the following monitoring and management plans:</i></p> <p>(i) Stream and/or wetland restoration plans;<br/> (ii) Vegetation restoration plans; and<br/> (iii) Fauna management plans (eg avifauna, herpetofauna, bats).</p>   |
| NoR 4 | 26 <del>d</del> . | <p><b>Ecological Management Plan (EMP)</b></p> <p>(a) An EMP shall be prepared for any Confirmed Biodiversity Areas (confirmed through Condition 26) prior to the Start of Construction for a Stage of Work.</p> <p>(b) The objective of the EMP is to minimise effects of the Project on the ecological features of value of Confirmed Biodiversity Areas as far as practicable. The EMP shall set out the methods which may include:</p> <p>(i) If an EMP is required in accordance with Condition 25(b) for the presence of native herpetofauna:</p> <p>A. a description of the methodology and timing for survey, trapping and relocation of lizards rescued;</p> <p>B. a description of the relocation site(s), including:</p> <p>a. any measures to ensure the relocation site remains available; and</p> <p>b. any weed and pest management to ensure the relocation site is maintained as appropriate habitat.</p> <p>C. a post vegetation clearance search for remaining lizards; and</p> <p>D. any proposed monitoring.</p> <p>(c) The EMP shall be consistent with any ecological management measures to be undertaken in compliance with conditions of any regional resource consents granted for the Project.</p> <p><i>Advice note:</i><br/> <i>Depending on the potential effects of the Project, the regional consents for the Project may include the following monitoring and management plans:</i></p> <p>(i) Stream and/or wetland restoration plans;<br/> (ii) Vegetation restoration plans; and</p> |

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|                         |     | (iii) Fauna management plans (e.g. avifauna, bats).   |
| NoR 2<br>NoR 4<br>NoR 5 | 27. | <p><b>Tree Management Plan (TMP)</b></p> <p>(a) Prior to the Start of Construction for a Stage of Work, a <b>Tree Management Plan (TMP)</b> shall be prepared.</p> <p>(b) The objective of the <b>Tree Management Plan (TMP)</b> is to avoid, remedy or mitigate effects of construction activities on trees identified in Schedule 3. To achieve the objective, the <b>Tree Management Plan (TMP)</b> shall:</p> <ul style="list-style-type: none"> <li>(i) confirm that the trees listed in Schedule 3 still exist; and</li> <li>(ii) demonstrate how the design and location of project works has avoided, remedied or mitigated any effects on any tree listed in Schedule 3. This may include: <ul style="list-style-type: none"> <li>A. planting to replace trees that require removal (with reference to the ULDMP planting design details in Condition 0);</li> <li>B. tree protection zones and tree protection measures such as protective fencing, ground protection and physical protection of roots, trunks and branches; and</li> <li>C. methods for work within the rootzone of trees that are to be retained in line with accepted arboricultural standards.</li> </ul> </li> <li>(iii) demonstrate how the tree management measures (outlined in (ii)A – C above) are consistent with conditions of any resource consents granted for the project in relation to managing construction effects on trees.</li> </ul> <p>(c) Where replacement planting of any tree listed in Schedule 3 is required under (b)(ii)(a) it shall be at a ratio of 2:1 for Single Trees and a minimum of like for like (in m<sup>2</sup>) for Group of Trees.</p> |
| All                     | 28. | <p><b>Network Utility Management Plan (NUMP)</b></p> <p>(a) A NUMP shall be prepared prior to the Start of Construction for a Stage of Work.</p> <p>(b) The objective of the NUMP is to set out a framework for protecting, relocating and working in proximity to existing network utilities. The NUMP shall include methods to:</p> <ul style="list-style-type: none"> <li>(i) provide access for maintenance at all reasonable times, or emergency works at all times during construction activities;</li> <li>(ii) protect and where necessary, relocate existing network utilities;</li> <li>(iii) manage the effects of dust and any other material potentially resulting from construction activities and able to cause material damage, beyond normal wear and tear to overhead transmission lines in the Project area;</li> <li>(iv) demonstrate compliance with relevant standards and Codes of Practice including, where relevant,</li> </ul>  |

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|                               |            | <p>the NZECP 34:2001 New Zealand Electrical Code of Practice for Electrical Safe Distances 2001; AS/NZS 4853:2012 Electrical hazards on Metallic Pipelines;</p> <p>(c) The NUMP shall be prepared in consultation with the relevant Network Utility Operator(s) who have existing assets that are directly affected by the Project.</p> <p>(d) <del>The development of the NUMP shall consider opportunities to coordinate future work programmes with other Network Utility Operator(s) where practicable.</del> <u>The Requiring Authority shall consult with Network Utility Operators during the detailed design phase to consider opportunities to enable, or not preclude, the development of new network utility facilities including access to power and ducting within the Project, where practicable to do so. The consultation undertaken, opportunities considered, and whether or not they have been incorporated into the detailed design, shall be summarised in the NUMP.</u></p> <p>(e) The NUMP shall describe how any comments from the Network Utility Operator in relation to its assets have been addressed.</p> <p>(f) Any comments received from the Network Utility Operator shall be considered when finalising the NUMP.</p> <p>(g) Any amendments to the NUMP related to the assets of a Network Utility Operator shall be prepared in consultation with that asset owner.</p> |
| <b>Operational Conditions</b> |            |  |
| <b>All</b>                    | <b>29.</b> | <p><b>Low Noise Road Surface</b></p> <p><u>(a)</u> Asphaltic concrete surfacing (or equivalent low noise road surface) shall be implemented within 12 months of Completion of Construction of the project.</p> <p><del>(a)</del><u>(b)</u> <u>The asphaltic concrete surface shall be maintained to retain the noise reduction performance of the surface established in accordance with (a).</u></p>  |
| <b>All</b>                    | <b>29a</b> | <p><b>Future Resurfacing Work</b></p> <p><del>(b)</del> Any future resurfacing works shall be undertaken in accordance with the <del>Auckland Transport Reseal Guidelines, Asset Management and Systems 2013 and asphaltic concrete surfacing (or equivalent low noise road surface) shall be implemented where:</del></p> <p><del>(i) the volume of traffic exceeds 10,000 vehicles per day; or</del></p> <p><del>(ii) the road is subject to high wear and tear (such as cul de sac heads, roundabouts and main road intersections); or</del></p> <p><del>(iii) it is in an industrial or commercial area where there is a high concentration of truck traffic; or</del></p> <p><del>(iv) it is subject to high usage by pedestrians, such as town centres, hospitals, shopping centres and schools.</del></p>   |

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|              |             | <del>(c) Prior to commencing any future resurfacing works, the Requiring Authority shall advise the Manager if any of the triggers in (a)(i) – (iv) are not met by the road or a section of it and therefore where the application of asphaltic concrete surfacing (or equivalent low noise road surface) is no longer required on the road or a section of it. Such advice shall also indicate when any resealing is to occur.</del>  |
| <u>NoR 1</u> | <u>29A.</u> | <u>Noise from the transport hub</u><br><br><u>Noise from the operation of the transport hub and park and ride facility shall comply with the relevant zone noise limits at receivers as set out in the AUP.</u>  |
| All          |             | <b>Traffic Noise</b><br>For the purposes of Conditions 31 to <b>Error! Reference source not found.</b> :<br>(a) Building-Modification Mitigation – has the same meaning as in NZS 6806;<br>(b) Design year has the same meaning as in NZS 6806;<br>(c) Detailed Mitigation Options – means the fully detailed design of the Selected Mitigation Options, with all practical issues addressed;<br>(d) Habitable Space – has the same meaning as in NZS 6806;<br>(e) Identified Noise Criteria Category – means the Noise Criteria Category for a PPF identified in Schedule 4: Identified PPFs Noise Criteria Categories;<br>(f) Mitigation – has the same meaning as in NZS 6806:2010 Acoustics – Road-traffic noise – New and altered roads;<br>(g) Noise Criteria Categories – means the groups of preference for sound levels established in accordance with NZS 6806 when determining the Best Practicable Option for noise mitigation (i.e. Categories A, B and C);<br>(h) NZS 6806 – means New Zealand Standard NZS 6806:2010 Acoustics – Road-traffic noise – New and altered roads;<br>(i) Protected Premises and Facilities (PPFs) – means only the premises and facilities identified in green, orange or red in Schedule 4: Identified PPFs Noise Criteria Categories;;<br>(j) Selected Mitigation Options – means the preferred mitigation option resulting from a Best Practicable Option assessment undertaken in accordance with NZS 6806 taking into account any low noise road surface to be implemented in accordance with Condition 29; and<br>(k) Structural Mitigation – has the same meaning as in NZS 6806. |
| All          | 30.         | The Noise Criteria Categories identified in Schedule 4: Identified PPFs Noise Criteria Categories at each of the PPFs  |

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|            |            | <p>shall be achieved where practicable and subject to Conditions 31 to <b>Error! Reference source not found.</b> (all traffic noise conditions).</p> <p>The Noise Criteria Categories do not need to be complied with at a PPF where:</p> <p>(a) The PPF no longer exists; or</p> <p>(b) Agreement of the landowner has been obtained confirming that the Noise Criteria Category does not need to be met.</p> <p>Achievement of the Noise Criteria Categories for PPFs shall be by reference to a traffic forecast for a high growth scenario in a design year at least 10 years after the programmed opening of the Project.</p> |
| <b>All</b> | <b>31.</b> | <p>As part of the detailed design of the Project, a Suitably Qualified Person shall determine the Selected Mitigation Options for the PPFs identified on Schedule 4: Identified PPFs Noise Criteria Categories</p> <p>For the avoidance of doubt, the low noise road surface implemented in accordance with Condition 29 may be (or be part of) the Selected Mitigation Option(s).</p>   |
| <b>All</b> | <b>32.</b> | <p>Prior to construction of the Project, a Suitably Qualified Person shall develop the Detailed Mitigation Options for the PPFs identified in Schedule 4: Identified PPFs Noise Criteria Categories, taking into account the Selected Mitigation Options.</p>  |
| <b>All</b> | <b>33.</b> | <p>If the Detailed Mitigation Options would result in the Identified Noise Criteria Category changing to a less stringent Category, e.g. from Category A to B or Category B to C, at any relevant PPF, a Suitably Qualified Person shall provide confirmation to the Manager that the Detailed Mitigation Option would be consistent with adopting the Best Practicable Option in accordance with NZS 6806 prior to implementation.</p>  |
| <b>All</b> | <b>34.</b> | <p>The Detailed Mitigation Options shall be implemented prior to Completion of Construction of the Project, with the exception of any low-noise road surfaces, which shall be implemented within twelve months of Completion of Construction.</p>  |
| <b>All</b> | <b>35.</b> | <p>Prior to the Start of Construction, a Suitably Qualified Person shall identify those PPFs which, following implementation of all the Detailed Mitigation Options, will not be Noise Criteria Categories A or B and where Building-Modification Mitigation might be required to achieve 40 dB L<sub>Aeq(24h)</sub> inside Habitable Spaces ('Category C Buildings').</p>   |
| <b>All</b> | <b>36.</b> | <p>Prior to the Start of Construction in the vicinity of each Category C Building, the Requiring Authority shall write to the owner of the Category C Building requesting entry to assess the noise reduction performance of the existing building</p>   |



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|            |            | envelope. If the building owner agrees to entry within three months of the date of the Requiring Authority's letter, the Requiring Authority shall instruct a Suitably Qualified Person to visit the building and assess the noise reduction performance of the existing building envelope.   |
| <b>All</b> | <b>37.</b> | <p>For each Category C Building identified, the Requiring Authority is deemed to have complied with Condition <del>37</del><u>36</u> above if:</p> <ul style="list-style-type: none"> <li>(a) The Requiring Authority's Suitably Qualified Person has visited the building and assessed the noise reduction performance of the building envelope; or</li> <li>(b) The building owner agreed to entry, but the Requiring Authority could not gain entry for some reason (such as entry denied by a tenant); or</li> <li>(c) The building owner did not agree to entry within three <del>(3)</del> months of the date of the Requiring Authority's letter sent in accordance with Condition <del>37</del><u>36</u> above (including where the owner did not respond within that period); or</li> <li>(d) The building owner cannot, after reasonable enquiry, be found prior to Completion of Construction of the Project.</li> </ul> <p>If any of (b) to (d) above apply to a Category C Building, the Requiring Authority is not required to implement Building-Modification Mitigation to that building.</p> |
| <b>All</b> | <b>38.</b> | <p>Subject to Condition <del>38</del><u>37</u> above, within six <del>(6)</del> months of the assessment undertaken in accordance with Conditions <del>37</del><u>36</u> and <del>38</del><u>37</u>, the Requiring Authority shall write to the owner of each Category C Building advising:</p> <ul style="list-style-type: none"> <li>(a) If Building-Modification Mitigation is required to achieve 40dB L<sub>Aeq(24h)</sub> inside habitable spaces; and</li> <li>(b) The options available for Building-Modification Mitigation to the building, if required; and</li> <li>(c) That the owner has three months to decide whether to accept Building-Modification Mitigation to the building and to advise which option for Building-Modification Mitigation the owner prefers, if the Requiring Authority has advised that more than one option is available.</li> </ul>   |
| <b>All</b> | <b>39.</b> | Once an agreement on Building-Modification Mitigation is reached between the Requiring Authority and the owner of a Category C Building, the mitigation shall be implemented, including any third party authorisations required, in a reasonable and practical timeframe agreed between the Requiring Authority and the owner.  |
| <b>All</b> | <b>40.</b> | <p>Subject to Condition 37, where Building-Modification Mitigation is required, the Requiring Authority is deemed to have complied with Condition <del>39</del><u>38</u> if:</p> <ul style="list-style-type: none"> <li>(a) The Requiring Authority has completed Building Modification Mitigation to the building; or</li> </ul>   |



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|            |            | <ul style="list-style-type: none"> <li>(b) An alternative agreement for mitigation is reached between the Requiring Authority and the building owner; or</li> <li>(c) The building owner did not accept the Requiring Authority's offer to implement Building-Modification Mitigation within three <u>(3)</u> months of the date of the Requiring Authority's letter sent in accordance with Condition <del>3736</del> (including where the owner did not respond within that period); or</li> <li>(d) The building owner cannot, after reasonable enquiry, be found prior to Completion of Construction of the Project.</li> </ul> |
| <b>All</b> | <b>41.</b> | The Detailed Mitigation Options shall be maintained so they retain their noise reduction performance as far as practicable  |