

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

Proposal

This is a Notice of Requirement for a designation for the construction of improvements (including road widening) on Lincoln Road and local road connections. The proposed works will occur over an approximate 1.3 kilometre length of both sides of Lincoln Road.

This Notice of Requirement is ACCEPTED in whole, subject to conditions. The reasons are set out below.

Application:	NoR for the Lincoln Road Corridor Improvement project
Site Address:	Lincoln Road, Henderson
Requiring Authority:	Auckland Transport
Hearing Commenced:	15, 17, 18 May 2017, 9.30am
Hearing Panel:	Richard Blakey Dr Lee Beattie Alan Pattle
Appearances:	<p><u>For the Applicant:</u> Christina Sheard, Legal Counsel John Stokes, Corporate and Construction Methodology Rachel Dimery, Consultation Julian Harrison-Tubb, Property Acquisition Kathryn King, Walking and Cycling Angie Crafer, Transport Wayne Bredemeijer, Urban Design Melean Absolum, Landscape Architecture David Mead, Planning Allan Leahy, Stormwater Leon Saxon, Aboriculture</p> <p><u>For the Submitters:</u> Mehmed Investments – Colin Hardacre, Planning Z Energy</p> <ul style="list-style-type: none"> - Stephanie de Groot, Legal Counsel - Matt Brennan, Submitter - Colin McArthur - Gary Cheyne, Commercial/Economic - Karen Blair, Planning <p>Portage Licensing Trust and West Auckland Trust Services Limited – Elizabeth Wells, Planning Graeme Cameron</p>

	<p>Restaurant Brands New Zealand Ltd – Mark Arbuthnot, Planning</p> <p>Mobil Oil New Zealand Ltd – Mark Arbuthnot, Planning</p> <p>Central Park Business Association – John Schipper</p> <p>North Western Toyota – Mark Jago</p> <p>Progressive Enterprises</p> <ul style="list-style-type: none"> - Mike Foster, Planning - Jonathan Griffiths <p>B Vela, F Vela, D Vela, and BM Trustees Limited</p> <ul style="list-style-type: none"> - Douglas Allan, Legal Counsel - John Parlane, Traffic Engineering - Vaughan Smith, Planning <p>The National Trading Company of New Zealand Ltd</p> <ul style="list-style-type: none"> - Douglas Allan, Legal Counsel - Dion Vela - Nick Hanson - John Burgess, Traffic - Vaughan Smith, Planning <p><u>For Council:</u></p> <p>Eryn Shields, Team Leader / Manager</p> <p>Douglas Sadlier, Reporting Officer</p> <p>Tony Innes, Director Transport</p> <p>Gavin Donaldson, Arborist</p> <p>Melanie McKelvie, Landscape Architect</p> <p>Ainsley Verstraeten, Urban Designer</p> <p>Maryke Fouche, Hearings Advisor</p>
Hearing adjourned	18 May 2017
Commissioners' site visit	9 May 2017
Hearing Closed:	22 May 2017

INTRODUCTION

1. Pursuant to section 168 of the Resource Management Act 1991 (“**RMA**”), Auckland Transport (“**AT**”), as the Requiring Authority, gave notice to the Council for a designation to authorise the construction of improvements (including road widening) on Lincoln Road and local road connections, known as the Lincoln Road Corridor Improvement project (“**LRCI**”).
2. The proposed works will occur over an approximately 1.3 kilometre length of both sides of Lincoln Road, from Te Pai Place and Pomaria Road to the intersections of Triangle Road/Central Park Drive in Henderson. It will include works in adjacent local road connections and connections to the State Highway 16 / Lincoln Road Interchange.

3. In particular, the Notice of Requirement ("**NoR**") involves the widening of the northern part of the existing Lincoln Road corridor by between two to three metres (and up to 11 metres in places) to accommodate an additional bus and high occupancy vehicle (or transit) lane, a mix of segregated cycleways and footpaths on each side of the road, and a raised median. Two general vehicle lanes will be maintained in each direction (north and south) and the existing intersections will be upgraded. A new service lane will be constructed to provide access to properties north of Daytona Avenue.
4. The NoR includes land that is required on a temporary basis as part of the construction process. Once the construction works are completed, the designation boundaries will be reviewed and the designation is expected to be reduced in part (typically by a width of 2 metres), to a location sufficient to protect the road and enable its ongoing operation and maintenance.
5. AT has sought a ten-year lapse date. Its funding programme anticipates that detailed design will occur in 2020-2022, with construction in 2023-2025, subject to funding reviews.
6. Other particulars of the NoR will be described as necessary in the context of those matters in contention and which are set out later in this recommendation.

SUBMISSIONS AND EVIDENCE

7. The NoR was publicly notified by the Auckland Council ("**Council**") at AT's request on 14 October 2016. Submissions closed on 14 November 2016. A total of 33 submissions were received, with 24 in opposition, seven in support and two neutral. A report and recommendation on the NoR was prepared by Council officers, and is referred to hereafter as the "**officer report**". This 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 Council's report, the NoR itself and the submissions made on the NoR. Expert evidence on behalf of all parties who appeared was also circulated prior to the hearing and again was taken as read.
8. The hearing for the NoR was conducted at the Council's Henderson Service Centre by three Independent Hearing Commissioners, Richard Blakey (chair), Dr Lee Beattie, and Alan Pattle, who were appointed and act under delegated authority from the Council under sections 34 and 34A of the RMA.
9. A considerable volume of paper was produced through the Council hearing volumes and the subsequent evidence (and supplementary statements of witnesses for AT) and 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 below. 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.
10. The recommendations made in this document follow the deliberations and the findings made by the Commissioners after considering the NoR, the submissions lodged, the

Council's reports, and the submissions and evidence presented at the hearing, including final comments made by Council officers and consultants ("**officer response**"), and a written Reply and associated updated conditions schedule provided by Ms Sheard on behalf of AT. The recommendations are made in terms of the framework provided by section 171 of the RMA.

PROCEDURAL MATTERS (SECTION 37)

11. There were two procedural matters that we referred to at the commencement of the hearing, with respect to the acceptance of a late submission, and the timeframes around the hearing and completing these recommendations. Both matters are required to be considered in terms of section 37 of the RMA.
12. One late submission was received, being that from Pingping Zhang (in respect of the property at 301 Lincoln Road) which was in opposition to the NoR. This submission was received by the Council on 3 December 2016, 14 days following the closing date. While no specific recommendation was made in respect of this matter as part of the officer report, Mr Sadlier confirmed that it was the recommendation of officers that the submission be accepted. Ms Sheard also advised that AT had no concerns with respect to acceptance of the submission. Having regard to that advice, and to the fact that the lateness of the submission does not appear to have prejudiced any party, nor the commencement date of the hearing, we conclude that the submission should be accepted.
13. The officer report did provide some analysis of timeframes with respect to the hearing of the NoR, noting that the hearing was originally due to commence on 11 January 2017, pursuant to section 169(3)(c) of the RMA. The officer report notes that officers exercised their delegation to extend this timeframe to 16 February 2017, and again to 21 April 2017. We note that the hearing was originally scheduled to commence on 22 March 2017 but was adjourned at AT's request, and as verbally confirmed by Ms Sheard at the commencement of the hearing, AT accepts a further extension of time under section 37 and we have proceeded on that basis.

ISSUES IN CONTENTION

14. We commence this section of our recommendation by noting the background and rationale for the proposed works, being an aspect that we did not find to be the subject of any contention, at least in terms of the expert evidence that we heard. In this regard, we note below the rationale for the project as set out in the officer report, to provide the contextual backdrop to our analysis of the matters that remained in contention.
15. The NoR documents have described the manner in which the Lincoln Road corridor is coming under increasing pressure due to growth from commuter and business-related traffic, resulting in increased congestion. It is currently used by 42,000 vehicles per day, and general traffic is expected to increase by at least one percent per annum for the foreseeable future. Lincoln Road also has a poor safety record, with a total of 446 crashes recorded between 2008 and 2012 – in this respect crossing and turning collisions, presently provided for by a flush median, account for 36 percent of crashes).

16. From a strategic perspective, Lincoln Road is identified in the Auckland Plan as a 'growth corridor', primarily for business, retail, light industrial and residential activities, and provision for the growth of those activities is now confirmed through the Auckland Unitary Plan (Operative in part) ("**AUP**"). It is also a key feeder road for Auckland's Western Ring Route. The officer report notes that the road's strategic importance, its existing safety and congestion issues and the expected growth in traffic volumes make it a priority for upgrading.
17. This background and rationale, including the safety advantages associated with the preclusion of right hand turns as a result of the implementation of a raised median, was not countered by any expert traffic evidence. We note that while some submissions have queried the need for the proposed works and the resulting road width and the installation of separated cycle lanes, no expert evidence was presented that opposed the general intent or overall scope of the works. Instead, the evidence was focused on the manner by which particular aspects of the works are unresolved to the extent that specific effects on certain properties are unknown, or there are effects of the overall proposal that are considered adverse on specific properties, and the manner by which such effects may be addressed through conditions, or via the Public Works Act 1981 ("**PWA**").
18. After analysis of the NoR and evidence (including proposed mitigation measures), undertaking a site visit, reviewing the Council planning officer's report, reviewing the submissions and concluding the hearing process, the proposed NoR has left a number of issues as being unresolved between the parties. We have defined the principal issues as being in contention in broad terms as follows:
 - The relevance of the permitted baseline to the consideration of effects;
 - The interface between the NoR and the PWA;
 - Insufficient information provided for submitters to determine the extent of effects on their specific businesses, in particular with respect of construction activities;
 - The lapse period for the designation;
 - Landscaping plan details;
 - Site specific concerns including:
 - the loss of access through prevention of right-hand turns into and out of sites;
 - the loss of site frontage due to the width of the designation;
 - insufficient consultation by AT with various landowners; and
 - the conditions recommended to be imposed on the designations by either the Council or by AT's representatives and consultants.

19. Some of these issues were common across a number of submitters, or were site specific. We address the former matters first, and the site specific matters second. 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 AT, and we record those outcomes as relevant to the sites in question.

Permitted Baseline

20. There was reasonably extensive discussion during the hearing with respect to the “permitted baseline”, or the extent to which activities that AT is entitled to carry out as of right within the roading corridor should be taken into account in the assessment of effects of the NoR, and in particular for specific properties. We address this matter first due to its significance to some of the effects that are considered by some submitters to arise in respect of their respective businesses.
21. The central issue was essentially whether the loss of custom from existing right-turn movements into and out of a property, as a result of the proposed raised medians, is a matter that can be discounted as part of the permitted baseline. This was a significant concern for Z Energy, Restaurant Brands, Vela Family Trust and Graeme Cameron. As we note above, none of those parties presented evidence that opposed the installation of the median per se, nor evidence that countered the safety advantages of the median, but rather sought to establish a certain rate of custom that would be diminished through preclusion of such right-turn movements (20% in the case of Z Energy, and 45% for Restaurant Brands’ Carl’s Junior outlet for example). In this regard, and given that no expert evidence was presented that refuted the safety advantages associated with the median component of the NoR, we had the impression that establishing a certain level of business loss through the implementation of the median may form the basis for subsequent claims under PWA provisions. However, to the extent that it is relevant to an assessment of effects of each affected property, we set out findings on the baseline question below.
22. It appeared to be common ground that it is a permitted activity under the AUP for AT to carry out road network activities within the road corridor (via Chapter E26), and that such activities encompass a wide range of works including construction, operation, use and maintenance of roads. While works such as median barriers or other roading restrictions (such as the installation of “No Stopping At All Times” lines) are subject to an internal AT Traffic Control Committee process, which we were advised includes consultation with affected landowners, that process does not affect the permitted activity status associated with the installation of such restrictions. This is illustrated in plain terms by the fact that AT has installed a temporary form of barrier (using flexi posts) in the centreline of the road adjacent to the Z Energy service station. Mr Stokes advised us that AT will install a permanent median in this location if the works proposed under the NoR do not proceed.
23. Counsel for several submitters acknowledged that the permitted baseline is applicable to the consideration of designations, but urged us to exercise our discretion not to apply it in this case. Ms de Groot, counsel for Z Energy, suggested that this is in part because the effects of implementing a median, on the Z Energy site, are “significant”.

However, Ms Sheard commented in her Reply that this assertion fails to balance those effects on site accessibility against the potential safety benefits that will accrue from the permanent median. We would add our understanding that the effects of a permitted activity are not relevant to the determination of whether an activity is permitted or not, and such an approach would seem to render the whole purpose of establishing a permitted baseline in either a designation or resource consent sense somewhat nugatory. We agree therefore with Ms Sheard that there is no case law to support the proposition that an assessment of effects of an activity is required in order to determine whether such effects are significant before it can be applied.

24. Ms de Groot and Ms Blair (planning witness for Z Energy) also took the approach that the median, in its proposed form, should be considered as part of an overall integrated package of works, of which the median forms a key component. We took this to be a reference to the raised median as proposed (and its width of between 1.2 and 3.8 metres adjacent to Z Energy), as opposed to simply a raised median of narrower width, such as that which has already been installed. However, we do not think that is the correct approach as the ability to install a physical median has been demonstrated, and we do not view the width of the median to be relevant to the question of whether access to the site can be prevented or not. Again, we agree with Ms Sheard that the application of the permitted baseline does not require consideration of what is being constructed, but rather what could be constructed as a permitted activity.
25. Mr Allan, counsel for the National Trading Company and the Vela Family Trust, advanced the proposition that “atomising”, or discounting various individual elements of the proposal, into permitted categories would be inappropriate, having regard to the overall effects of the proposal. We also do not consider that this is an accurate portrayal of the baseline as it is sought to be applied here. We did not discern that AT had sought to break the proposal into any further components than the singular activity of constructing a central median, as a permitted activity and independent of the present NoR. There are no other permitted activity elements that we were proposed by AT as forming part of the baseline, and Ms Sheard acknowledged in this respect that all other components are clearly dependent on the expansion of the corridor onto private land.
26. We therefore conclude that the permitted baseline, as it pertains to construction of a raised median, is relevant to our consideration of the effects of the designation, and we exercise our discretion to consider that aspect of the proposal accordingly.

Interface with the PWA

27. A significant area of discussion within the evidence and during the hearing centered around the extent to which RMA considerations as to adverse effects, and the avoidance, remedying or mitigating of such effects, ends, and PWA processes commence. We discuss this matter now as providing clarification as to the basis for our approach to the discussion of conditions that follows.
28. Submitters had presented a generally consistent theme that the PWA should be a last resort for addressing adverse effects, that should be dealt with at the first instance

through amendments or modifications to the NoR, or via conditions. To a significant extent, however, those effects, particularly where related to reductions in site frontages and landscaping, parking and resource consent compliance, are an unavoidable consequence of the scope of works envisaged under the NoR. The purpose of the PWA is to provide a financial remedy to such effects, including business losses and injurious affection arising as a direct result of the works.

29. It is apparent to us that the proposed NoR is certainly not unique in respect of its reliance on the PWA to address such effects, many of which will not manifest themselves until the works commence. Ms Sheard's Reply provides what we consider to be a helpful overview and summary of the interface between the PWA and RMA, including citations of other commissioner-level decisions on designations that have taken into account the compensation regime of the PWA. While Mr Allan was critical of AT's approach in this regard, we note that he did not direct us to any cases or decisions that would support his view that this approach was unlawful, or improper.
30. Ms de Groot also commented that there is nothing in the RMA to suggest that any particular type of environmental effects should be excluded from consideration under section 171. Where those effects are significant, section 171 requires a consideration of whether adequate consideration has been given to alternative sites, routes or methods of undertaking the work. In that respect, and from our review of the totality of the evidence presented by AT, we agree with the position as advanced by Ms Sheard – being that AT has considered as a first step whether effects on properties can be avoided, remedied or mitigated. We simply cannot agree with Mr Allan's assertion that impacts on his client's properties, or any others, have been disregarded in their entirety, nor Ms de Groot's suggestion that they have been ignored and not adequately considered, nor that alternative sites, routes or methods have not been assessed. We note that further discussion with submitters, including Z Energy and the Vela Family Trust, continued through the hearing process in order to preserve an acceptable level of access for these properties as far as practicable.
31. We were, however, curious to understand the extent to which potential business losses could be assessed under the PWA, given that these may not fully manifest themselves in the what we understood to be the 'default' two-year period from commencement of the works. In this regard, Ms Sheard provided supplementary submissions during the hearing (dated 16 May 2017) which clarified that the two-year period runs from the date of the 'execution of the works', which is when the construction the 'relevant' portion of work has been completed. Ms Sheard advises that, in those circumstances where the damage or loss does not manifest until all stages of the project are complete, the Council have held some flexibility to allow the two-year period to run from the completion of the project where appropriate. In addition, the "acquiring" authority (i.e. AT) also has the ability under section 78(3) of the PWA to agree to an extended period. Given the expected length of the construction period, we anticipate that some flexibility in this regard will be required, but accept that the exact details for each affected property will be the subject of specific negotiations.

Construction Details and Management

32. A number of submitters were concerned that the NoR contained insufficient information to allow them to determine the effects of the proposal on their site and business, and accordingly sought further detail through the construction-related conditions, and/or that an outline or draft version of certain construction management plans be provided at this stage, rather than at some later (pre-construction) point.
33. Z Energy, Restaurant Brands and the National Trading Company (“**NTC**”) sought specific conditions requiring consultation in respect of any temporary access limitations during construction, while Z Energy and Restaurant Brands also sought that a right of approval be included in the relevant conditions regarding access arrangements. Progressive Enterprises Limited (“**PEL**”) sought a separate agreement with AT to address the same issues, but we consider that these concerns can be appropriately addressed by way of the conditions as now proposed by AT, and which we comment on below.
34. In respect of these matters it is also noted that outline plans will be required pursuant to section 176 of the RMA before works can commence, and Ms Sheard reminded us that AT has not sought a waiver of this outline process. Mr Mead advised in his evidence that these plans will address the more detailed aspects of construction and operation, including landscape treatment, with the parameters and processes set out by the final NoR conditions. Mr Mead went on to say in this respect that:

Detailed design is likely to involve the input of the contractor selected by AT to undertake the works, and as such, aspects of the preliminary design put forward in the application material may reasonably change. In addition to this, best practice approaches to landscape and urban design, noise management and the like will likely develop over the next 10 years, so it is important not to ‘lock in’ all aspects of the detailed design.

35. Some of the submitter concerns in this respect appeared to revolve around the fact that a draft Construction Noise & Vibration Management Plan had been provided (as part of AT’s section 92 response in September 2016), which will form part of the Construction Environmental Management Plan (“**CEMP**”) required under condition 14. On that basis, submitters were of the view that other specific plans should also be developed, if only to outline specific “bottom line” provisions. Ms Sheard commented in her reply that the use of management plans as part of the outline plan process to avoid, remedy or mitigate adverse effects is standard practice, and has been adopted for numerous projects (including the CRL, and more recent Watercare approvals for the Northern Interceptor wastewater project). Ms Sheard acknowledged that the provision of draft management plans would be “nice in theory but impossible to implement in practice”. She noted that AT have provided as much detail in the conditions as it can as part of the designation process prior to the detailed design of the works.

36. While we generally accept that view, we consider that there are likely to be other components of the CEMP (such as a draft Erosion and Sediment Control Management Plan and Dust Management Plan) that may have been able to be provided at this stage, based on existing known parameters and typical construction methodologies. However, we do not consider that their present exclusion is of such significance that a modification to the NoR would be required, nor that any further conditions would be necessary.
37. Mr Mead's supplementary evidence included an amended set of conditions including a change to condition 12(e), which would only involve full closure of an access to a site where there is no practicable alternative, and which must involve adequate notice. We note that the amendments contained in those amended conditions appeared to go some way towards addressing the concerns of submitters, as acknowledged by a number of witnesses, albeit that residual concerns still remained in respect of several properties as we discuss in the next section of this decision. A further updated set of conditions were provided by AT as part of their Reply which has adopted some of the further recommendations and changes sought by submitters and their witnesses.
38. We have undertaken a careful review of those further amendments against the specific additions and changes proposed in the various legal submissions and witness statements and the officer reply to the earlier version of conditions attached to Mr Mead's evidence, in order to identify where issues in contention may be likely to remain. We address these in respect of the respective witnesses in our comments on specific site issues below. By way of a general overview, however, we note that we have adopted some aspects of Ms Blair's recommendations (on behalf of Z Energy) relating to the inclusion of a reference to the Community Facilities and Local Business Management Plan into the list of plans under condition 3, and some of her suggested wording improvements at conditions 5, 11, 12, 14 and 31 which we consider will assist in clarifying their respective application and intent.
39. However, we have not adopted those conditions proposed by Ms Blair, Mr Arbuthnot (for Restaurant Brands and Mobil) and Mr Smith (for the NTC, and as further amended in the submissions by Mr Allan) with respect to their requests for specific conditions related to temporary construction access arrangements. As Mr Innes advised in the officer reply, it is considered that condition 12(e), and the associated Construction Traffic Management Plan, provides the necessary recourse to address such matters, in combination with the other relevant construction management plans. We acknowledge the concerns of the submitters, and NTC in particular, with respect to the potential effects on business operations as a result of partial or complete closures of access, but we consider that the amended form of condition 12(e) provides an appropriate basis for managing these effects in conjunction with affected parties.
40. Similarly, we consider that a general approach to the requirements for details associated with works in the vicinity of hazardous substances facilities set out in AT's new proposed condition 14(k), would include all service stations along the NoR route and makes Ms Blair's request for a specific condition for Z Energy unnecessary.

41. While reference was made to the need for an independent “certification” process, or an independent peer review panel, to be undertaken by the Council in respect of outline plans (as described in Ms Blair’s proposed condition 4 and Mr Allan’s condition 5a¹), we do not consider that a certification or peer review panel process is appropriate or necessary in the context of the general construction activities that will occur in terms of the conditions. While the CRL decision was cited as an appropriate authority for the requirement for such processes, we accept Mr Mead’s evidence that this was a response to the political position of the Council in respect of that project, and the extent to which the Council could provide an objective review of the outline plans. We do not consider that the same situation applies here.
42. However, as Mr Mead also states in his supplementary evidence:
- AT has agreed that where works are likely to step beyond the limits imposed in a condition, such as in relation to site specific noise issues,² then the Council should have a certification role.*
43. In our view, that is as far as the need for certification goes in the context of the present NoR.
44. Mr Allan’s conditions (condition 5b) also included proposed conditions requiring the outcome of that consultation with Directly Affected Parties be included as part of the CEMP and Construction Traffic Management Plan. However, we note that this requirement has already been included in respect of these plans, as well as the Community Facilities and Local Business Management Plan, and we see no utility in a further condition to the same effect. A further condition (condition 5d) is also suggested by Mr Allan that requires the final version of the plans listed in condition 3 be provided to those parties at the same time that they are submitted to the Council. Again, this requirement is already included as part of condition 6.
45. We further note, in respect to construction-related conditions, that we have not adopted the requests by Ms Blair and Messrs Allan and Arbuthnot to include requirements that the “prior approval” (including in writing) of affected parties be obtained by AT in respect of temporary access restrictions in terms of condition 12(e). Mr Mead opposed such an amendment in his supplementary evidence on the basis of the obvious potential implications for the construction process, but we think that Ms Sheard’s response through her Reply sums up the situation more directly – that is, that providing the submitter with a right of refusal in such situations is clearly ultra vires.

Lapse Date

46. The ten year lapse date sought by AT as part of the NoR was a matter of concern common to a number of submitters, with legal submissions and evidence suggesting that the standard five year period (per section 184 of the RMA) should apply, with AT having the option to seek a longer period at the end of that five years should it be able to demonstrate that it is giving effect to the designation.

¹ And as a result we also do not propose to include Mr Allan’s proposed condition 5c.

² Refer condition 14(e)(vi)

47. The rationale for the ten year period was set out in the AEE and Mr Mead's evidence, and further referred to by Mr Mead in his supplementary evidence. He states therein:

AT cannot rely upon an extension of the standard 5 year terms pursuant to section 184 of the RMA because they may not have made substantial progress to give effect to the designation in that time period, given current funding. The alternative of delaying the issuing of the NoR until closer to the construction commencement date seems illogical to me. The whole purpose of the (NoR) is to signal future public works. A lapse date seeks to ensure that projects are implemented and indicative designations do not 'hang around' for a long period of time. In my view, 10 years is an appropriate lapse date for such a large project, and given the current (known) funding programme faced by AT.

48. Ms Sheard advised in her reply that the ten year lapse period as sought is appropriate for the reasons set out in Mr Mead's evidence. While a five year period could be extended, imposing this period would simply require AT to apply for an extension at a later date.

49. The opposing view is generally represented by Mr Allan, who cites the uncertainty that will affect decisions with respect to the maintenance, upgrading and replacement of buildings and infrastructure on commercial sites. Further:

- there will be an ongoing risk as to when commercial activities will be compromised and for how long;
- the lack of clarity as to effects on commercial activities is likely to affect the prospect of upgrading or reinvestment on those sites, and reduce their attractiveness to potential tenants if existing businesses shift or close; and
- there is uncertainty that the PWA process will adequately compensate for commercial loss, nor do so in a timely fashion.

50. Mr Allan also highlighted a recent commissioner decision in respect of the Watercare northern infrastructure corridor project (33km long), which recommended a 20 year lapse period and which Mr Allan considered provided too much uncertainty, and reflected his observation that requiring authorities were tending to request longer durations as part of their notices of requirement. We note that the reasons for that lapse period as stated in the Council recommendation for the Watercare projects were that:

We have concluded that the 20 year lapse period sought by Watercare for each of the designations is appropriate given the long planning horizon anticipated for each of these projects, and the fact that they must marry with the actual population and its demands at the relevant times.

51. We acknowledge that the lapse period in that case can be differentiated to some extent by the actual physical length of the works, but we also note that the RMA provides for a longer lapse period to be applied in each case. In this respect, we consider that Mr Allan's concerns are overstated, and further we conclude that any

concerns around the timely resolution of any PWA-related matters are not relevant to a finding on this matter. The application documents and evidence have been reasonably clear that the works will occur in the period 2023-25, and this time frame will no doubt be further clarified during the property acquisition process, and during the pre-construction consultative requirements for AT associated with formulation of the various management plans ahead of the outline plan process. In that context, we can see no greater certainty for adjacent property owners in leaving any extensions beyond the five year standard lapse period to be subject to applications by AT under section 184(2) of the RMA, and consider that this places an unnecessary burden on the project when it is reasonably clear that the works will not be completed in that timeframe. As Ms Sheard notes, AT are not asking for “decades” (a reference to the 20 year period approved for the aforementioned Watercare project), but is “simply asking for an additional period of five years to allow time to work through the detailed design, resource consent, funding and land acquisition matters”.

52. Having regard to the extent of works proposed in this NoR, we conclude that a ten year lapse period is reasonable and appropriate.

Specific Sites

Z Energy

53. The submissions and evidence presented by Z Energy related to construction-related concerns, as discussed earlier, as well as specific issues around the design of the access and egress driveways in respect of the adjacent slip lane, and provision for signage.
54. Resolution of the access arrangements was the subject of some design evolution during the evidence exchange period. The evidence of Ms Crafer for AT and that of Mr MacArthur for Z Energy summarised further discussions with respect to the design of the Lincoln Road accesses, and indeed these discussions continued during the hearing to the point where an amended design approach was agreed. A final design was subsequently agreed between the parties and provided by AT following the hearing, and as part of Ms Sheard’s Reply. This revised plan, dated 18 May 2017, has therefore been included by AT as part of the NoR plans (at condition 1), and addresses those agreements. In particular, the amended design has removed the auxiliary lane component of the slip lane, and has relocated the position of the northern (exit) access driveway further south to enable safer egress movements across the adjacent T3 lane and into the north-bound traffic lanes. Removal of the auxiliary lane and a revision to the length of the slip lane has also reduced the overall area of land take on the Lincoln Road frontage of the site, thereby avoiding effects on the stormwater management system for the site.
55. Although that revised plan now addresses the concerns set out in Mr MacArthur’s evidence as to the safety of egress manoeuvres from the site, residual issues remained as to the potential for a secondary western access from the site, by way of a crossing between the Z Energy and Mitre 10 Mega sites, and whether this could also be provided for as part of the NoR. While it was common ground between the traffic

experts that this was not necessary to ensure safe egress from the site, we acknowledge that provision for a further alternative access to the west would be desirable, if only to provide Z Energy customers with a more 'controlled' form of egress via the adjacent signalised intersection when undertaking right-hand turns into the Lincoln Road southbound traffic lanes. We had some doubts as to whether Ms de Groot's submission that we could extend the designation boundary to allow for this was actually an option available to us. Indeed, no legal authority was presented that would give us confidence to proceed further on that basis, and in lieu of any landowner approval for such an extension, the appropriate and conservative approach is consistent with that which was advanced by Ms Sheard, to the effect that there is no proper basis for us to consider modifying the designation boundary during this recommendation stage of the NoR.

56. We therefore consider that any provision for access via an internal western connection is a matter appropriately dealt with through private property negotiation – AT advised in this respect that they are able to accommodate such an access through the NoR works, to the extent that it does not affect the boundary or purpose of the NoR.
57. Certain signage protection measures were also sought by Ms Blair, in particular to request a limitation on planting to maintain visibility of the relocated prime sign. However, we consider that it would be inappropriate to limit potential landscape outcomes further than those that are already inherent in the constrained road berm widths. We prefer, and agree with, the evidence of Mr Mead that such a restriction is unnecessary, and therefore do not intend to include such a restriction. We also acknowledge Ms Sheard's observations on this point that imposing a condition for blanket prohibition on tree planting along the frontage of one site would elevate the concerns of one site owner above all the other various factors that will need to be taken into account for such planting.
58. While we appreciate the basis for Ms Blair's request in terms of maintaining the visibility of the Z Energy operation as a means to partially offset any potential business losses from the works, we consent that a restriction on tree planting to ensure the visual primacy of commercial signage would be a somewhat unusual outcome in RMA terms. We know of no other circumstance, nor were we directed to such, where commercial signage would be protected in this manner. Signage elements are themselves usually subject to strict rules and restrictions to reflect the effect that such features have on amenity values, while at the same time acknowledging their necessity from a commercial perspective. With respect to the latter, we note that other similar activities appear able to continue to operate in other busy corridors notwithstanding the presence of existing or emerging vegetation (the Caltex service station along Te Atatu Road being an obvious and proximate example).
59. We have not therefore adopted the conditions proposed by Ms Blair (as amendments to condition 22 and as a new condition 25) in regard to this matter.

Vela Family Trust

60. The submissions and evidence presented on behalf of the Vela Family Trust highlighted the effects on the NoR on the Vela site at 311 and 313 Lincoln Road (a fruit and vegetable retail outlet). These effects would arise due to changes to the road width and alteration to the frontage of the site, including the alignment of the left-in access driveway and the need to relocate the front canopy to the southern side of the shop. This would result in a reduction in on-site parking, although it appeared to be generally accepted that this could be largely offset by the provision of two or three new spaces at the rear of the parking area.
61. The primary issue of concern to the Vela Family Trust was described in the traffic engineering evidence of Mr Parlane, as relating to the width of the adjacent section of median barrier, which will be 5.8m outside the Vela property. Mr Vela noted that this was a function of the need to accommodate U-turn movements at the intersections at either end of the medians.
62. Mr Parlane advised, in quite candid terms, that provision for such U-turns by 8m trucks (or possibly larger) was dangerous, to an extent that was without precedent in his opinion. This opinion was not supported by Ms Crafer, and we note that the effect of such movements would be reviewed by way of a safety audit per condition 15. Mr Innes also advised, through the officer reply, that the U-turn aspect was not inherently unsafe, but did note that it would be necessary to seek to maximise the space available for such manoeuvres at the detailed design stage. Mr Innes did, however, acknowledge that this would be unlikely to yield such changes as would accommodate much more than the 8m truck depicted in Figures 4 and 5 of Mr Parlane's evidence. We accept Ms Sheard's comment in Reply that the narrowing of the median as sought by Mr Parlane would preclude all truck U-turns, while only providing a further 1.4 metres (maximum) of width to the Vela site, and this would still require relocation of the canopy at the front of the site.
63. We consider that while provision for such movements are not without precedent in the Auckland context, they are not widespread and may well be a unique proposition, at least initially, for many motorists using the Lincoln Road corridor. It is our recommendation, therefore, that in view of the potential safety effects that could arise from their use (or misuse), that the requirement for a post-operation safety audit should be brought forward to a period no later than three months following completion of the works. This would further amend the six month period sought in Mr Foster's evidence, as discussed below in regard to the submission by PEL.
64. In this regard, we note that the timing for this audit had only been included in the advice notes to the conditions schedule included with the officer report, which as Mr Foster observes has not been included in AT's subsequent conditions. Mr Mead had commented on the advice notes in his evidence in chief, and was of the view that such advice notes were unnecessary due to their nature (as "helpful suggestions" only). While we generally agree with Mr Mead's sentiment, the exclusion of this advice note would mean that there is no obligation elsewhere within the NoR conditions to review the operation of the U-turn movements post-construction, which we consider to be of

some importance in this case. We have therefore reinstated and recast the intent of advice note 2 within the officer report as a condition (condition 15A³), following the pre-construction safety audit requirement set out at condition 15.

Restaurant Brands

65. Mr Arbuthnot provided a statement of evidence on behalf of Restaurant Brands Limited, and in respect of their various outlets on Lincoln Road comprised of a Carl's Junior, KFC and Pizza Hut. The main thrust of this evidence was on the management of construction-related effects on these premises, and to continue to seek amendments to facilitate right-hand turns into the Carl's Junior outlet at 281 Lincoln Road.
66. Mr Arbuthnot noted that approximately 45% of custom for the Carl's Junior outlet were from western and southern locations, which necessitate a right-turn manoeuvre from Lincoln Road to access the premises. Restrictions to such access would, Mr Arbuthnot advised, have a significant effect on business custom, with those customers approaching from those western and southern locations needing to make a detour and U-turn via the Lincoln Road/Central Park Drive intersection. As we have noted above, the implementation of a solid median is in itself a permitted activity, and an aspect of the proposed NoR that we have considered as forming part of the permitted baseline of effects. We were not provided with any information regarding crash records in the vicinity of the Carl's Junior site, and given that no temporary measures are presently in place (as compared with the Z Energy site) there appears to be less immediate impetus for the installation of a solid median. However, having regard to the overall crash rate for Lincoln Road, we consider it as entirely possible that AT could implement a solid median (temporary or permanent) along the subject section of Lincoln Road, separate from the scope of works envisaged by the NoR. Ms Crafer also comments in her supplementary evidence with respect to Mr Arbuthnot's evidence that "the aim of the central median is to reduce the number of right turning movements on Lincoln Road to improve safety". We also reiterate that no traffic evidence was presented that cast any doubt on the safety benefits of the proposal in this regard.
67. Mr Arbuthnot included as part of his hearing presentation a set of attachments, including a memorandum from Mr Trevor Lee-Joe, of Traffic Design Group (dated 17 May 2017), which included a diagram depicting a concept for a slip lane to provide right-turn access to the Carl's Junior and adjacent Caltex sites. The proposed slip lane would be located just to the south of the signalised mid-block pedestrian crossing, and would operate in conjunction with those signals. Mr Arbuthnot's evidence concluded in this respect that without the provision of such an access, the effects on the Carl's Junior activity will be significant, and will not be appropriately avoided, remedied or mitigated.
68. We had some immediate concerns with respect to this proposed concept, and its potential effect on the overall efficiency and of the corridor that might arise as a result

³ We have added the condition as 15A to avoid renumbering all the conditions and affecting the cross-referencing within the evidence and elsewhere in this decision. If the condition is accepted by AT, it will have the option of revising the condition numbering as part of its final decision.

of this proposal, not least of all the manner in which this information was provided at the hearing and not as part of the evidence for Restaurant Brands in accordance with the evidence exchange timetable. Mr Lee-Joe did not attend the hearing and we were therefore unable to ask questions with respect to the details of this concept, nor the effect that other similar requests might have for further access points within the median (such as that sought by North Western Toyota). Ms Crafer did not have the opportunity to review this proposal prior to the presentation of her evidence. Mr Innes commented in the officer response that the proposed concept would be likely to have an impact on the operation (or efficiency) of through-traffic movements.

69. We also note that the concept would not provide for right turn exit manoeuvres from Caltex or Carl's Junior, and so the requirement for U-turns (at the Lincoln Road/Universal Drive intersection) for those vehicles wishing to continue northwards from these premises would remain. The interruption to the median would also remove a significant section of median planting area, and adversely impact on the levels of landscape amenity that were expected as a result of such median planting, particularly having regard to the limited opportunities for replacement planting on either side of the corridor.
70. It was also apparent that concerns regarding the loss of a right turn exit from Universal Drive in respect of the KFC and Pizza Hut outlets appeared to be resolved, albeit separately from the NoR itself, by way of an agreement by AT (as recorded in Mr Mead's supplementary evidence at paragraph 66) that the western-most access from the Lincoln Centre could be amended from its present left turn only to provide for right turns. This is an apparently simple matter of changing the painted markings on the access, just north of the proposed designation boundary. Because the required changes to signage will occur outside the designation boundary, we do not propose to adopt Mr Arbuthnot's proposed condition 6A to address this matter.
71. We noted that this change may have some implications for a wider range of conflicting traffic movements associated with a nearby exit for the Pak'n Save, and this raised a query in our minds as to the reason for the access having been limited in the first place to left turns only. However, Ms Crafer provided supplementary comment on this matter to confirm that from her review of the consent files for the site, that there was no particular reason for the imposition of the left-turn only restriction, and that provision for right turns in this location could be accommodated safely. Both Ms Crafer and Mr Innes further noted that right turns from this location would represent a traffic safety improvement compared to those that currently occur from the access to the east.

Progressive Enterprises Limited

72. Mr Foster presented evidence on behalf of PEL and advised that while PEL was not opposed to the NoR in overall terms, there remained some concerns regarding certain conditions (and supported the evidence of Z Energy in respect of conditions 11 and 13), as well as issues associated with the safety of U-turn movements, and relocation of the Countdown pylon sign adjacent to the Lincoln Road and Universal Drive Extension intersection.

73. We have addressed changes to the construction related conditions earlier in this recommendation, and those changes are equally applicable to PEL. Although the main vehicle access to the site (from Universal Drive Extension) is largely outside the designation boundary, we consider that construction management conditions have been written in a way that will appropriately safeguard that access point to the greatest extent practicable, as envisaged for all sites along the corridor. We note that in the worst case, where a temporary restriction to the left-turn exit access may occur, that the site has a separate left-turn out access to Lincoln Road. We would further observe that each road frontage is the subject of separate construction stages, as illustrated in the Attachment A to Mr Stoke's evidence, and it is therefore quite reasonable in our view to expect that any simultaneous restrictions for both access points would be able to be avoided.
74. As noted previously, Mr Foster raised a concern regarding the timing of safety audits associated with U-turn movements, and sought that such reviews be brought forward to six months, rather than the 12 months proposed in the condition as originally advanced by AT. We have addressed this matter in respect of the submission by Vela Family Trust, and accept Mr Foster's evidence to the extent that we consider the timing of the safety audit should be brought forward to an earlier date (3 months), and that this requirement should be stipulated by way of a condition (recommended condition 15A).
75. Mr Stokes advised in his supplementary evidence that it is unlikely that the pylon sign will need to be moved as part of the NoR works. He went on to note that in the event that the sign does need to be moved, it will only need to be moved marginally and will be reinstated near its current position. Mr Foster commented during the hearing that such relocation works are not necessarily simple, due to the size of the concrete sign plinth and associated electrical connection requirements. However, we do not perceive these matters as unduly complex and would be quite within the scope of any reinstatement works that can reasonably be addressed by AT in accordance with the undertakings set out in Mr Stokes evidence. This was further reinforced by Ms Sheard in her Reply, where she acknowledged that any movement of the sign will be at AT's cost, and that new foundations will be sound from a construction perspective.
76. Mr Foster was also critical of AT with respect to his impression of the consultation process undertaken by AT in respect of the PEL site, and in terms of his request to achieve a side agreement with AT on construction-related matters. We were not advised of the specific matters that such an agreement was required to cover, and Ms Sheard advised in her reply that from AT's perspective, they have had no further response from PEL as to what an agreement may be required to cover. However, the apparent lack of resolution of this matter was not something we needed to reach a finding on. As Ms Sheard points out, the existence (or not) of any such agreement between AT and PEL, which would presumably be as part of the PWA process, is not relevant to our consideration of the NoR. Nevertheless, we note that the amendments to the conditions as discussed above are suitable in our view to address any outstanding concerns in respect of construction matters.

National Trading Company of New Zealand Limited

77. The submissions and evidence presented on behalf of the NTC was directed at concerns associated with potential effects on site at 202-224 Lincoln Road, which accommodates NTC's Lincoln Road Pak'n Save supermarket. These concerns were summarised in Mr Allan's submissions as relating to the management of access, including avoidance of construction during the peak Christmas trading period, as well as the effects of construction generally, and effects on carparking. Mr Allan requested that if the NoR is upheld, then the conditions be amended in accordance with the annexure to his submissions (which represented a further update to those attached to Mr Smith's planning evidence, and responded to the changes made by Mr Mead as part of his supplementary evidence). We have commented on those changes as part of the wider construction effects issues earlier in this decision, and consider that the amendments made by AT to the conditions have given some consideration to the requests by NTC, including the requirement to generally minimise disruption during the period 12-24 December (via condition 14(b)).
78. However, having regard to the evidence of Messrs Burgess and Hanson for NTC which described for us the scale of traffic flows associated with the Pak'n Save activity, in combination with the Mitre 10 Mega, during the December period, we agree that there is a particular need to minimise those effects for a longer period (i.e. 1-26 December). We have therefore amended condition 14(b) to accommodate this requirement, and to provide some clarity around the area of Lincoln Road in which this effect should be carefully managed (as described in Mr Allan's proposed condition 36). This area would appear to align closely with the northern part of Stage 7 of the construction staging plan illustrated in Appendix A to Mr Stoke's evidence, and we would not expect it to create any complications with timing or works associated with other stages.
79. Mr Smith's evidence also highlighted the need to maintain the alignment of the signalised pedestrian crossing on Universal Drive, adjacent to the internal pedestrian connection within the Pak'n Save. The arrangement as shown on Sheet 13 of Appendix 21 of the NoR creates a disconnect between the site and the pedestrian crossing, and we were advised that the proposed median could be altered in a non-standard manner⁴ to accommodate this change without adversely affecting pedestrian safety. We have included this requirement as a new condition (condition 34).

Central Park Business Association and North Western Toyota

80. Mr Schipper and Mr Jago, from the Central Park Business Association and North Western Toyota ("**NWT**") respectively, made a joint presentation in support of their submissions. Mr Jago re-stated those points contained in the submission of North Western Toyota, advising of his continued opposition to the NoR due to the effects that it would have on the continued operation of the NWT facility and the services it provides to the surrounding area, including the disruption and loss of business during construction, difficulties in access following the installation of the median and lack of

⁴ i.e. where the pedestrian movement within the safety refuge is directed away from oncoming vehicle movements, rather than towards it.

provision for loading of vehicle transporter trucks. Mr Jago also queried the necessity of the revised road width and the need for cycle lanes and the width of the median adjacent to the NWT property, which varies from 4.4m at its maximum, and reduces to 1.2m where it provides for a right turn pocket to provide for access to Paramount Drive.

81. In respect of those latter concerns, we refer to our introductory comments regarding the purpose and necessity for the works, including the desirability for the proposed safety improvements provided by the median and enhanced facilities for both pedestrians and cyclists. The overall purpose, intent and general proposed layout of the NoR works were not challenged from a strategic or operational transport engineering perspective (save for concerns about specific access and site frontage issues at other sites), and we do not therefore propose to recommend any particular road layout changes to address Mr Jago's concerns. We note that provision for a right turn bay within the median to service entry or exit manoeuvres to the site has been addressed in a broader context earlier in this decision, and we consider that the relief sought by Mr Jago in this respect, and in combination with similar relief sought by other parties (such as that of Restaurant Brands), would lead to a significant diminution of the efficiency and safety of the corridor having regard to its overall and strategic purpose.
82. We noted during the hearing to Mr Jago that it was our understanding that the use of the existing median for the unloading of vehicles is unlawful, and this was reiterated in Ms Sheard's Reply. That situation notwithstanding, it does appear that this is a practice that might be widely practiced by similar operators throughout the region, and perhaps continues to occur though lack of any enforcement by AT, or the Police, which may have been interpreted by NWT and others as tacit acceptance by these authorities. However, the point is that operators such as NWT do not have the right to use the median for this activity, and it therefore seems unlikely that they can seek compensation for the loss of opportunity to continue that use. Mr Innes did comment, however, that the loading issue could be addressed through PWA processes, and that evening deliveries might be a suitable option for NWT. We presume this to be a suggestion that temporary use of the road reserve, during off-peak periods, may be an acceptable solution from a roading operations perspective.
83. In respect of any loss of income, this is not able to be quantified at this time and is an aspect that will be addressed through the PWA process as discussed earlier. Ms Sheard comments in this respect that "the quantum of loss is impossible to project at this point in time which is exactly why a separate regime exists under the PWA to compensate for such losses".
84. Effects associated with construction effects are addressed in general terms earlier in our decision, and will be equally applicable to NWT's operations.

Lincoln Manor

85. Mr Cameron spoke to his evidence, outlining his concerns as to the extent of land acquisition, loss of parking at the front of the Lincoln Manor site, and the need for the completion of Soljan Drive to the east to prevent shortcuts through the site.
86. Mr Innes agreed that the completion of Soljan Drive by AT would be a better solution for access to the site, but did not consider that it was necessary as part of the present NoR. We would further note that those works would simply fall outside the NoR and cannot be contemplated as part of this present process. Ms Sheard also observed in her Reply that no evidence was presented to demonstrate that the completion of Soljan Road is necessary to mitigate any effects of the project, and noted that while AT acknowledges Mr Cameron's concerns, "the completion of Soljan Road would not assist in achieving the project objectives and is therefore not part of the project".
87. Mr Cameron's concerns regarding loss of parking and changes to the frontage of the site are noted, but we consider that these are able to be appropriately addressed through separate compensation processes in accordance with the requirements of the PWA.

Waitakere Licensing Trust

88. Ms Wells had prepared evidence on behalf of the Waitakere Licensing Trust ("**Trust**"). Her evidence had outlined the concerns of the Trust with respect to potential effects on the parking layout, lack of consultation and identification of effects during construction, and what she considered to be an inappropriate degree of reliance on PWA processes to remedy these matters.
89. However, Ms Wells advised that she had reviewed the revised conditions provided by AT for the hearing and was able to confirm her support for those amendments, and in particular, those amendments that will enable affected parties to have input into the construction management plans. No further changes to those conditions were sought by Ms Wells.

Mehmed Investments Limited

90. Mr Hardacre appeared in support of his submission on behalf of Mehmed Investments Limited ("**Mehmed**"), but did not seek to add anything further to this, other than to confirm Mr Stoke's evidence that discussions with AT were ongoing. Mr Hardacre also indicated that his client had a proposal for a mixed use development in mind for the site. It is apparent that the issues raised in the submission by Mehmed will be addressed in due course through negotiations, and no specific further considerations were sought by Mehmed in respect of their submission or Mr Hardacre's evidence.

Council Response

91. We have had regard to the comments provided in the officer response as part of our discussion of the matters in contention in the preceding discussion above. In this respect, officers have highlighted the significance of the proposed central median

planting, and have recommended further additions to ensure appropriate standards for tree planting and subsequent maintenance, that go beyond the requirements of the Detailed Urban Design and Landscape Plan (“**DUDLP**”).

92. We note that the suggestion that a further condition be added (that AT engage a supervisory works arborist) in respect of the median planting has been adopted by AT in condition 22(d) as part of their proposed amended conditions provided as part of their Reply. We do not consider that a further requirement, that a minimum initial three year maintenance plan requirement be included for these works, is necessary as condition 22(b) is not confined to any specific time period and is therefore a better approach in our view.
93. The officer reply reiterated the need to retain their proposed condition 25 to require more information be provided as part of a specific Landscape Management Plan to inform the DUDLP, and to provide the Council with “more certainty as to what the magnitude of effects will be and if the proposed landscape plan will adequately mitigate those effects”. Officers further sought that this plan be completed within the next year.
94. The approach as advanced by AT is to plant “as many suitable street trees as possible” in the median, remining berm areas and footpaths, in general accordance with the concept plan provided in as part of the NoR (condition 22), and through the DUDLP requirements under condition 21, and in particular (a) and (d). We agree that the requirements of conditions 21 and 22 are generally adequate to address these matters. However, we consider that a small amendment is necessary to ensure that condition 22(a)(ii) is inclusive of the requirement for tree pits that may be associated with planting within the road berm (including the footpath), rather than solely in respect of the median.
95. We do not support a requirement for the landscape component of the DUDLP to be prepared this year, or next, given the changes that could occur between now and when outline plans are prepared and the works commence, as recognised by condition 21.

RELEVANT STATUTORY PROVISIONS CONSIDERED

Introduction

96. AT is a requiring authority in terms of section 166 of the RMA and has given notice to the Council of its requirement to authorise the construction of improvements (including road widening) on Lincoln Road and local road connections.
97. Section 171 of the RMA sets out the matters to which a territorial authority must have regard when considering a requirement and any submissions received, and in making its recommendations to the requiring authority. Section 171 is subject to Part 2, which states the purpose and principles of the RMA.
98. Section 171(1) requires:

- (1) *When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to -*
- (a) *any relevant provisions of -*
 - (i) *a national policy statement:*
 - (ii) *a New Zealand coastal policy statement:*
 - (iii) *a regional policy statement or proposed regional policy statement:*
 - (iv) *a plan or proposed plan; and*
 - (b) *whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if –*
 - (i) *the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
 - (ii) *it is likely that the work will have a significant adverse effect on the environment; and*
 - (c) *whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
 - (d) *any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*

99. The preceding parts of this decision have considered the adverse effects of the NoR where there were matters remaining in contention between AT and submitters, and we have made our findings in respect of these matters, having regard to the relevant statutory tests and the conditions proposed by AT and our recommended amendments (set out in Attachment A). These various matters are discussed in summary form below.

Assessment of Section 171(1)

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

100. Pursuant to section 171(1)(a), when considering the NoR we must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to any relevant provisions of a national policy statement, the New Zealand Coastal Policy Statement, a regional policy statement, and the relevant regional and district plans and proposed plans.

101. Collectively the NoR application, the officer report and the evidence has provided a comprehensive commentary with respect to the potential adverse effects of the NoR, and in the context of the relevant national and regional policy statements and the AUP. We do not intend to repeat this material in this decision; rather we rely on the application documents and officer's report in this regard, except to indicate that the following documents were considered of particular relevance in reaching our decision:

- The National Policy Statement for Freshwater Management;
- The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health;
- Auckland Regional Policy Statement; and
- Auckland Unitary Plan – Operative in Part.

102. No regional plans are relevant to the consideration of this NoR. Any subsequent applications to develop the site that triggers the need for resource consents under the regional plans will be applied for at that time.

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

103. We conclude, on the basis of the documentation provided in Appendix 5 to the NoR, and the evidence of Mr Mead, that the requirements of section 171(1)(b) have been met.

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

104. The objective of AT, as the Requiring Authority, in serving this NoR is to enable the construction, operation and on-going maintenance of Lincoln Road. We conclude that the NoR is reasonably necessary to meet the objectives of AT, and so meets the requirements of this section of the RMA.

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

105. The default period for the lapse of a designation is five years after its inclusion in a plan unless it has been given effect to or an application is made to extend the period, or a longer period is confirmed as part of the designation process⁵. In this application, AT has sought a lapse period of ten years. We have set out earlier in this decision why we agree that a ten year period is appropriate.

⁵ Section 184(1) of the RMA

Part 2 of the Act

106. Part 2 of the RMA sets out its purpose and principles at sections 5 to 8, with the overall purpose being sustainable management as defined in section 5.
107. In terms of section 5, we recognise that the proposal will generate adverse environmental effects, but subject to compliance with the conditions we are recommending to AT as the requiring authority these effects will 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 NoR. The conditions recommended to be attached to the designation, if agreed to by AT, 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, business interruption and landscape amenity.
108. We have had regard to the matters of national importance listed in section 6, as well as the 'other matters' in section 7 relevant to the proposed designations, and in particular to:
- (b) The efficient use and development of natural and physical resources;*
 - (c) The maintenance and enhancement of amenity values;*
 - (f) Maintenance and enhancement of the quality of the environment*

and we have concluded that the NoR is consistent with those provisions.

109. No adverse issues directly associated with section 8, which requires all persons exercising functions and powers under the Act 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 has established a collaborative working relationship with mana whenua, and this engagement will continue through the requirements set out in condition 10.

CONCLUSIONS

110. Section 171 of the RMA provides the means by which the NoR can be recommended to be confirmed or otherwise by AT. In terms of section 171 we consider that the NoR is appropriate, subject to the conditions we are recommending to be adopted (as Attachment A) by the requiring authority and should be confirmed.
111. We have concluded that the ten year lapse period sought by AT for the designation is appropriate 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.
112. Many of the issues raised by submissions will be appropriately dealt with at the Outline Plan of Works stage, which must occur before work commences and is subject to overview by the Council.

RECOMMENDATIONS

Recommendation 1

113. In accordance with section 171(2) of the RMA, and on behalf of the Auckland Council the Commissioners recommend to Auckland Transport that the Notice of Requirement for a designation to authorise the construction of improvements (including road widening) on Lincoln Road and local road connections, **be confirmed**, subject to the following conditions set out in Attachment A.

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

- (a) The NoR satisfies section 171 of the RMA as the designation will avoid, remedy or mitigate adverse environmental effects, subject to the adoption of the recommended conditions set out in Attachment A, and because:
 - The designation is in general accordance with to the objectives and policies of the relevant plans, which include:
 - The National Policy Statement for Freshwater Management;
 - 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;
- (b) A ten year lapse period for the designation is appropriate given the scale of the proposed works and associated timeframes related to funding, outline plan approvals and construction.
- (c) The work proposed by the NoR is consistent with Part 2 of the RMA in that it represents the sustainable management of natural and physical resources.

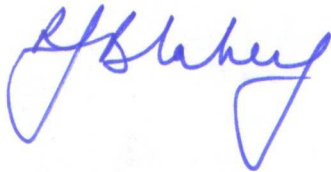
Recommendation 2

115. In accordance with section 37(2)(a) of the RMA, the late submission by Pingping Zhang is accepted, for the reasons that:

- (a) A waiver of the submission deadline that would otherwise apply to the receipt of this submission will cause no prejudice to any other party (and nor was any such prejudice claimed); and
- (b) The requiring authority was not opposed to a waiver of the deadline.

AMENDMENTS TO THE AUCKLAND UNITARY PLAN

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



Richard Blakey
Chairperson

Date: 8 June 2017