

**IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE PAPAIOEA ROHE**

**CIV-2023-485-137
[2024] NZHC 2870**

UNDER	the Resource Management Act 1991
IN THE MATTER OF	an appeal against Environment Court decision pursuant to s 299 of the Resource Management Act 1991
BETWEEN	AOKAUTERE LAND HOLDINGS LIMITED Appellant
AND	PALMERSTON NORTH CITY COUNCIL Respondent

Hearing:	1 October 2024
Counsel:	G L Woollaston for Appellant N Jessen for Respondent
Judgment:	3 October 2024

JUDGMENT OF GRAU J

Introduction

[1] The appellant, Aokautere Holdings Ltd (AHL), appeals against a decision of the Environment Court confirming a Notice of Requirement (the NoR) by the Palmerston North City Council (PNCC) to designate land at Johnstone Drive in Palmerston North for the purposes of a new road connection between Abby Road and Johnstone Drive.

[2] At the relevant time, AHL was the registered proprietor of the land that was made subject to the designation under s 168A of the Resource Management Act 1991 (the RMA). AHL objected to the proposed designation, but an independent

commissioner (the Commissioner) determined the designation should be confirmed. AHL appealed the Commissioner's decision to the Environment Court. The Environment Court dismissed the appeal.¹ AHL now appeals to this Court on a question of law pursuant to s 299 of the RMA.

[3] The crux of the appellant's argument on appeal is that the purpose of the NoR was only expressed as being to provide a link road between Abby Road and Johnston Drive, as well as providing access to the nearby Adderstone Reserve from Abby Road, but the proposed designation also has the objective of facilitating access to another (adjoining) reserve, the Manga o Tane Reserve, when doing so was not a stated purpose. AHL considers the extent of the proposed designation therefore extends beyond what was identified in the NoR and is more than is required for the works that are necessary to construct the proposed road.

[4] The PNCC's position is that the Environment Court was correct to find in favour of the PNCC that the designation over the full area proposed by the PNCC was appropriate. The NoR had included within the proposed designation land which might potentially be required for physical road formation, landscaping, and effects mitigation once the final construction design has been completed. The PNCC points out that the connection to the Manga o Tane Reserve is not included as an objective in the NoR because it was not the PNCC's objective. Instead, it is only a feature of the route the PNCC selected to achieve its stated objectives.

The legal and factual background

Designations under the RMA

[5] A "designation" is a provision made in a district plan to give effect to a requirement made by a "requiring authority" under either ss 168 or 168A of the RMA for land to be set aside (or "designated") for a public work, such as building a road, a school, or a public infrastructure facility.² It is effectively a kind of zoning. Until a designation has been confirmed and included in a district plan, a proposal for designation is referred to as a "notice of requirement" (a NoR) or simply a "requirement".

¹ *Aokautere Land Holdings Ltd v Palmerston North City Council* [2023] NZEnvC 035 [Decision on appeal].

² Resource Management Act 1991 (RMA), s 166 definition of "designation".

[6] Under s 168 of the RMA, “requiring authorities” may apply to a “territorial authority” for designation of certain land. “Requiring authorities” include Ministers of the Crown, local authorities, or approved network utility operators.³ A “territorial authority” under the RMA has the same meaning as in the Local Government Act 2002, that is, a city council or district council named in sch 2 of that Act.⁴ A “local authority” is both a regional council or territorial authority.⁵ A territorial authority may itself decide to issue a NoR for designation pursuant to s 168A. The PNCC is all three such authorities, and it exercised its power in this case to designate as a territorial authority under s 168A.

[7] The process of applying for designation is similar to an application for a resource consent. When a requiring authority gives notice to a territorial authority of its requirement for a designation of land for a public work, or where a territorial authority itself seeks to designate an area for public work, the territorial authority will then provide “notification” of the requirement. Notification is either by “public” or “limited” notification; the former being notice of the application published on the Internet and in a newspaper, and the latter being simply serving notice of the application on any affected person.⁶

[8] Where a territorial authority has itself notified a NoR under s 168A, after hearing submissions on the NoR,⁷ the territorial authority may make a decision confirming, modifying, imposing conditions on, or withdrawing the requirement.⁸ The territorial authority is to make its decision with regard to the following considerations in s 168A:

- (2A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.
- (3) 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—

³ Section 166 definition of “requiring authority”.

⁴ Section 2 definition of “territorial authority”; Local Government Act 2002, s 2 definition of “territorial authority”.

⁵ RMA, s 2 definition of “local authority”.

⁶ Sections 2AA and 2AB. However, there is no duty to consult about NoRs (s 36A).

⁷ Sections 99, 100, and 168A(2).

⁸ Section 168A(4).

- (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 decision on the requirement.
- (3A) The effects to be considered under subsection (3) 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 requirement, as long as those effects result from measures proposed or agreed to by the requiring authority.

[9] Of particular relevance in this case is the consideration in s 168A(3)(c), that is, “whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought”.

[10] Once a decision is made, a territorial authority must notify the decision to any submitters or those affected.⁹ The decision can be appealed to the Environment Court in turn.¹⁰ If a NoR is issued over privately owned land, the owner of that land cannot prevent or hinder the proposed works without approval of the requiring authority.¹¹ Land that is subject to a designation also does not require resource consent in the form of a land use consent (to the extent the land is used for the designated purpose).¹² If no appeal is lodged against the decision, or if the Environment Court confirms or modifies the requirement on appeal, the designation must be provided for by the

⁹ Section 173.

¹⁰ Section 174.

¹¹ Sections 176(1)(b) and 178(2).

¹² Section 176(1)(a).

territorial authority in its district plan (or proposed district plan) as soon as practicable.¹³ As noted above, it is at this point that a NoR (or requirement) becomes a designation.

[11] A requiring authority also generally submits a further “outline plan” to the territorial authority before construction begins.¹⁴ An “outline plan” effectively contains more detailed design information about the upcoming public work. This allows the territorial authority to request changes once more information is gathered following a designation application, which usually occurs during the initial stages of a project.

Facts of this case

[12] As noted above, the PNCC sought to designate land at Johnstone Drive in Palmerston North for the purposes of creating a new road connection between Johnstone Drive and Abby Road (the Road). The Road would also provide access to Aokautere Drive, which is part of State Highway 57. That would in turn provide access between the urban area of Palmerston North and the suburb of Aokautere. The area had recently seen significant residential development and subdivision. The land sought to be designated, comprising 0.97 ha at 52 Johnstone Drive, was privately owned by AHL.

[13] The PNCC’s NoR was publicly notified on 4 November 2020. The PNCC’s description of the activity for which designation was sought was set out in the NoR as follows:

The Notice of Requirement application seeks to enable roading access between Abby Road (currently without a formed ending) and Johnstone Drive. The proposed road will be a two-lane local road, approximately 180m long and would extend Abby Road and join with a T intersection to Johnstone Drive.

[14] The purpose of the NOR was expressed as follows:

The NoR will secure the potential to extend Abby Road so that it joins up with Johnstone Drive for the purpose of:

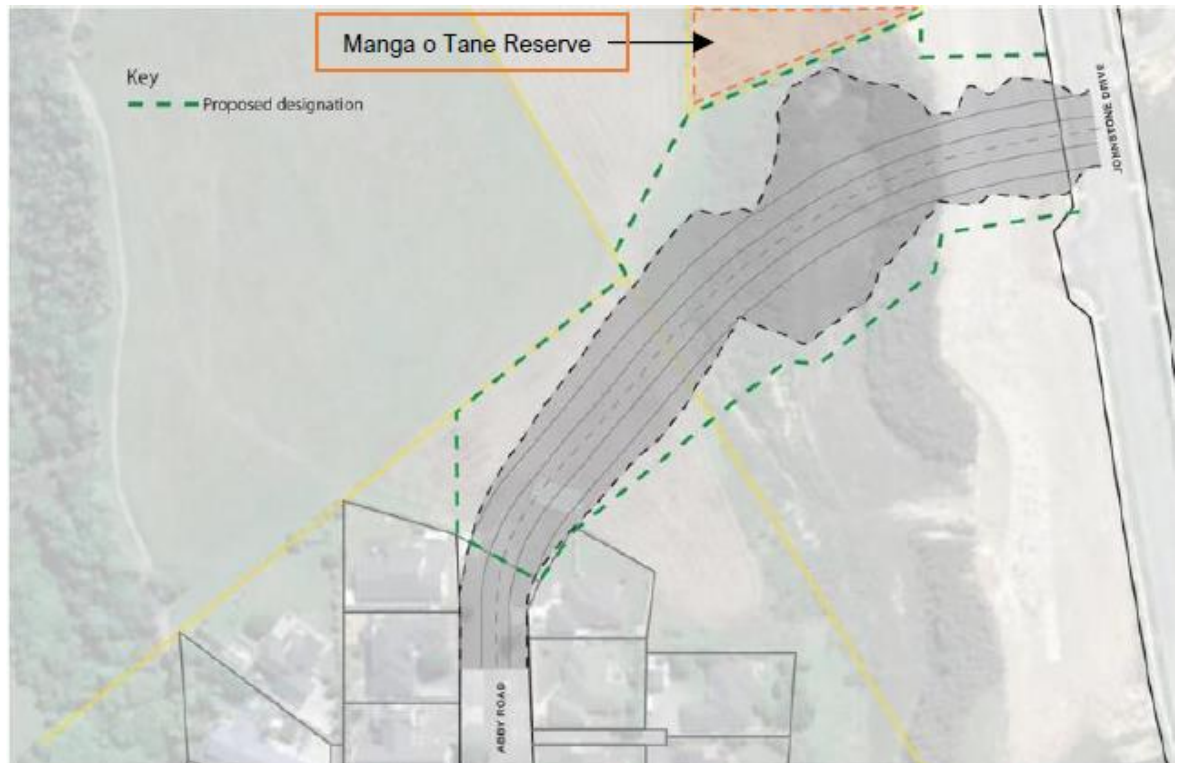
- Preserving and providing an efficient and logical connection between Abby Road and Johnstone Drive.

¹³ Section 175.

¹⁴ Section 176A.

- Preserving and providing an efficient and logical access to the eastern side of the Adderstone Reserve from Abby Road, to enable recreational opportunities.

[15] The extent of the proposed designation is set out below. As indicated, the boundaries of the designated land would intersect with another reserve adjacent to the Adderstone Reserve, the Manga o Tane Reserve, enabling access from the Road into the Manga o Tane Reserve:



[16] AHL opposed the designation on the basis that (among other things) the area proposed to be designated was excessive and went beyond what was required to meet relevant Council Engineering Standards. A facet of this argument was that connection with the Manga o Tane Reserve was not within the notified objective of the NoR so designating land for that purpose was unlawful. For ease of understanding, the difference in the land covered by the extent of the works physically required for the proposed Road corridor (marked in the darker grey area above), and the total land area covered by the proposed designation (marked by the dashed line) is referred to as the “Additional Land”.

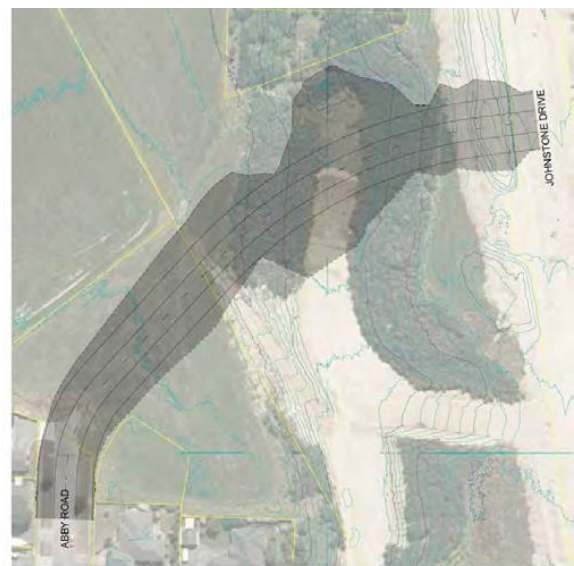
[17] It is relevant at this stage to note that four years earlier, in 2016, the Horizons Regional Council granted AHL a resource consent to undertake earthworks to create a road and to infill the gully within the land associated with residential development at

Johnston Drive. AHL also applied to the PNCC for land use consent for earthworks but was declined. In 2019, the PNCC sought to designate the same parcels of land, and AHL and the PNCC entered into negotiations about co-funding to deliver the connection road. Once the current NoR had been finalised, the negotiations ceased, as AHL lodged a subdivision application.

[18] The 2019 NoR had proposed a different road alignment, called the “Southern Alignment” (as opposed to the “Northern Alignment” in the current 2020 NoR). The Southern Alignment provided a more direct pathway from Abby Road to Johnstone Drive, requiring less of AHL’s land to be designated, and was further away from the Manga o Tane Reserve:



SOUTHERN ALIGNMENT (INDICATIVE)



NORTHERN ALIGNMENT (INDICATIVE)

[19] The NoR explains that the Northern Alignment came to be preferred for the following reasons:

- It provides for better road gradients;
- It provides better connection and integration with the Manga o Tane Reserve;
- It provides sufficient space for the proposed landscaping mitigations; and
- Its expansion of the NoR area allows for the predicted fill works to be undertaken within its boundaries.

[20] The Commissioner was then appointed to consider the proposal and submissions that had been received, including by AHL, and two local residents, in opposition to the NoR. The Commissioner found that the extent of the NoR sought to

be imposed was properly commensurate with the nature and extent of the public works intended to be undertaken.

[21] AHL had similarly submitted to the Commissioner that because the connection to the Manga o Tane Reserve as a feature of the NoR did not fall within the PNCC's statement of purpose, it could not be said the work or designation was reasonably necessary for achieving the objectives of the NoR. The Commissioner instead accepted the PNCC's submission that the connection to the Manga o Tane Reserve was within or implicit in the first statement of purpose relating to the efficient and logical connection between Abby Road and Johnstone Drive.

[22] The Commissioner went on to discuss the concept of "reasonable necessity" and said it was ultimately a matter of evidence. In his view, compelling evidence was provided by Mr O'Leary (a Planning Manager engaged by the PNCC) who had said the designation appropriately abutted the Manga o Tane Reserve, which would enable revegetation of exposed earthwork areas to be planted in a manner which integrates with that Reserve, and avoiding a situation where residual private land physically and legally separates the proposed road from connecting to the Reserve. As well, the landscape experts and engineering assessments supporting the NoR were that the width of the NoR was necessary for an efficient layout and route selection and to accommodate the necessary earthworks, battering, remediation and mitigation planting.

The Environment Court's decision

[23] AHL appealed the Commissioner's decision to the Environment Court pursuant to s 174 of the RMA.¹⁵ The two issues for the Environment Court on appeal were in essence the same as those raised by AHL in its initial objection before the Commissioner; being that the proposed designation went beyond the extent of works physically required for the proposed Road and that its extent had been fixed by the objective of facilitating access to the Manga o Tane Reserve rather than providing an area necessary for the road connection works.¹⁶

¹⁵ Which applies by virtue of s 168A(5).

¹⁶ Decision on appeal, above n 1, at [6].

[24] After setting out the parties' submissions, Judge Dwyer acknowledged that the designation area shown in the NoR extended beyond the identified roadworks area to connect the designation area with the boundary of the Manga o Tane Reserve.¹⁷ While the Judge accepted there was "obvious merit in a general sense" in AHL's contention there should be minimal interference with its property rights to provide facilitation of properly notified public works, his Honour said that proposition must be looked at in context.¹⁸

[25] His Honour concluded that it was apparent on consideration of the NoR documents that the physical roadworks area identified is indicative only. In particular, the Judge noted the following paragraphs from the NoR in accepting that the roadworks area shown is "conceptual and subject to detailed design":¹⁹

1.4.3 OUTLINE PLAN

In dealing with projects such as the placement and construction of roads, the designation phase is normally undertaken during the initial stages of the project cycle. On that basis, it is usually only possible to provide a general and conceptual design at the time of the designation phase with the detailed design undertaken in the latter stages of a project. The designation process under the RMA addresses this issue via a two-phase process. In this respect, a NoR provides the opportunity to lodge a conceptual design in support of the requirement, while outline plans provide the opportunity to confirm and clarify detailed design information at a later stage.

In this instance, while the details provided in this NoR have been developed in accordance with the anticipated operational requirements of the road and the best information available at this time, the design drawings attached to this NoR are indicative plans only to assist with evaluating potential effects on the environment. In effect this stage considers a 'corridor' within which the road would be constructed. Once the specific design of the road is known, and prior to construction, an Outline Plan application will be submitted in accordance with section 176A of the Resource Management Act 1991.

[26] The Judge said that what the NoR proposed was what was envisaged by the RMA, namely, that there would be clarification of details of the designation once a specific design was known.²⁰ That was consistent with the observations of Whata J in the case of *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council (Queenstown Airport)*, where his Honour explained that the approach to what is "reasonably necessary" in s 171 of the RMA (the mirror provision to s 168A applying

¹⁷ At [14].

¹⁸ At [14]–[15].

¹⁹ At [15].

²⁰ At [15].

when a requiring authority is not the territorial authority) requires “some tolerance”.²¹ Judge Dwyer held that it is “appropriate for there to be inbuilt flexibility to accommodate detailed design requirements”.²²

[27] The Judge was satisfied the information before the Environment Court showed that “providing a designation over the full area proposed by the Council is “efficient and logical”, in line with the one of the stated purposes of designation”. The alternative was for there to be “no flexibility” for the PNCC as to the extent of the physical work to be undertaken once detailed design work was complete. It was efficient and logical to include within the proposed designation land which might be required for ancillary works, for example, for the purposes of physical road formation, landscaping, and effects mitigation once final construction design is completed.²³ In declining the appeal, the Judge’s conclusion was that “[i]ncluding the full corridor proposed by the Council in the proposed designation is entirely appropriate”.²⁴

Approach on appeal

[28] Section 299 of the RMA allows a party to a proceeding before the Environment Court to appeal to the High Court on a question of law on any decision. The onus of establishing that the Environment Court erred in law rests on the appellant.²⁵ It is not the role of the Court in an appeal on a question of law to undertake “a broad reappraisal of the [decision-maker’s] factual findings or the exercise of its evaluative judgments ...”.²⁶ Relief will only be granted if the errors in law materially affected the outcome of the Environment Court’s decision.²⁷ For the present purposes, the Environment Court may have made an error of law if it applied the wrong legal test or where the true and only reasonable conclusion contradicts the determination.²⁸

²¹ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 [Queenstown Airport] at [94]–[95].

²² Decision on appeal, above n 1, at [16].

²³ At [17].

²⁴ At [18].

²⁵ *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159, (2022) 22 ELRNZ 202 at [30].

²⁶ *Chorus Ltd v Commerce Commission* [2014] NZCA 440 at [112].

²⁷ *Titirangi Protection Group Inc v Watercare Services Ltd* [2018] NZHC 1026, [2020] NZRMA 200 [Titirangi Protection Group] at [27].

²⁸ *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 at [24] and [26]; see also *Poutama*, above n 25, at [31]; and *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, (2015) 19 ELRNZ 163 at [22]–[23].

[29] AHL's pleaded grounds of appeal are that:

- (a) The Environment Court erred in conflating the notions of what is entailed within an efficient and logical connection between Abby Road and Johnstone Drive (the **Primary Notified Purpose**) with what may entail an efficient and logical utilisation of the [PNCC's] designation powers for the purposes of facilitating objectives and purposes which were not within the notified scope of the Notice of Requirement (the **NOR**).
- (b) The Environment Court erred in concluding that works which are without the notified objective of the NOR may be given effect to by virtue of the taking of land areas which are greater than those required to facilitate, including adequate buffering for completion of works and/or final alignment and design, (herein **Additional Land**) the furtherance of the Objectives notified in the NOR.

[30] The PNCC complains that the pleaded grounds of appeal do not adequately particularise an error of law in the Environment Court's decision and ignore the requirement under s 300 of the RMA to identify a question of law. I have some sympathy for the PNCC's position as the grounds require a degree of deciphering. Nevertheless, it seems tolerably clear that the error of law alleged is in essence that, instead of applying a threshold test of whether the designated land is "reasonably necessary" to fulfil the stated purpose of providing an "efficient and logical connection" between Abby Road and Johnstone Drive, the Judge incorrectly applied a threshold test of simply whether the pathway of the Road is an "efficient and logical" one. This then led to the Environment Court erroneously concluding that the designation could extend to the Additional Land.

[31] As expanded on below, the PNCC accepts that connection to the Manga o Tane Reserve is not a stated purpose of the NoR; indeed, the PNCC's position is that connection to the Reserve was not a purpose of the requirement at all. Against this context, and reading the Notice of Appeal in its entirety, it follows that there is really only a single question of law which would answer both the pleaded grounds of appeal: Can the designation of land for physical works beyond the minimum required to achieve an NoR's stated objectives be considered appropriate for the purposes of s 168A, and in particular, can such designation be "reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought" as per subs (3)(c)?

[32] Both parties have addressed these matters in their written and oral submissions, notwithstanding that the Notice of Appeal did not provide clearly stated questions of

law. It was also clarified at the hearing that, despite AHL no longer being the owner of the land in question, the land remains in family ownership.

[33] It is also the case that the relief sought was not particularly clear either. The Notice of Appeal sought a declaration that the taking of any land greater than that required to facilitate the notified objectives of the NoR is ultra vires the PNCC's designation power. AHL also sought that the NoR be set aside insofar as it relates to the Additional Land, with the PNCC being directed to amend and re-notify the NoR should the PNCC still wish to provide access to the Manga o Tane Reserve from the new Road. As the PNCC pointed out, AHL was not challenging the size of the NoR, but only its connection to the Manga o Tane Reserve, and AHL accepted that flexibility was necessary. Nor had it adduced any evidence in support of a position that the NoR should be moved or "shrunk". Nor can this Court re-route the proposed Road to the south given it cannot engage in the merits of the case. At the hearing AHL clarified its position as being that the decision of the Environment Court should be set aside because it was predicated on an "unsound" basis, that land could be included on the basis of it being "logical and efficient". As will be seen below, my conclusion that there is no error in Judge Dwyer's decision means the issue of appropriate relief is not one that falls to be determined in this case, and I do not propose to do so.

The positions of the parties

AHL

[34] AHL submits that the Environment Court erred in focussing on an allowance of flexibility within the final plans of the designation. No purpose, objective or rationale within the NoR was predicated upon, advanced, or notified at any time in relation to the intended formation of access via the link road to the Manga o Tane Reserve.

[35] AHL does not dispute that it is "efficient and logical" to incorporate a surplusage of land within the designated Road corridor for work outside of the roading structure itself. Rather, the issue is whether it is open to the PNCC to "retrofit" an objective of providing access to the Manga o Tane Reserve into the NoR—and designating land for this purpose—on the basis that it is "efficiently and logically" connected to the objectives actually notified. The designation framework provides that the objectives of a designation are to be made clear, that they be notified, and it also

provides for submissions by affected stakeholders to be heard and determined in accordance with natural justice procedures. To allow an objective to escape this process simply because of an “efficient and logical” ancillary connection offends the RMA’s intention to provide for robust scrutiny of proposed designations, particularly where privately owned land is involved, as it also unduly impedes on indefeasibility of title.

[36] AHL argues that the “reasonably necessary” test established in s 168A(3)(c) requires a NoR to be sufficiently precise in setting out and specifying its objectives. AHL points to the Court of Appeal’s explanation in *Waimariri County Council v Hogan* that it is necessary to ask what the “plain ordinary meaning of the words used” in designating the use of the land is what an “ordinary, reasonable member of the public ... [would] have taken from the designation”.²⁹ The designation is also to be interpreted in accordance with its text and in light of its stated purpose.³⁰ Here, there is no objective or purpose of the NoR that speaks to establishing access to the Manga o Tane Reserve. And further, facilitating access to the Manga o Tane Reserve is not “reasonably necessary” to achieve the notified objectives as forming the link Road and facilitating access to the Adderston Reserve. An adequately informed and impartial individual reading the NoR would not have ascertained that access to the Manga o Tane Reserve was included in its purposes and intent. That impacts on the ability of affected persons, and/or the public, to have an opportunity to comment. A designation must represent the use of the property faithfully in order to provide such opportunity.

[37] AHL submits that if the Court finds that the NoR proposes to designate land beyond its properly notified purpose, the NoR is rendered invalid and the appeal must be allowed.

PNCC

[38] The PNCC submits that the Environment Court did identify and determine the correct issue, and it is AHL that misunderstands the nature of project objective statements in NoRs and the assessment required in s 168A(3). The PNCC accepts that a connection with the Manga o Tane Reserve was not explicitly listed as a written

²⁹ *Waimariri County Council v Hogan* [1978] 2 NZLR 587 (CA) at 590 as applied in *Titirangi Protection Group*, above n 27, at [52].

³⁰ Relying on *Neil Construction Ltd v Auckland Council* [2019] NZEnvC 154, [2020] NZRMA 134 at [29]–[30].

objective in the NoR. But that is because it is not the PNCC’s objective. Rather, it is a feature of the route selected by the PNCC to achieve its stated purpose. And in any event, as the Judge found, designation of the land adjacent to the Manga o Tane Reserve was reasonably necessary to achieve the NoR’s stated objectives. The Judge’s finding of fact on this point is beyond challenge.

[39] The PNCC acknowledges that a statement of objectives is required to enable assessment of whether the requirement is reasonably necessary to achieve them. The RMA does not, however, establish any formal requirements for a requiring authority about how it must state these objectives. There is little case law on how an objective should be expressed, except that it ought to be distinguished from the method or route chosen to achieve the objectives, and can properly be cast in broad terms. This prevents the objective’s framing from pre-empting consideration of other relevant matters—such as alternative sites, routes or methods. In this case, the PNCC would have been hindered in its consideration of alternatives had it specified a connection to the Manga o Tane Reserve, as it would have been so specific that there would be no other alternatives to assess.³¹ That the sites, routes or methods of a project are not objectives in themselves is evidenced in the requirement under s 168A(3)(b) for the territorial authority to consider these matters in terms of their capacity to fulfil the project’s objectives.

[40] The enquiry under s 168A is not concerned with the “reasonableness” of the requiring authority’s objective, but whether the work is “reasonably necessary” to achieve them. The PNCC underscores Judge Dwyer’s position that this threshold requires a degree of flexibility, consistently with Whata J’s comments in *Queenstown Airport*. The Road alignment the PNCC selected was influenced by the factors set out in the NoR’s Assessment of Environmental Effects (AEE) section, namely: better road gradients; better connectivity with the Manga o Tane Reserve; sufficient space for the recommended landscaping mitigations (between the Road and the Manga o Tane Reserve); and allowing for the necessary fill work associated with the road works. The PNCC had provided expert planning evidence that the Northern Alignment was a better option; the Southern Alignment from the earlier NoR was of insufficient size to allow for the earthworks required to construct the Road, whereas the Northern Alignment allowed space for the predicted extent of engineering works and construction

³¹ Citing *Beadle v Minister of Corrections* EnvC Wellington A74/02, 8 April 2002 at [854].

requirements, as well as for the recommended mitigation measures, including parking and connection to the Manga o Tane Reserve. The size of the NoR allowed for those features while preserving marginal flexibility for the detailed road design.

[41] In short, the PNCC submits that the Environment Court was not wrong; it identified and determined the correct issue by reference to the evidence. The factors that influenced the PNCC's choice of route aligned with the PNCC's stated purposes as they relate to considerations of "efficiency and logic".

Discussion

[42] The starting point of the analysis is the NoR's notified objective and purpose. For ease of reference, this is:

The NoR will secure the potential to extend Abby Road so that it joins up with Johnstone Drive for the purpose of:

- Preserving and providing an efficient and logical connection between Abby Road and Johnstone Drive.
- Preserving and providing an efficient and logical access to the eastern side of the Adderstone Reserve from Abby Road, to enable recreational opportunities.

[43] As explained by Lang J in the case of *Titirangi Protection Group Inc v Watercare Services Ltd*:³²

There is no dispute regarding the test to be applied when interpreting the purpose of a broadly worded designation. As confirmed in numerous cases, the test is what an ordinary, reasonable member of the public who is considering a district scheme or plan would have taken from the designation.

[44] His Honour went on to explain that "[e]ither an activity is covered by a designation or it is not".³³ While interpreting the objectives of the designation is not the determinative issue in this case—given the PNCC's acceptance that connection to the Manga o Tane Reserve was not a notified purpose—it is nevertheless useful to bear this approach in mind given that what is "reasonably necessary" for the purposes of s 168A is a concept inherently linked to those purposes. The notified purposes set out above are clear on their words and I do not consider they need any further elucidation.

³² *Titirangi Protection Group*, above n 27, at [41] (footnote omitted).

³³ At [66].

[45] The question of what is “reasonably necessary” is to be assessed objectively.³⁴ The enquiry is qualified; the qualification being what is reasonably necessary for achieving the objectives of the requiring authority. This means the enquiry is not concerned with the necessity (or reasonableness) of the stated objective itself.³⁵ As noted by the PNCC, a requiring authority cannot couch its objectives in such terms as to exclude a consideration of alternative options.³⁶

[46] The decision of Whata J in *Queenstown Airport* is a helpful authority on the issue of determining whether the extent of a proposed designation is “reasonably necessary”.³⁷ In that case the Queenstown Airport Corporation (QAC) had issued an NoR seeking designation of around 19 ha of land in order to achieve the objective of “... provid[ing] for the expansion of Queenstown Airport to meet projected growth while achieving the maximum operational efficiency as far as possible”.³⁸ This land would have provided for, among other things, a general aviation and helicopter facility area for recreational/private use. The NoR was rejected in part by the Environment Court to the extent that it sought to provide for a “precision instrument approach runway and parallel taxiway”. As a result, the area of land subject to the NoR was reduced to 8.07 ha. Both of the parties appealed.³⁹

[47] Although within the context of s 171 of the RMA, Whata J explained that “the focal point of the assessment is, subject to Pt 2, consideration of the effects of allowing the requirement having particular regard to the stated matters” in s 171(1) (the equivalent to s 168A(3)). The purposes, policies, and directions in pt 2 of the RMA “set the frame for the consideration of the effects on the environment of allowing the requirement”. Paramount in this regard is the purpose of the RMA set out in s 5, being to promote sustainable management of natural and physical resources.⁴⁰ Given this overarching purpose, “the scope of the matters that may legitimately be considered as part of the effects assessment must be broad and consistent with securing the attainment of that purpose”.⁴¹

³⁴ Briar Gordon and others *Resource Management* (online looseleaf ed, Westlaw) at [A171.06(1)].

³⁵ *Beadle v Minister of Corrections*, above n 31, at [841]–[842] and [855].

³⁶ *Wymondley Against the Motorway Action Group Inc v Transit New Zealand* EnvC Auckland A022/03, 24 February 2003 at [28].

³⁷ *Queenstown Airport*, above n 21.

³⁸ At [1].

³⁹ At [2]–[3].

⁴⁰ At [68].

⁴¹ At [70].

[48] In considering how to interpret the language of “requirement” and “reasonably necessary” in ss 168(2) and 171(1)(c) of the RMA, Whata J held:⁴²

[93] The language of “requirement” and “reasonably necessary” in ss 168(2) and 171(1)(c) ... are standards used in everyday language. They should require no undue elaboration. But in the present context, involving the coercive powers of public authorities for public purposes, the words “requirement” and “reasonably necessary” are statutory indicia that any proposed works must be clearly justified by reference to the objective of the NOR ... Whether the scope of the NOR is clearly justified, in context, is of course a question for the Environment Court.

[94] The Environment Court adopted what might be called the orthodox threshold test of reasonably necessary namely:

In paragraph (c), the meaning of the word necessary falls between expedient or desirable on the one hand, and essential on the other, and the epithet reasonably qualifies it to allow some tolerance.

[95] The inbuilt flexibility of this definition enables the Environment Court to apply a threshold assessment that is proportionate to the circumstances of the particular case. This is mandated by the broad thrust of the RMA to achieve sustainable management and the inherently polycentric nature of the assessments undertaken by the Environment Court. Provided therefore that the Environment Court was satisfied that the works were clearly justified, there was no error of law in applying this orthodoxy.

[49] Justice Whata accepted that a NoR that will derogate from private property rights calls for closer scrutiny, but he further explained that the word “essential” was not to be equated with the proposition that the “best” site for a work must be selected, accepting QAC’s submission on this point that to do so:⁴³

... would set the test beyond the required threshold of “reasonably” necessary. Indeed to elevate the threshold test to “best” site would depart from the everyday usage of the phrase “reasonably necessary” and significantly limit the capacity of requiring authorities to achieve the sustainable management purpose. If that was the intention of Parliament then I would have expected express language to that effect ... I therefore discern no error in the court’s adoption of a threshold test that falls below this benchmark.

[50] His Honour was satisfied that it was “evident that the [Environment] court carefully evaluated whether the works were clearly justified” in that the Court sought clear justification for the scope of the NoR. Viewing the judgment as a whole led to the conclusion that “very careful consideration was plainly given to whether the works were justified”.⁴⁴

⁴² Footnotes omitted.

⁴³ At [96].

⁴⁴ At [97].

[51] Applying the reasoning of Whata J leads to a conclusion that “reasonably necessary” encompasses a designation of land that goes beyond the bare minimum of what is physically required to give effect to the notified objectives of that designation, as long as the extent of the designation is nevertheless justifiable for its scope. That the concept of what is “reasonably necessary” can be taken to include works or land beyond the “essential” work required is also clear from the broader RMA designation scheme in general:

- (a) Sections 168A and 171 require the territorial authority to have regard to alternative sites, routes, or methods of undertaking the work if the requiring authority does not have an interest in the land sufficient for undertaking the work, or if it is likely the work will have a significant adverse effect on the environment. It would be counter-intuitive in light of this requirement simultaneously to require that another relevant consideration—being whether the work and designation is “reasonably necessary”—be read to mean a designation could only be for the minimum amount of land necessary to realise a project. To read “reasonably necessary” in this way would necessarily remove any possible consideration of alternative options, contrary to the expressed statutory requirement.
- (b) As highlighted by Whata J, the standard is also not what the “best” site or route is. This would again elevate the “reasonably necessary” wording beyond the flexible standard it is intended to encapsulate. Not requiring that the option chosen must be the “best” one implies that, where faced with multiple potential sites, routes, or methods, the territorial authorities considering the requirements must evaluate the options in light of all of the considerations in ss 168A(3) and 171(1). Again, such an evaluation in light of all of a project’s circumstances would be precluded if territorial authorities were bound always to designate the least amount of land required.
- (c) Because the designation regime is subject to the purposes of the RMA as set out in pt 2 of the Act, a designation must always honour the overarching purpose of sustainable management. Given this broad overarching purpose, the matters which may legitimately fall to be

considered within the effects assessment in ss 168A or 171 will also be broad. It is not difficult to think of examples where sustainable management would require more land than is strictly necessary to be designated, for example, if the shortest possible route for building a road would cut through a conservation area or area of cultural significance.⁴⁵

[52] Accordingly, in response to the question of whether, for the purposes of s 168A, the designation of land for physical works beyond the minimum required to achieve an NoR's stated objectives can be considered appropriate and/or "reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought", the answer must be "Yes". Indeed, AHL appears to accept that land beyond the bare minimum required may properly be incorporated.

[53] The remaining question is whether the Environment Court failed to apply the correct approach to the appeal. Although the Judge used the language of "efficiency and logic" rather than explicitly referring to whether the full extent of the designation was reasonably necessary or appropriate in relation to its scope, the decision of the Environment Court nevertheless demonstrates that the Judge was satisfied the extent of the NoR was justified as against its notified purpose of providing an "efficient and logical" connection between Abby Road and Johnstone Road.

[54] I do not consider the Judge took an incorrect approach of asking whether the proposed designation would provide an "efficient and logical connection" between the two roads. That term was part of the explicit purpose of the NoR, and so was relevant to determining whether its land designation area was appropriate. The chosen Road pathway would ensure the NoR met its purpose of providing an "efficient and logical" connection if it, in itself, was an "efficient and logical" pathway. If the selected route upholds the NoR's purpose of providing an "efficient and logical" connection, it must, as a matter of commonsense, make it more likely than not that the extent of the designation would therefore be "clearly justified" so as to fall within the ambit of being "reasonably necessary".

⁴⁵ See, for example, *New Zealand Transport Agency v Architectural Centre Inc*, above n 28, where the High Court upheld a decision of a Board of Inquiry that building an overpass bridge through the Wellington Basin Reserve would have permanent adverse effects on the urban landscape, as well as areas of historical and cultural value in the area, such that transportation and economic benefits were not enough to confirm that the NoR would promote sustainable management.

[55] I reiterate that the Court on a question of law is not to delve into the merits of the decision. However, given the possibility of finding an error of law where a decision-maker's conclusion was not the true and only reasonable conclusion, I note that I also consider it was open to the Environment Court to find that designating the Additional Land and choosing a slightly longer route to allow connection with the Manga o Tane Reserve was justified in light of the NoR's objective.

[56] As highlighted by the PNCC, the route chosen for the designation was ultimately a result of several factors, and connection to the Manga o Tane Reserve was only one of those. Better road gradients and allowing sufficient space for fill works and landscaping—which would in turn mitigate the environmental impact of the works—were also relevant, as was the undesirability of a portion of private land remaining that physically and legally separates the proposed road from connecting with the Manga o Tane Reserve. I agree with the PNCC that the Environment Court found on the evidence that the land sought to be designated was not excessive. The fact that the designation extended to the Manga o Tane Reserve was simply a result of the route chosen.

[57] Finally, I agree with the PNCC that providing for a pathway from the Road that also connected to the Manga o Tane Reserve was not an attempt to “retrofit” an additional objective into the NoR to prevent affected stakeholders from being able to oppose the designation. The NoR clearly provided enough information for affected landowners (or any other interested member of the public) to provide submissions in opposition to it; connection to the Manga o Tane Reserve was not a notified objective, but the NoR itself made the extent of the required land clear. AHL was also clearly in a position to form an opinion on the extent of the designation and oppose it. The present case is very different to *Manukau City Council v Minister of Social Welfare*,⁴⁶ which AHL relied on, where a designation of land for the purposes of a “Girls Training Centre” many years previously could not stand when the current use of the property clearly fell outside that description. Although there is obvious merit in the general principle that the notification and submission stages within the designation process cannot be circumvented, I do not consider that is an issue in the circumstances of this case.

⁴⁶ *Manukau City Council v Minister of Social Welfare* (1992) 1 NZRMA 197 (PT).

Result

[58] The Environment Court Judge did not err in his approach to the appeal before him. The Environment Court's application of the law to the facts—and the ultimate outcome reached—was an assessment for it to make that is not open to challenge in this Court. It was for the Environment Court to weigh the relevant facts in light of the law as it correctly understood it.

[59] Accordingly, the appeal is dismissed.

[60] In terms of costs, I do consider any uplift is warranted. While I agree the Notice of Appeal (and the relief sought) was not entirely clear, in my view there was little to no prejudice to the PNCC. AHL's litigation conduct has not been less than satisfactory to such an extent that would warrant a departure from the normal 2B costs.

[61] Thus, I consider 2B costs are appropriate.

Grau J

Solicitors:
Dewhirst Law, Palmerston North for Appellant
Cooper Rapley Lawyers, Palmerston North for Respondent