IN THE ENVIRONMENT COURT
AT AUCKLAND

[2016] NZEnvC 073

IN THE MATTER OF	an appeal pursuant to section 174 of the Resource Management Act 1991 **(the Act)** in respect of a Notice of Requirement
BETWEEN	NORTH EASTERN INVESTMENTS LIMITED HERITAGE LAND LIMITED (ENV-2014-AKL-000003) Appellants
AND	AUCKLAND TRANSPORT Respondent

Hearing:	at Auckland 18-22, 25 January and 23-26 February 2016
Court:	Environment Judge J A Smith Environment Commissioner K A Edmonds Environment Commissioner D J Bunting
Appearances:	Mr M E Casey QC for North Eastern Investments Limited and Heritage Land Limited (**NEIL**) Mr GC Lanning and Mr WMC Randal for Auckland Transport Mr C J Brown for Auckland Council – watching brief only
Decision:	29 April 2016

DECISION OF THE ENVIRONMENT COURT

A. For the reasons set out in detail in the Decision the Court will confirm a modified NOR subject to the following:

1. **It is to be based upon:**

   (a) **the indicative operational road corridor shown in Annexure D attached to this decision, and covering a maximum width of 22m with the exception of areas specified in (2) and (3),**

   (b) **a vertical profile for the road as shown in Annexure D (or better);**

2. **In addition, the Designation over 1 and 2 being lots 2 DP199126, being 1,531m^2 owned by the Auckland Council, is to be designated in full, and lot 1 DP340400, being 856m^2, is designated in full.**

3. **In addition to the operational road corridor there shall be an additional area provided as follows:**

   (a) **an area necessary to construct the bridge abutments;**

   (b) **to connect with Fairview Avenue to the west of the proposed roundabout and on the eastern side of the roundabout to connect with the existing roading designation;**

   (c) **any area essential to allow construction of the road corridor or supporting infrastructure such as retaining walls.**

B: The parties are encouraged to reach an agreement in respect of access for the purposes of construction of their respective activities.

C: By 30 June 2016 Auckland Transport is to produce and circulate an indicative plan of the modified designation area in accordance with this decision. The indicative plan is to identify the specific land identified in A1 and A2, and any further areas required under A3. Reasons for the extent of any additional area required for construction purposes are to be provided. In undertaking its assessment of construction needs,

Auckland Transport is to minimise the effect on the NEIL development proposal adjacent to the road corridor.

D: **Auckland Transport is to provide proposed consents and conditions for the modified designation within a further ten working days.**

E: **NEIL then has fifteen working days in which to advise Auckland Transport and the Court whether it agrees with the area proposed to be designated in line with the Court's directions in the Decision, and particularly any additional area required for construction by Auckland Transport, as well as on the proposed conditions. NEIL is to advise of any concerns and ways in which these might be addressed, including any substitute condition wording.**

F: **Auckland Transport has a further ten working days to consider and advise NEIL and the Court of its response to any matters raised by NEIL.**

G: **The Court will then make a decision on the overall extent of the land to be designated, and the conditions to which the designation will be subject. In making this decision the Court will have regard to the memoranda lodged by the parties and, if necessary, convene a further hearing or conclude the matter on the papers.**

H: **Once the extent of the designation has been decided by the Court, Auckland Transport is to undertake a survey and prepare a plan that clearly identifies the area of the designation to be confirmed by the Court, and submit this plan to the Court within twenty working days.**

I: **Any applications for costs are reserved and application is to be made on issuing the final decision in accordance with directions given at that time.**

REASONS FOR DECISION

Introduction

[1] This notice of requirement (NOR) relates to the provision of much needed roading to allow the development of Fairview Catchment in Albany. The NOR goes through land owned by Heritage Land Limited, and which the company North Eastern Investments Limited (**NEIL**) is responsible for developing.

[2] Since around 2003, NEIL has been seeking to progress intensive residential and other development on this land, approximately 7.8 hectares in area, between Fairview Avenue and Oteha Valley Road. Over the ensuing decade a number of issues have arisen, leading to several hearings in the Environment Court and the current proceedings. There have been ongoing issues with obtaining resource consents for the project, with the resource consent for land use declined at the first instance hearing and an appeal lodged seeking that decision be overturned.

[3] The primary issues in this case are:

(a) should a requirement under s 171 of the Act, to a route through the NEIL site, be confirmed?

(b) if the assessment of alternatives has not been an adequate consideration of alternatives (including Fairview Avenue), should the designation nevertheless be confirmed?

[4] In relation to both issues, the effect on NEIL land available for intensive residential use is relevant.

Background

[5] The NEIL site has been subject to a *preferred road indication* on the former North Shore City Council district plans since the late 1990s. During discussions for development, the North Shore City Council and its successor Auckland Council made it clear that it was anticipating a road going through this site linked to Medallion Drive and Fairview Avenue. We will discuss later the detailed history of this matter.

[6] Subsequently the North Shore City Council notified a plan change (PC32) constraining lot sizes within the Fairview Catchment. Eventually, PC32 came to a hearing before the Environment Court relating to whether or not the Council should or

could constrain development within certain areas of the Fairview Catchment (which includes land to the north and west of Fairview Avenue but not the NEIL site) until the necessary roading infrastructure was in place.

[7] During the course of that decision, the Court acknowledged, *the status of the notation is unclear and at best, can be described as indicative* and that it did not impact on the property in terms of any rule.[1] As well as identifying that the preferred road indication had no planning force, the Court upheld the rule maintaining larger lot sizes in certain parts of the Fairview Catchment, essentially those to the west of the motorway that use Lonely Track Road to access Fairview Road, until the necessary infrastructure was in place.

[8] In the meantime NEIL had advanced plans for a comprehensive development on its site with three main components:

(a) a mixed use area with residential and retail facing Oteha Valley Road;

(b) an intensive residential area over the majority of its land excluding a corridor some 20m wide for roading between Medallion Drive and Fairview Avenue; and

(c) the East-West Towers on a smaller portion of land between Fairview Avenue and Oteha Valley Road to the west of the proposed corridor.

[9] After the hearing on PC32 the parties engaged in discussions as to how to best address the issues. Although the alignment for a road between Medallion Drive and Fairview Avenue seemed to be agreed in traffic assessment terms, there were a number of caveats on whether this was the appropriate road and the particular design or modelling required for it.

[10] At the same time NEIL was pursuing its application for resource consent for the towers on the western portion of the site (**East-West Towers**), which was set down for hearing before Judge Thompson in 2012. Prior to that hearing, and as recorded in the decision, NEIL and the Auckland Council had reached agreement in respect of resource consents for the intensive residential development and mixed use business area. The Court decision recorded that the parties would be filing a consent order (sic) in the near future.

[1] ***Thurlow Consulting Engineers & Surveyors Ltd v Auckland Council & Ors*** [2013] EnvC 082, paragraph [31]

[11] The Court then proceeded to hear that part of NEIL's appeal relating to the proposal for an East-West Towers complex on 12-13 November 2012. It is recorded in the decision of 6 December 2012 that at the time of that hearing the Court was advised about a notice of requirement, and notes:

> We were advised at the hearing that a notice of requirement has now been issued for the extension by Auckland Transport and that it conforms at least broadly, with the development's design for it.

[12] Subsequently the Court disallowed the East-West Tower residential development resource consent application.[2]

[13] It transpires that the notice of requirement was adopted by Auckland Transport on 2 November 2012, ten days prior to the Court hearing, but it was not advertised until February 2013, well after the date of the issue of the Court's decision on 6 December 2012. The notice of requirement was then notified and has proceeded to the Commissioner recommendation and decision by Auckland Transport.

The current hearing

[14] The designation decision was appealed to this Court in 2014, and was proceeding through preliminary stages to a hearing.

[15] In the meantime, this Court had assumed that matters relating to the intensive residential and mixed use business area appeals had been resolved and closed its file. It was not until 2015 that the parties advised the Court that they had not been able to settle the terms of the resource consent and required a hearing. The Court set both the designation and resource consents matters down to be heard in January/February 2016 with an estimate of three days for each hearing.

[16] After the first week of the designation hearing, which commenced on 8 January 2016, it was clear that it was unlikely that this matter would conclude, and the Court subsequently adjourned to continue hearing the NOR matter on 23 February. The Court has subsequently issued a Minute adjourning the intensive residential and mixed use area resource consent proceedings for the reasons set out in that Minute, which need not be repeated in this decision.

[17] However, we need to mention the plans detailing the proposals which are to be the subject of the two land use consent applications and appeals which were

[2] ***North Eastern Investments Ltd v Auckland Council*** [2012] NZEnvC 266

constantly referred to during the hearing. We remain mindful that this is not a hearing of those proposals and also that there is nothing to prevent NEIL, or any future landowner or land developer, from proceeding with a completely different proposal for the land. But a focus of the hearing was the implications of the designation on NEIL's land use proposals and we traverse the issues raised in the course of our decision.

Background to the designation

[18] The designation appears to have its genesis in some comments made by the Environment Court in respect of PC32, particularly in relation to a joint witness statement prepared on 22 August 2011 which reads, in part:

> The witnesses agree that in any consideration of the transportation and engineering implications of the alternatives of the Medallion Drive extension versus the upgrading of the existing alignment of Fairview Avenue, that the Medallion Drive extension is an option that is preferred. This is because it provides improved network connectivity and efficiency and achieves greater separation of the intersection and State Highway 1 interchange.

[19] In those proceedings the Court noted:

> Subsequently Mr Lanning filed a memorandum advising that Auckland Transport now had funding in place to enable it to proceed with the notice of requirement, and also that it intended to commence parallel discussions with the landowner regarding acquisition of the land required, rather than await completion of the NOR process.

[20] Of critical importance to our evaluation of the issues is the aerial extent of the designation sought.[3] That was originally notified as annexed hereto as **"A"** and shows the designation of an area of some 7,881m^2 on the NEIL land. The proposed alignment of the road and its positioning is of some importance given the subsequent plans produced to this Court during the hearing.

[21] The designation matter was heard before (then) Commissioner D Kirkpatrick, a commissioner appointed by the Auckland Council, who concluded that the NOR should be confirmed *as notified by Auckland Transport*, with the recommendation that there be minor alterations to several of the conditions.

[22] Subsequently Auckland Transport resolved to adopt the Commissioner's recommendation confirming the notified designation and conditions subject to further minor alteration of several of those conditions. Annexed hereto and marked **"B"** is a

[3] Common bundle of documents, page 164

map showing the actual area to be designated adopted by Auckland Transport.[4] This was produced to the Commissioner towards the closing of the hearing on the designation. That map is not attached to the Commissioner's decision and it is unclear whether he was aware of the extent of the difference between the area on that map and that attached to the original notice.

[23] Annexed to the Auckland Transport decision is a diagram (Annexed hereto as **"C"**) showing areas to be removed from the designation (shown in orange), and additional areas to be included in the designation (shown in blue).[5] What was not clear, and certainly was not discussed by the Commissioner, is that those blue areas were in fact not part of the notified NOR, and represented new areas of land to be included within the designation.

[24] The Commissioner discusses changes to the Designation Plan at paragraph 14 of his decision.

> AT produced an amended plan of the NOR, moving its alignment up to 6m to the south and consequently adjusting the areas of land for construction purposes on either side of the proposed alignment. This Plan also reduced the area of affected land at 21 Fairview Avenue.

[25] However, the differences are not immediately apparent. It is not until one undertakes a very close comparison of the two designation plans "**A**" and "**B**" that one is able to ascertain that there is in fact a strip of land on the eastern side of the corridor on NEIL's land that is added to the designation. Overall there is a net increase in designated land of some 238m^2 from that notified, which we understand to be the net effect of the areas removed and those added. More importantly it has no apparent reduction in effect on the eastern side, but an increase in the impacts on any building opportunities on the western side.

[26] Counsel addressed the Court on this matter and raised it as a jurisdictional matter as to whether a NOR can be modified in circumstances where the Commissioner and Auckland Transport have simply confirmed the notified notice of requirement. For reasons that will become clear during the course of this decision, the matter in the end is of no particular moment but does highlight the importance of clarifying the exact areas sought to be covered by designations. This lack of information was troubling throughout the hearing, with the Court still having no exact dimensions in respect of the proposed designation.

[4] Common bundle of documents, page 356
[5] Common bundle of documents, page 357

Context of designation

[27] The objectives of the NOR are:

- to facilitate future growth in the residential areas north of Oteha Valley Road;
- to increase capacity of the transport links between Oteha/Pinehill and Fairview Heights/Northcross;
- to provide a link which optimises the efficiency of existing intersections at SH1, Medallion Drive and Rising Parade with future traffic growth;
- to provide a link which addresses the existing safety issues for traffic accessing Oteha Valley Road from Fairview Avenue; and
- to improve walking and cycling connections between Medallion Drive and Fairview Avenue across Oteha Valley Road.

[28] The designation seeks essentially to provide a roading corridor consisting of two lanes over the majority of the length through the NEIL property each 4.2m wide; a 3m combined cycleway/footpath on the eastern side and a 1.8m footpath on the western side. The formed roadway would therefore be 8.4m wide with a further 4.8m required for cycleway/footpaths, making a total of 13.2m. To this was added a verge of 0.8m on each side of the road between the road and the footpath and a berm (or amenity strip) of some 3m on the outside of the footpath. All of this combines to give a total width of 20.8m. Over a length from the Medallion Drive intersection with Oteha Valley Road the designation plans include a third lane 3.9m to allow left and right stacking or queuing for the peak morning traffic heading south. This additional 3.9m gives a total width of just under 25m (24.7). The width of amenity berms was a subject of dispute at 3m on each side. Without them, the roading corridor is between 15 and 19m.

Land outside the roading corridor

[29] However, the proposed designation area extends well beyond this on each side of the road. We were told that the extended areas may be required for construction purposes. The width of the extra area varies significantly, including batter slopes of 3:1 on both sides of the corridor to tie in with the original ground level.

[30] We were told that it is intended by Auckland Transport for the land beyond the finished extent of the road corridor to be surrendered to NEIL once the road has been constructed. A major concern of the appellant in respect of this part of the designation is that it effectively prevents the developer from developing this part of the land until the road is constructed. The designation would require the developer to obtain permission for works outside the road corridor but within the designation under s176 of the RMA, and there was no guarantee that approval would be forthcoming.

[31] The argument of the Auckland Council in this regard is somewhat more subtle. It says that in principle it does not object to the NEIL works being done on the designated land, but:

(a) that NEIL cannot prevent or hinder the designation works; and

(b) that it cannot know whether the NEIL development proposal will prevent or hinder the designation work until such time as design is finalised.

Given that it is seeking a lapse period of ten years, that could essentially constrain construction and the development of this part of the NEIL land for the next decade or until the final design of the road has been completed.

[32] Furthermore, despite lengthy attempts by Auckland Transport and NEIL to agree on the vertical alignment of the road, the alignment supplied to the Court as part of supplementary evidence produced after the closing of the applicant's case and after the opening for NEIL brought the area to be designated and its effect sharply into focus, not just for the Court but also the parties. That shows that a vertical alignment for the road can be adopted that gets close to or matches the existing ground level over the majority of its length, thereby minimising cuts.[6] We attach that design as Annexure "**D**".

[33] The effect of the broader designation area being sought by Auckland Transport is that it prevents or constrains large building platforms on the NEIL site that encroach on the designation outside the roading corridor.

[34] Currently the situation is that NEIL has been refused consent for the East-West Towers part of its development, and the proposed development east of the corridor is subject to concerns about the impact of the buildings on the designation. Despite this, we were told the parties largely have reached agreement in respect of land use consent

[6] Common bundle of documents, Exhibit M

conditions for the eastern part. More importantly, until the road is constructed or Fairview Avenue is upgraded the wider Fairview Catchment cannot be fully developed.

Chronology

[35] In order to establish the context in which this NOR matter has been determined it is important to understand the inter-relationship of the development issues, including roading, roading funding, and the constraint over development in the Fairview Catchment (excluding the NEIL site) that currently exists. Over the last ten to twelve years there have been changes not only in terms of the territorial authority responsible for the resource consents for the land use development, but also in respect of the standards required in terms of riparian margins, accessibility and the like.

[36] We considered attaching a chronology of key actions and documents provided to us before and during the course of the hearing, however we recognise that many of these documents were produced in relation to the appeal of the land use consents, which has yet to be heard. We concluded that such a chronology was not necessary.

[37] Mr John R Farquhar, who manages NEIL, the company responsible for developing the site and the applicant for resource consents for the site, referred to extensive correspondence and said that he tried between 2005 and 2013 to accommodate the Medallion Drive link as the path of least resistance in seeking to obtain land use consent. (Mr Farquhar is also the director and beneficial owner of Heritage Land Limited which owns 56 Fairview Avenue (purchased in 2001) and 129 Oteha Valley Road (purchased in 2006)).

[38] We acknowledge that the history of this matter has been less than impressive and it is extremely unfortunate that matters could not have been resolved much earlier. There was a great deal of finger pointing during the hearing as to where the blame could and should be apportioned, referencing particular documents. However, we do not find the background to the matter to warrant recital of the detail of that history. We also remain mindful of the Commissioner's reasons for declining the first land use consent application for the East-West Towers, which extended beyond transport considerations.

[39] However, we do take Mr Casey's point, this being that Mr Farquhar should not now be penalised for going along with the demands of the various regulators and transport agencies (North Shore City and then Auckland Transport and Auckland

Council) that a road corridor be included in the proposals for land use consent. Accordingly, we set aside the fact that there were various iterations of the land use proposals illustrating the road corridor as a reason for confirming the designation.

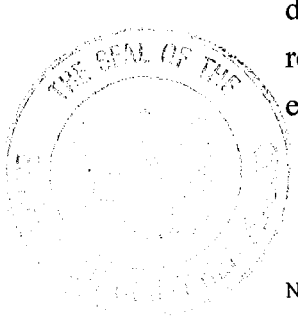
The Court's role in the designation

[40] The appeal is pursuant to s 174 of the Act and section 174(4) enables the Court to cancel, confirm, confirm and modify and/or impose conditions. Section 171(1) applies, and subsection (1) is directly relevant for consideration of this appeal. This reads:

> S171(1) When considering a requirement and any submissions received the territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement having particular regards to:
>
> (a) the relevant provisions of a national policy statement, New Zealand Coastal Policy Statement or regional policy statement or proposed regional policy statement and a plan or proposed plan;
>
> (b) whether adequate consideration has been given to alternative sites, routes or methods of undertaking 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;
>
> (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

Subject to Part 2

[41] Clearly, the consideration of the NOR by this Court is subject to Part 2 and whether the designation achieves the purpose of the Act as set out particularly in s 5. Sections 6, 7 and 8 also assist in the interpretation of the purpose of the Act. Accordingly, we understand that the overall test to be applied is that it must achieve the purpose of the Act as that is defined in s 5. In doing so the Court must consider the effects on the environment, and have particular regard to the matters set out in s 171(1)(a), (b), (c) and (d). It can be seen from these provisions that the power we have to modify the proposal or impose conditions can have an impact on the designation by reducing effects on the environment. There is clearly an inter-relationship between the various matters under s 171(1)(a), (b), (c) and (d) and the effects on the environment to be considered.



[42] Importantly, the Court's power to control effects on the environment only rises in circumstances where it confirms the notice of requirement. It must at least confirm a modified requirement to enable it to impose conditions.

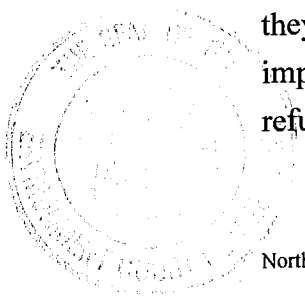
What is the environment on which the effects are judged?

[43] Section 171 uses the words *effects on the environment* compared to s 104, which refers to *any actual or potential effects on the environment*. We cannot see any distinction between the wording. Both deal with effects under s 3, which defines effects in the widest terms. It includes positive and negative effects. Environment is also defined in s 2 in the widest terms, and includes communities and people, social, economic, aesthetic and cultural conditions. The environment includes that which lawfully exists and that which can be established.

[44] Of particular difficulty in this case are aspects of the NOR requiring discretionary actions by Auckland Transport to achieve intended results. For example, granting a designation may enable the outcomes anticipated, however Auckland Transport clearly have the power to not implement the designation and allow it to lapse. All the experts agreed the effect of not having improvements to the roading would be significant. Even with a designation it is possible that Auckland Council might decide on other roading improvement works it could perform without requiring a designation, such as improvements within the existing Fairview Avenue roading corridor, which could render the designation unnecessary.

[45] Even with a designation, Auckland Transport must undertake other activities not included in the designation before full benefits can be realised. These include signalising the Oteha Valley Road/Medallion Drive intersection. The traffic experts appear to have worked on the assumption that traffic lights would be installed at Medallion Drive/ Oteha Valley Road, or at the Fairview Avenue/Oteha Valley Road intersection if the improvements were undertaken to that road. These improvements are not part of the designation sought, and would be subject to funding and design decisions by Auckland Transport over which this Court has no control.

[46] We have also concluded that it would be unwise for the Court to conclude that improvements to Fairview Avenue would be part of the existing environment, even if they could be undertaken on a permitted basis, as there is no certainty that such improvements would proceed even if the NOR for the Medallion Drive extension was refused. Similarly, we do not think we can conclude that the existing Medallion



Drive/Oteha Valley Road roundabout will be signalised, given that signalisation is not covered by the designation and relies upon other decisions by Auckland Transport.

[47] We have concluded that we should take into account the potential for NEIL to develop its land, at least to the discretionary activity limits, especially as NEIL is not affected by the development constraints set out in the Court's decision for PC32. Although it appears that a number of non-complying developments may have been granted consent within the areas subject to PC32 constraints, we were not given any details of those consents, and we cannot assume that development will occur on a non-complying basis within the wider catchment.

[48] It was clear to us, and accepted by all witnesses, that there is a need for an improvement to the Fairview Catchment roading. This has been evident for a significant period. The Court noted in 2011 that the access was in urgent need of upgrade and the situation has only worsened since that time. Traffic numbers have increased through this area since that time, and are likely to increase further. A recent example is the Hung development, in which the Auckland Council concluded that the cumulative effects on traffic from this development were negligible.

[49] The NEIL existing environment also includes the motorway immediately to the west of the site, and the fact that the motorway's north and south on and off ramps are readily accessible from Oteha Valley Road. Beyond this there is the wider transport network available through the transport hub less than 1 kilometre from the site, and the Albany shopping centre situated within 1½ kilometres. Oteha Valley Road is also a major arterial road providing access both east and west, and access to East Coast Bays Road, Medallion Drive, and the Albany town centre via McClymonts Avenue.

Effects on NEIL

[50] In this case a major allegation is the disenabling effect of the designation on the use of the NEIL land for intensive residential development.

[51] When we come to the application of the provisions of s 171(1)(a)-(d) we have concluded that this follows a format similar to section 104 of the Act, which lists these matters to inform the assessment required in respect of effects and under Part 2. As the High Court said in ***NZTA v Architecture Centre Inc (Basin Reserve)***,[7] no

[7] [2015] NZEnvC 375, p [1]-[3] and p [62]-[78] HC

extra weight is to be attributed to the matters under s 171(1)(a) to (d) and the strength of an individual matter will depend on the evidence and importance in respect of a particular case. We can, however, ascertain from the various criteria that where there is an effect on private land, greater scrutiny is required, as noted in the ***Queenstown Airport***[8] case.

[52] In respect of reasonable necessity, although this has a meaning between desirable and essential, again it is a question of practical import in the circumstances of the case as discussed in the ***Basin Reserve*** case.[9]

[53] In relation to alternatives, this formed a significant element of the appellant's argument. It was suggested that in the circumstances of this case there had been only a cursory consideration of alternatives. For current purposes we have concluded that, even if the consideration of alternatives is unsatisfactory or arbitrary, this is not, of itself, a bar to the requirement being confirmed.

[54] We acknowledge that the effects of the development on private land are effects on the environment as defined. Similarly we acknowledge that, through the power to modify and impose conditions, the Court has the potential to ameliorate those effects so that that effect reaches a satisfactory or acceptable effect having regard to the exercise of evaluation under Part 2 of the Act.

[55] We intend to approach these matters by working through:

(a) whether there has been an adequate consideration of alternatives;

(b) is there a reasonable necessity for the works;

(c) other related matters, including the conduct of the parties;

(d) the Plan provisions that apply; and

(e) assessing the matter under Part 2.

[56] In doing this we recognise the need under s 290A to have special regard to the Commissioner's decision, and we will discuss aspects of this in due course. Suffice to say similar arguments were raised before the Commissioner.

[8] ***Queenstown Airport Corporation Ltd v Queenstown Lakes District Council*** [2013] NZHC 2347
[9] [2015] NZEnvC 375, p [28]-[32]

[57] When the Court comes to exercising its power under Part 2 of the Act we note in particular that the question of whether or not the notice of requirement meets the purpose of the Act can only be judged after the Court has assessed whether there are modifications and/or conditions that could be imposed which might reduce adverse effects to an acceptable level.

The approach alternatives

[58] In the ***Basin Reserve***[10] case the High Court commences discussion of alternatives at paragraph [97]. We note that at paragraph [98] the High Court holds that ss 171(1)(a)-(d) are subject to Part 2.

[59] Section 171(1)(b) of the Act requires that alternative sites, routes and methods are required to be considered when either the consent authority does not hold the land, or there are significant adverse effects. In this case, the authority does not hold the land, or at least the majority of it, which is in the hands of NEIL. Accordingly, the test is applicable.

[60] Adopting the words of Whata J in the ***Queenstown Airport*** [11] case there is a requirement to establish an appropriate range of alternatives and properly consider them. Whata J at paragraph [121] noted:

> The section [171(a)(b)] presupposes that where private land will be affected by a designation, adequate consideration of alternative sites not involving private land must be undertaken by the requiring authority. Furthermore, the measure of adequacy will depend on the extent of the land affected by the designation. The greater the impact on private land, the more careful the assessment of alternative sites not affecting private land will be.

[61] In ***Basin Reserve***[12] the High Court concluded that a similar approach should be adopted in relation to adverse effects. Looking at the decisions side by side, we have reached the conclusion that the question of a proportional response to the impact of the designation is appropriate. This is especially so when the designation has a greater impact under national documents, as in ***King Salmon***,[13] or in relation to private land, as in the ***Queenstown Airport*** case, or in relation to adverse effects on heritage as in the ***Basin Reserve*** case.

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[10] [2015] NZRMA 375
[11] [2013] NZHC 2347 at p [97]
[12] As above
[13] ***Environmental Defence Society v The New Zealand King Salmon Company Ltd*** (SC) [2014] NZRMA 195

[62] The word *adequate* is discussed in ***Te Runanga o Atiwhaka Rongotai v Kapiti Coast District Council***:[14]

> ...adequate is a perfectly simple word and we have no doubt has been deliberately used in this context. It does not mean meticulous; it does not mean exhaustive; it means sufficient or satisfactory.

[63] This proportionate response now required means that the question of sufficiency is one to be judged by regard to the identified impacts, whether in planning terms or otherwise, including in terms of impact on private land or adverse effects. As the High Court said in the ***Basin Reserve*** case:[15]

> ... it is simply common sense that what will amount to sufficient consideration of alternative sites will be influenced to some degree by the extent of the consequences of the scenarios in s 171(1)(b)(i) and (ii)...

Alternatives considered

[64] The NEIL case was that the consideration of alternatives had been cursory and not adequate, and also that it involved pre-determination of the Medallion extension as the preferred option. Mr Casey extensively cross-examined Auckland Transport witnesses in respect of the contract for setting project objectives and identifying and evaluating alternatives and their effects, the work done on the alternatives prior to the issue of the NOR and the work done since that time. Mr Casey also focussed on and questioned the decision-making process within Auckland Transport. We now consider these points.

[65] Mr Casey spent considerable time cross-examining witnesses and questioning whether the process and decision-making leading to, and the notice of requirement itself, had involved anyone with an appropriate level of seniority within Auckland Transport or the Board. We accept that the RMA does not specify any particular level within a requiring authority organisation that these responsibilities need to be undertaken by.

[66] We accept Mr Lanning's submission that Auckland Transport is a body corporate under s 38(2)(a) of the Local Government (Auckland Council) Act 2009 (**LGACA**). As a body corporate it necessarily has to act, including making decision, through individuals with authority to act on its behalf – from the Board on down. The Act has powers to delegate, and then to sub-delegate in s 54(1) and (3) LGACA.

[14] 2002 8 ELRNZ 265 at [153]
[15] Paragraph [140]

[67] We also accept Mr Lanning's submission that the evidence shows that Auckland Transport, acting through officers of appropriate expertise and seniority, and with expert assistance from outside the organisation and particularly external consultants, undertook the necessary actions, notwithstanding our conclusions on the adequacy of the consideration of alternatives.

[68] The question of whether the individuals exercising that authority held the necessary delegation is still moot. Witnesses for Auckland Transport focussed on current structure rather than that which applied at the time. However, the resolutions and activities have the apparent authority of Auckland Transport, and we conclude the actions should be assumed as legitimate under delegation for the purpose of this appeal. A declaration as to the legality of the designation process in terms of delegation is a matter for the High Court.

[69] Auckland Transport commissioned Beca to undertake the work leading to the NOR and we were provided with a copy of the contract for services.

[70] The Notice of Requirement attached the Options Evaluation Report November 2012 (prepared by Beca), with Fairview Avenue being one of those. The work first had a long list of options and that was refined to a short list of 7 options, as follows:

- Option 1 – Do Minimum
- Option 2 – Do Minimum Plus – Construct two lane bridge; retain existing Fairview/Oteha Valley Road intersection
- Option 3 – Do Minimum Plus – Construct two lane bridge: upgrade Fairview/Oteha Valley Road Extension
- Option 4 – Short Link – Across NEIL land with a roundabout at Fairview Avenue Intersection
- Option 5 – Short Link – Across NEIL lane with a T-intersection at Fairview Avenue Intersection
- Option 6 – Short Link – Across NEIL land with Fairview Avenue realigned to provide more direct link to retirement village
- Option 7 – Long Link – Across Fairview Avenue land to provide more direct linear link into Fairview Avenue.

[71] For the evaluation of the short list key assessment areas with underpinning criteria were selected – Land Use, Urban Design and Social (7 criteria),

Transportation (5 criteria), Environmental (5 criteria) and Economic (2 criteria). The evaluation scoring system was 3 (supports criteria), 2 (limited or neutral support of the criteria, 1 not supportive of criteria, and a red flag was noted as a 'show stopper' for the option to progress.

[72] So-called internal and stakeholders' workshops, which involved Beca and its project team, various people and areas within Auckland Transport, and at times NZTA and Auckland Council, were held to undertake and then confirm the evaluation.

[73] The outcome was an overall recommended option as the preferred outcome in terms of the project objectives and the evaluation criteria, a new short link option extending Medallion Drive and involving constructing a T-intersection (option 5) at the Medallion Drive/Fairview Avenue intersection and upgrading the existing roundabout at the Oteha Valley Road/Medallion Drive intersection to a signalised intersection.

[74] The report contained an aerial plan of the proposed designation footprint, an indicative alignment, and an indicative operational road corridor following construction which was the basis of the NOR.

Concerns with alternative evaluation

[75] Mr Casey's cross-examination and the evidence of Mr Paul Thomas, planner for NEIL, and Mr Brett Harries, traffic expert for NEIL, was directed at highlighting deficiencies in the evaluation of alternatives which meant that the small differences between the Fairview Avenue and Medallion extension options were magnified. In particular, these concerned:

- the selection (and application) of the factors in the multivariate option evaluation framework and analysis,
- the scoring system,
- the weighting of the factors in the multivariate analysis.

We accept that there were shortcomings in the evaluation of alternatives on these matters.

[76] There is no doubt that Auckland Transport recognised at an early stage the potential for an upgrade of Fairview Avenue. It was identified as a viable alternative that met the objectives and purposes of the notice of requirement. We conclude that it is clear from the evidence given that the NOR always involved the installation of a signalled intersection to replace the current Medallion Drive/Oteha Valley Road roundabout, and was compared with Fairview without signalisation.

[77] Assumptions were also made that the signalisation at Fairview Avenue would have a significant adverse impact on traffic flows.

[78] We conclude that there was a failure to fairly consider NEIL's position, including a failure to properly consult prior to proceeding with the NOR. Auckland Transport wrote by email to Mr Farquhar on 4 August 2012, inviting a response to the proposal. Mr Farquhar apparently replied that he did not live in Auckland or would not be available on that specific date, but offered several alternative dates. The response to that, forwarded on 4 September, was that the Council was not able to attend on those dates, and that the process was over and he could attend public open days. Given that the designation was to be placed over NEIL's land, this was most unsatisfactory.

[79] A focus of Mr Casey's cross-examination of Mr Stephen Burris and Mr David Nelson from Auckland Transport, and Ms Catherine Richards a planner (Beca consultant) for Auckland Transport, was on the involvement of Auckland Transport and its decision making in the process. We accept that there were also some shortcomings with the approach taken to the evaluation of alternatives within Auckland Transport.

[80] Furthermore, our consideration of the report to the Auckland Transport dVac Committee[16] (the Auckland Transport Committee that apparently made the decision on the NOR), demonstrates:

(a) that the adequacy of the Fairview Avenue alternative option was not considered in any detail in that report, including whether the costings were similar or lower than the Medallion Drive extension;

(b) it was asserted that consultation with landowners had occurred when this was patently not correct;

[16] Decision Value Assurance Committee, which apparently made the designation decision

(c) the NOR traffic modelling was undertaken on the basis that there were no access roads or connections to it, notwithstanding that it was shown as a local or local arterial road;

(d) the Auckland Transport dVac Committee was not advised that there was a major development planned for the NEIL site, nor the details of that plan, nor the fact that the parties had largely reached agreement in respect of the other two land use consents – even though it was clear that the purpose for the haste with which the notification took place was due to the upcoming Court hearing on a NEIL land use consent.

[81] We have concluded that there was inadequate written background information provided to the Committee at this stage. Nor are we satisfied that the committee, or the person actually making the decision, Mr Sean Baker, had the full information relating to the development potential of this site, and the potential for signalisation of the Fairview Avenue intersection.

[82] An assumption appears to have been made that Fairview Avenue, being some 120m closer to the motorway than Medallion Drive, would create greater traffic impacts. At that time, however, no modelling had been undertaken to support this assumption.

[83] The question is whether these shortcomings meant there was inadequate consideration of alternatives, and in particular on the upgrading of Fairview Avenue.

Can adequacy be considered over a period of time?

[84] Subsequent to the lodging of the appeal, further work was done on the Fairview Avenue option (now called Option 3B) and evaluating the differences between this option and the Medallion Drive extension option.

[85] Prior to the hearing, Auckland Transport undertook a re-design of the Fairview Avenue option for what we were told was a needed comparison of *like with like*. Mr Casey was critical of the basis for this work, portraying it as a ploy to increase the relative costs and downplay the benefits of the Fairview Avenue option.

[86] As this Court has said on many occasions, the process under the RMA can be an iterative one. Circumstances change, and in the three years since the decision on the NOR was made by Auckland Transport considerable additional modelling and

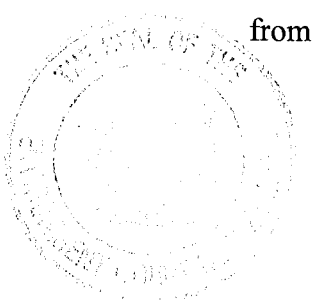
information has become available. This has been used to evaluate many of the issues not addressed by Auckland Transport at the time of notification of the NOR.

[87] From our own site inspection, we observed that the area to the north of Oteha Valley Road has continued to be developed to the stage that it is now largely medium intensity residential, at least to the east of the motorway. Traffic has continued to build, with an estimated 3,000 vehicles per day currently using Fairview Avenue. Given that Fairview Avenue has a one-lane bridge near to the intersection with Oteha Valley Road, we suspect that this road is already getting near to capacity.

[88] The NEIL land will introduce something in the order of another 450-500 homes that will also require traffic access. The question of timeliness becomes relevant, and it is clear that Auckland Council and Auckland Transport have now been seeking to address this matter for well over ten years. There have been various statements made over that period as to the immediacy of acquiring the NEIL land and constructing the new road.

[89] More recent modelling has demonstrated that a signalised Fairview Avenue/ Oteha Valley Road intersection, and double-laning of the existing single lane bridge with other improvement works, will produce a design which, overall, in performance is closely equivalent to the Medallion extension under the NOR.

[90] This modelling has also demonstrated that the Fairview Avenue intersection will provide a high level of service – in some cases C, D and E compared with the Oteha Valley/Medallion Drive signalisation, which can achieve an F or an F+ (the lowest level of service possible). We were told that the modelling runs can vary and that there is potential for oscillation in the outcomes of modelling depending on the assumptions used. One of the primary assumptions affecting the performance of the Fairview Avenue/Oteha Valley Road intersection is synchronising of its traffic lights with those at the motorway off ramp. This does not appear to have been provided for in earlier modelling, for reasons that were unexplained to the Court. Given the proximity of this intersection to the motorway, there is clearly the potential (with another set of lights a further 60m away) for signalisation to enable *green waves* in a particular direction at peaks, ie onto the motorway south during the morning peak, and from the off ramp north onto Oteha Valley Road during the afternoon/evening peak.



[91] Given that this modelling of Fairview Avenue had not been undertaken prior to the notification of the NOR, critical assumptions on which Auckland Transport appear to have made their decision on the NOR would not now hold up.

Benefits and costs of alternatives

[92] The question of costs and benefits also relates to the question of adequacy of consideration of alternatives. At the time of the NOR being confirmed, costs of the Medallion Drive extension had been estimated by Auckland Transport to be similar to or slightly lower than those of a Fairview Avenue upgrade. By the commencement of our hearing, the position appeared to be that the Medallion Drive extension alternative had been costed at around $14m and a Fairview Avenue upgrade at $8m. Further evidence suggested considerable additional cost if a pumping station required its re-siting for road widening near the Fairview Avenue bridge. What is clear from the estimates is that the significant difference between the two costs is that the cost of acquiring the NEIL land is included in the costings for the Medallion Drive alternative. Given that the proposed designation area involves just under a hectare of land that could potentially be available for medium to high intensity residential use, the Court can immediately see the problems with providing an adequate or proper assessment of its value. A key aspect of NEIL's case is that, without the NOR and designation in place, NEIL could relocate or redesign the East-West Towers (the consents had been declined in an earlier hearing because of a lack of open space and shading of a neighbouring property (among other reasons)), or by being able to incorporate the proposed NOR land into any development.

[93] Clearly, in evaluating the alternatives one question is whether or not the benefits of each alternative have been sufficiently considered. The effect on NEIL can either be seen as a benefit to NEIL if the Fairview Avenue alternative was adopted, or a cost to NEIL if the Medallion Drive alternative was adopted. The fundamental proposition for NEIL is that there had been a failure to consider it under either head.

[94] We think this interpretation goes too far in stating the position in respect of the evaluation. However we do accept that the evaluation was insufficient in addressing only the effect of the NEIL property as though it was a cost to Auckland Transport of acquiring the land. In our view, the values of this land, in terms of effects, and benefits and costs, are represented in more ephemeral issues such as:

(a) the NOR creates a separation of two pieces of land;

(b) how pedestrian access is provided, not only from and to this site, but through the site;

(c) the question of how the NOR addresses the continuity of public access along the stream is not addressed; although a connection to the east is shown (we were told at its current inversion site the bridge could not have a walkway underneath it), no alternative as to how people would travel further down the stream to the west is given; nor has any methodology for crossing Medallion Drive to continue further to the west on the northern side of Oteha Valley Road been given;

(d) this might be addressed by signalisation, but we are unclear on that issue and there wasn't any substantive evidence on the point. In fact, there seems to have been an assumption that people would cross the road to the east of the Medallion Drive/Oteha Valley Road intersection, and that there would be some form of bus stop both in front of the commercial shops to the north, and opposite that to the south.

[95] In saying this we do not suggest that these matters are insurmountable, but rather that there was little, if any, evidence of their consideration in the evaluation of alternatives.

NEIL development without the NOR

[96] During the hearing evidence was produced for NEIL showing that an alternative layout for the NEIL development had been offered by NEIL in 2013.[17] This is annexed as "**E**", showing access into the NEIL site from the Medallion Drive roundabout, crossing the stream and then moving to the east and connecting up with the internal roadwork of the site. This would allow some site permeability, even though there are likely to be some traffic calming measures through the site, ie stop signs, crossings etc.

[97] This proposal suggested that Fairview Avenue would be upgraded, and one assumes signalised, at the Oteha Valley Road intersection. No modelling has been produced by either party relating to that option, but it is relatively clear that it could enable traffic from the site to move either down Fairview Avenue or through the Medallion Drive roundabout. NEIL considered that any roads on their site would be

[17] Common bundle of documents, Exhibit L (attached to letter)

private roads, but little consideration seems to have been given to vehicular access to or from the site as opposed to pedestrian and cycle access for such a development.

[98] Traffic from further north might also permeate through this site but we had no details on this. In that regard it seems that if people were travelling directly south, ie further along Medallion Drive or to the school, they may very well permeate through the development and exit straight onto Medallion Drive through the roundabout. Alternatively, they could travel down Fairview Avenue, turn left and then exit right from the roundabout onto Medallion Drive. That would turn on whether the internal NEIL roads (or parts of these) were public.

[99] Those choices would be driven by personal preference, traffic safety and congestion issues. Such a NEIL development without the NOR would also enable people travelling to the NEIL site, or further north, to make a choice to either turn left on Fairview Avenue or travel on to the roundabout, which choices would again be driven by congestion and destination. None of the witnesses for Auckland Transport appeared to be aware of this option, even though it was provided to Auckland Transport in 2013.

Joint witness statements and related appeals

[100] This Court was handed a folder consisting of some 29 joint witness statements, covering a whole range of issues in relation to both the NOR and the development itself. We suspect there may be other joint witness statements which are relevant only to the NEIL East-West Towers project, or to land use aspects which have not been included in the bundle. This folder appears to include joint witness statements prepared from 2011, and we understand there was significant work done by the parties prior to that date referred to in two other bundles of documents.

[101] Behind these joint witness statements a significant amount of work has been done in respect of considering various planning and roading aspects of the development and the alignment of the proposed Medallion Drive extension. Not surprisingly, this work appears to have taken on a life of its own, and matters have somewhat devolved from the core issues in which this Court is involved.

[102] The starting point is a joint witness statement prepared on 22 August 2011 quoted by Judge Harland in her 2011 decision at paragraphs [28]-[32] which stated:

> [28] The trigger rule, which was introduced in the decision version of PC32, sought to implement the upgrade policy, and related objectives and policies, in the specific context of the parts of Areas A and B that were considered to be within the Fairview Avenue catchment.
>
> [29] It was agreed by all of the parties that road improvements need to be completed before further subdivision to smaller lots is enabled in the area identified as the Fairview Catchment. Although several options for road improvements were evaluated, the four transportation experts agreed that the Medallion Drive Extension was the preferred option from a traffic management perspective.[18] This was because it provides improved network connectivity and efficiency, and it achieves greater separation from the Oteha Valley Road/SH1 Interchange.
>
> [30] The Plan objectives and policies are quite clear that any road upgrading required to mitigate adverse effects of additional traffic is to be completed before, or concurrent with, any additional development rights being realised. However in this particular case there is considerable uncertainty surrounding several aspects of the road works required to provide for the additional subdivision potential in those parts of Areas A and B.
>
> [31] The Medallion Drive Extension is shown as a "*preferred road*" on the Planning Map in the District Plan. The status of this notation is unclear and at best, can be described as indicative. Although Mr Lanning submitted that there was a linkage between the dotted lines on the map and the *assessment criteria* for any resource consent (subdivision), Mr Reidy said that the preferred road did not impact on the property in terms of any rule.[19]
>
> [32] The Medallion Drive Extension road works affect NEIL's land, which is outside of the PC32 area. These works will most likely be public works for which the Council will have responsibility as they are to service a wider area than just NEIL's land.

[103] The matter was put to the Environment Court again in 2012,[20] but in relation to the Towers concept on the east of the NEIL land in a much more truncated way. At paragraph [4] the Court noted:

> For some years and certainly since this proposal has been alive, there has been a proposal to extend Medallion Drive across NEIL's site to Fairview Avenue in the west and the overall design of the development allows for an extension of Medallion Drive across the site immediately to the north of the proposed towers. For reasons that are not entirely clear, the proposal has made very slow progress and unsurprisingly NEIL had become rather frustrated with it, but we were advised at the hearing that a notice of requirement has now been issued for the extension by Auckland Transport, and that it confirms at least broadly with the development's design for it.

[18] Joint Statement of the Transportation Engineering Witnesses, 22 August 2012, paragraph 8, signed by Messrs I Clark, B Harries, B Hall and A Bell.
[19] Mr Reidy, Transcript, page 97, lines 13 and 14
[20] Get reference

[104] To understand the context of these comments by the Court, there are several factual matters which only became evident as our hearing progressed.

1. The NOR was adopted by the Auckland Transport relevant dVac committee on 2 November 2012, but was not notified until February 2013.
2. The hearing before Judge Thompson commenced on 12-13 November 2012 and it is unclear whether any details of the designation were made available either to the Court or the other parties.
3. In relation to the comments made by Judge Harland, one must have regard to paragraph [32] of that decision, cited earlier.

[105] Paragraph [32] of the ***Thurlow*** decision then cites a number of issues:

- (a) and (b) amounting to the fact that there was no provision in the Long-term Plan for the construction of the extension, or any related land purchase. The memorandum was filed on 30 August.
- at paragraph (c) the Court notes that on 19 December 2011, after the hearing but prior to the issue of the decision, Mr Lanning filed a memorandum advising that Auckland Council now have funding in place to enable it to proceed with the notice of requirement, and also that it intended to commence parallel discussions with the landowner regarding acquisition of the land required rather than await completion of the NOR process.
- subsequently Mr Lanning advised there had been a delay in appointing a consultant, but that they expect to have a contract by the end of February 2012; and
- on 10 February Mr Maassen (for NEIL Homes) advised that NEIL had not been approached to negotiate the terms of acquisition to any part of its land or road.

Failure to progress resolution

[106] It is important, in the context of this decision to note that assertions (as had been made earlier at the PC32 hearing) were made before this Court that there are now funds available to enable land purchase; however as at the date of the hearing of this matter no offer to purchase the land had been made.

[107] In ***Thurlow Consulting***[21] the Court notes that as early as December 2011, Mr Lanning advised the Court that Auckland Transport (interalia):

> ...intended to commence parallel discussions with the landowner regarding acquisition of the land required, rather than await completion of the NOC process.

[108] The Court records that it had not done so by February 2012.[22]

[109] In this hearing, Mr Farquhar again advised that there has been no approach by Auckland Transport to acquire the land over the past four year period.

[110] Mr Lanning repeated the assertion that funding was available, but offered no evidence or assertion that Auckland Transport had made any effort to negotiate a purchase.

[111] In his final submissions, Mr Lanning stated:[23]

> Non-compulsory acquisition in the absence of land use approval is unlikely to meet Auckland Transport's obligations to operate in a financially responsible manner.

[112] If Auckland Transport have no intention to acquire the land until after the NOR process, this is not what they told the Court in 2011 and at this hearing.

[113] Similarly, in relation to the road design assertions were made that:[24]

> Auckland Transport does not oppose the building being located within the designation footprint as it is understood that they will not be located within the final link alignment.

[114] Notwithstanding this statement, Auckland Transport was dilatory in undertaking the works necessary on the alignment, and this was only produced to the Court late in the evidence exchange.

[115] This lack of progress had led to significant frustration by Environment Commissioner Oliver appointed to undertake the various mediations, and led to Commissioner Oliver for the Environment Court noting her displeasure at Auckland

[21] Above at paragraph [32](c)
[22] Above at paragraph [32](e)
[23] Final Submissions, 6.21(b)
[24] Auckland Transport Memorandum to the Court dated 19 June 2015 at [5]

Transport's refusal to supply revised design that would take into account the relative levels of the two properties.

[116] Commissioner Oliver's report on an expert conference held on 2 October 2015 also records that all experts agreed that a technical design solution could be achieved, but there had been a failure by Auckland Transport ahead of the conference to undertake the relevant work to investigate the feasibility of raising the level of the proposed NOR between Oteha Valley Road and Fairview Avenue.

[117] These matters are indicative of the background to the slow progress on the matters at issue between the parties, as amplified by Ms Amanda Coats, project manager for NEIL, in her evidence and cross-examination. We could go on but it is sufficient to now recognise that by the time of our hearing matters had moved on considerably, with a revised vertical alignment to accommodate NEIL's concerns about the level distances between the road and their land development proposals to the east.

[118] We note that Annexure **D**, which was produced by Mr Burris after the close of Auckland Transport's case, showed a new vertical alignment raising the finished road level proposed NOR close to the existing ground levels, particularly between chainage 100 to 120. That Annexure, originally produced in November 2015, was an attachment to the evidence of Mr Robert Mason, civil engineer and a consultant for Auckland Transport, filed with his rebuttal.

[119] Given that this was a core issue for potential resolution of this matter, it is surprising to us that Auckland Transport took no real effort until just prior to this hearing to move these issues forward. That is particularly so when Mr Lanning submitted, and several witnesses accepted, that the Medallion Drive extension is a small project for Auckland Transport.

[120] The Medallion Drive extension, when complete, could have facilitated the opening up of a substantial area of the Fairview Catchment, including the NEIL site, for development. Even after 2011, if Auckland Transport had entered into negotiations with NEIL and reached an agreement in respect of the construction through the NEIL property, including within the designation footprint (but outside the active roading corridor) for the NEIL development, then this roading designation could have been finalised and the development on the NEIL site could have been

started. Not only this, it would have given the opportunity to open up the Fairview Catchment for further development, which has been held up by these delays.

[121] We are satisfied on the balance of the evidence before us that if the corridor could have been narrowed to that necessary for the road, and/or a reasonable agreement reached to allow NEIL to construct its buildings within the designation footprint, but outside the roading corridor, this matter could have been resolved by private agreement and with the acquisition of the land by Auckland Transport.

[122] The failure to do so highlights a major breach in the implementation of the Auckland Regional Policy Statement and the Auckland Plan, and indicates a significant failure by Auckland Transport to enable the construction of infrastructure and allow the intensification of Fairview Catchment and the NEIL property.

[123] This disconnect between the objectives and policies of the regional and district planning documents, and implementation by Auckland Transport to allow for intensification of the city, is a recurring theme which we shall revisit a number of times through the course of this decision.

Modifications

[124] We conclude that there are important principles in our approach to the designation that should inform the modification of the designation for the Medallion Drive extension. These principles are:

- Designation of all the land required to undertake the work not only allows the work to be treated in an integrated manner but authorises its land use activities in terms of the District Plan.
- A vertical alignment for the road which should not impede development of the adjoining NEIL land.
- The extension of Medallion Drive should provide for carriageways, pedestrian and cycling facilities, reasonable berms with associated space for services and lighting.
- The extent of the designation should be the minimum necessary to allow for the construction of the Medallion Drive extension so as to maximise the area of land available for residential development, open space etc on the NEIL land.

- The construction of the extension should generally be contained as far as is practicable within the operational road corridor where it crosses the NEIL land.
- The extent of land at the south end of the extension already in the ownership of the Auckland Council in the vicinity of the bridge has several benefits, including for construction of the bridge and potentially to accommodate the storage of construction equipment and materials.
- The bridge should be built to a height and design that allows for pedestrian/cycling access under the bridge and along the stream bank.
- The riparian margins within an area of approximately 20m at the side of the stream require sensitive treatment.
- The area required under the designation for the construction of the Medallion Drive extension/Fairview Avenue roundabout needs particular attention to address both operational and construction needs.
- Conditions should be developed and be attached to the designation with respect to these principles to ensure the above.

We now consider what this means for the designation.

Effect of vertical profile of the road on land requirements

[125] As emerged during the hearing, we conclude that a vertical profile for the road as shown in Annexure **D** or better, which is close to the existing ground level will minimise the extent of the retaining walls that will be required. That should be subject to a condition.

[126] In this context, it seems clear to us that the area to be designated should be minimised to an area sufficient to accommodate the operational road corridor and a narrow construction area on either side. In that regard we need to have a slightly closer look at the road corridor itself, and what width that would entail.

[127] We have concluded that the operational 3-lane roading corridor could be accommodated within a width of 22m, which would allow for three lanes; two of 4.2m width and one at 3.9m to a total of 12.3m; 3m and 1.8m footpaths (4.8m) two 0.8m verges (1.6m) and leaving land available for two 1.65m berms (3.3m) on each side. Where only two road lanes are required the designation width could be reduced, or wider berms provided.

[128] To get an understanding of the type of roading expected, we would have expected the witnesses to have made some comparison with Medallion Drive south of Oteha Valley Road given it is an extension of that road. From our visual inspection and without taking any measurements, including the berms, the road corridor in that area appears to be around 20m wide. Some sections incorporate an extra slip lane.

[129] We conclude that the extent of the operational road corridor be reduced but stop short of specifying the exact dimensions of the design elements within the corridor, other than requiring that there be a pedestrian footpath on one side and a shared footpath/cycle path on the other. From the analysis we have set out above we consider that a corridor width of 22m would provide sufficient flexibility and future proofing for transport needs. In relation to Fairview Avenue, Mr Mason said it should be noted that the footpath and berm area on the eastern side of Fairview Avenue has been removed, as a result of mediation with NEIL, to reduce the impact on the NEIL land. However, there is still a need for works to accommodate the roundabout. These are likely to involve a fan shape but do not need to encroach on any proposed building platforms. Further work for intersection road works needs to be done to show the designation here.

Bridge area

[130] When we looked at the proposed plans for the Medallion Drive bridge we note that its width is approximately 17m because there are no berms. However it does require abutments on both sides of the stream and associated earthworks. We acknowledge also that there needs to be sufficient room to allow for the construction of the wing walls.

[131] Bridge works on the southern side of the stream can be accommodated on the land already owned by the Council adjacent to Oteha Valley Road. As we have already noted, that land also appears to have the capacity to store materials, equipment and machinery for the entire project. Given that Auckland Council is not seeking any modification to the designation in relation to its properties, this land can clearly be utilised for construction and then any surplus re-dedicated as required.

[132] The designation of the land already owned by Auckland Council to the south of the stream should be confirmed as there are many reasons for roading works to be authorised and accommodated on this land, including for construction purposes.

[133] An issue for the bridge then is the transition from this width adjacent to the stream to the corridor north of the stream. Mr Mason told us there was an opportunity to reduce the large splayed area in the designation while still allowing sufficient room for a contractor to build the bridge and the abutments. This requires specific attention of the design team to provide an area which is adequate but not unnecessary.

[134] Quite simply, if agreements cannot be reached between the parties we can see no problem to creating retaining walls – this has been done south on Medallion Drive and elsewhere through this district. We noted for example that the motorway itself has post retainers in excess of 4m high after the abutments to its bridge over Oteha Valley Road. There is nothing exceptional about this type of construction in this area and it is repeated many times locally. Thus the road could be constructed even if this meant retaining at the edges to meet existing ground level.

Comment on alignment levels

[135] We accept that the logical proposition is that NEIL and Auckland Transport should work together to develop a common earthworking strategy to reach common levels in respect of their respective properties and provide for common erosion controls. We are satisfied that it is possible to construct the road within the corridor restraints constraints. None of the Auckland Transport engineers suggested otherwise. We are unable to understand why 3:1 batter slopes would be required beyond the edges of the road; they are certainly not required by NEIL and in the absence of any sensible agreement retaining walls could be put in place which would look the same as the many others throughout this local area.

Reasonably necessary

[136] We have used this elliptical approach matter to try and bring some order to the evaluation required under s 171. The question of reasonably necessity itself turns upon the extent of works, and thus we have felt it necessary to reach some conclusion as to the extent of the designation that might be appropriate before considering whether the designation is reasonably necessary.

[137] The answer to that question will vary significantly depending on whether the extent of the NOR is sought as notified or for the modified corridor that we have discussed. Given the shortcomings in the evaluation of alternatives and the failure to reach agreement on acquisition it is difficult to establish that the entire designation

area is reasonably necessary. *Reasonably necessary* falls between desirable and essential. Where acquisition of private land is concerned the degree of necessity is scrutinised more rigorously.

[138] We conclude that the entire designation area as sought is not necessary. It would defeat a purpose of the designation and impede the construction of intensive housing on the NEIL land.

[139] On the other hand, it follows that the need for a road to service new development to the north is plain and has been for some considerable period of time. We recognise that, in the absence of this designation, it would always be possible for Auckland Transport to improve Fairview Avenue to provide a better connection to Oteha Valley Road. However, that is not an outcome that this Court can compel. The designation of land for a roading corridor does not mean that the road will be constructed, but it gives a much clearer signal that development is appropriate. We will discuss its potential impact on development later in this decision.

[140] When we come to consider the question of whether it is reasonably necessary we, like Commissioner Kirkpatrick in making the recommendation at first instance on the NOR, and the Court on the PC32 decision, are drawn back to the joint witness statement prepared by the traffic experts in August 2011.

[141] In the context of that history and those statements we conclude that there is a reasonable necessity for the designation of a road corridor to the extent it is necessary for the road's construction.

[142] In that regard we have discussed a corridor somewhat narrower than the designation confirmed by the Commissioner, and more limited, but still generous in the context of roading development for Medallion Drive south of Oteha Valley Road. Such a modified designation would avoid or reduce the impact on the NEIL land use proposals currently before the Court for the land to the east of the corridor. Such a NOR would also enable reasonable development of land to the west of the corridor.

[143] As we will discuss later, the failure to uphold the designation may have an unintended impact upon the NEIL development in giving rise to new traffic considerations in respect of the NEIL land use consent appeal currently due to be heard by this Court. In that regard the Auckland Council has signalled that it will be raising traffic impact issues if there is no NOR.

[144] In summary, we have concluded that a reduced roading designation is reasonably necessary to achieve the purpose of the designation.

Other effects

[145] As we have noted, there are significant effects both from the granting of a designation and from refusing it. In this regard a major consideration for this Court is to enable the development of the land within the Fairview Catchment including the land on the NEIL site. Provided it was limited to the more confined corridor we have identified, it is our understanding that the designation would not impact on the buildings that have been designed for the NEIL site. If the road was to be removed it could give rise to new issues about parking and access that may in fact prevent or hinder NEIL from continuing with their development as currently planned. We also note the importance of allowing development within the Fairview Catchment generally. We take into account that there is a need for intensive housing near major road corridors and transportation centres and that this site, and the Fairview Catchment generally, would provide an opportunity to construct housing in appropriate areas close to major infrastructural facilities.

[146] We also note that currently Fairview Avenue is accessed by a single lane bridge close to a 90° turn, a legacy of the rural character of the area. We note that traffic issues were of concern to the Court in 2011, and those had been exacerbated by 2016 when this case was heard. That is a potentially significant adverse effect of not providing certainty about roading in this area.

[147] Accordingly we conclude that, with a modified corridor as we have discussed, the effects on the environment of granting the designation are likely to be beneficial overall to the Fairview Catchment, and would accommodate the existing NEIL proposal.

Planning documents

[148] Relevant provisions of planning documents (National Policy Statements, Regional Policy Statements, regional and district plans) are also matters which must be had regard to when considering *the effects on the environment of allowing the requirement*. Mr Lanning submitted that the NOR was in line with the planning documents. Mr Casey submitted that there is little in the relevant plans that warrant particular discussion, other than to reiterate that the inclusion of the *preferred road* in

the District Plan over NEIL land does not provide any support for the NOR. He submitted that the preferred road notation in the District Plan has no clear justification, nor does it have any legal effect on the site (as was confirmed in the Court's decision on PC32), which would warrant giving it any weight in these proceedings.

[149] An assessment of the project against relevant planning documents was undertaken in section 10 of the Assessment of Environmental Effects to the NOR. Ms Catherine Richards, the planner for Auckland Transport, gave evidence on what she considers to be the key planning provisions of relevance. There are no National Policy Statements and the requirements of the National Environmental Standard: Contaminated Soils are to be considered as part of detailed design and through the consenting phase, including the outline plan.

[150] However, Mr Thomas the planning witness for NEIL did give some evidence on the planning documents. By the time of the hearing, matters that were in contention between the two planning witnesses appeared to be more confined.

Regional Policy Statement

[151] Chapter 2 Strategic Direction and Chapter 4 Transport contain important 'policy' direction.

> 2.6.8 Strategic Policies - Urban design
>
> 1. The design of Future Urban Areas and the management and promotion of change in existing urban areas is to occur so that:
>
> (i) There is a diversity of urban environments (including building types and densities) and living choices for individuals and communities;
> (ii) Buildings, public spaces and road corridors contribute to a vibrant, liveable and attractive environment with a sense of place; ...
> (iv) Urban environments have a logical permeable and safe structure of connected routes for all modes of transport, including walking and cycling;
> (v) Public transport, roading, cycling and walking networks are integrated with each other and the land uses they serve:
> (vi) Roads (including new roads) and road improvements within higher density areas should be designed to provide a pleasant environment for cyclists, pedestrians and residents and minimise adverse effects on urban amenities;
>
> 2.6.11 Strategic Policies – Land Use and Transport Integration
>
> 1. Land Use and Transport shall be integrated throughout the region to ensure that:
>
> (i) within urban areas land use patterns provide communities with improved access to a range of services and activities and opportunities to work locally;

(ii) within urban areas new urban development and subdivision provides for improved connectivity for all transport modes including walking and cycling;
(ii) within urban areas new development and redevelopment provides for safe and attractive walking and cycling environments; ...

[152] There are objectives and policies related to transport with a similar focus but there was no suggestion that the proposed Medallion Drive extension cut across them. We accept that the proposed road link facilitates the region's growth by enabling the development of greenfield areas. Mr Thomas accepted that the adverse effects of urban growth on the transport infrastructure need to be managed and a planned integrated approach to land use and transportation taken. That often means additional or upgraded transport infrastructure is required. He considered that taking a broad, integrated look at what is the most sustainable solution for Auckland in relation to this land and in his opinion that was not to put a public road through it.

[153] Mr Thomas agreed we should be looking for an outcome that creates a logical, permeable and safe structure of connected routes.

[154] We were told that it is proposed that the development of the NEIL land have no public roading through it. Instead, the only public access across the site would be a pedestrian/cycling route secured by an easement. If resource consent is granted and not implemented, this access would not be provided.

[155] Mr Thomas considered what NEIL proposed was a higher quality walking and cycling link through the NEIL site than the Medallion Drive extension. He saw more value in the use of this link for the local access to school function of pedestrian cycling than a 3m shared path down the Medallion Drive extension. We consider that unlikely given vehicle accesses including to buildings and the crossing of internal roads, even if in a low speed environment. Mr Ian Clark, a transport witness for Auckland Transport, considered the route to be less satisfactory for cycling.

[156] In contrast Medallion Drive will provide a safe, legible and fully pedestrian and cycling route. It will add to existing pedestrian and cycle facilities in the area as Fairview Avenue will be still available for pedestrians and cyclists.

[157] Mr Thomas also argued a link along Medallion Drive is not part of a proposed cycle network of that part of the city depicted in an external document on the Auckland Transport website despite policies in the RPS which refer to in general

terms improving facilities for cyclists. He said that there is no proposal to provide a shared path the full length of Fairview Avenue.

[158] Mr Thomas accepted that Fairview Avenue was not built to service the urban development of the area and there is a legibility issue of flow with having to do a dog leg north on north-south movement and a perception of a clearer north-south linkage with the Medallion Drive extension.

[159] We conclude that the proposed Medallion Drive extension accords with the relevant provisions of the Regional Policy Statement.

Regional Plans

[160] Matters under the Auckland Council Regional Plan: Air, Land and Water and the Auckland Regional Plan: Sediment Control will be dealt with by resource consents for the Project in the future.

District Plan

[161] In reading the operative Auckland Council District Plan: North Shore section there is a strong policy emphasis on achieving an integrated approach to planning for growth. In particular, policy 10 in section 6.4 of the District Plan which states:

> Integrated planning of growth to match the needs of the community and the capacity of infrastructure needs to be used in a way that protects environmental values, and avoids the adverse effects of growth that will arise if land use, community and infrastructure planning (including planning for regionally and nationally significant infrastructure) that contributes to the growth concept in the Auckland Regional Growth Strategy and land use transportation integration, is not co-ordinated and sequenced correctly. Infrastructure planning and new growth need to be carried out and sequenced in a timely and efficient manner if the desired urban form is to be achieved and if infrastructure is to be efficiently provided, operated, maintained and upgraded.

[162] We conclude that the Medallion Drive extension will address *the needs of the community and the capacity of infrastructure* in a way that integrates with the NEIL proposed development and is consistent with the long term planning of the Albany Structure Plan area. The Medallion Drive extension will facilitate growth in the residential areas north of Oteha Valley Road. It will address existing and forecast traffic effects generated by urban (predominantly residential) growth. The road link

has been planned to address the transport effects of land use growth in the structure plan area to 2031.

[163] We recognise that perfect coordination of public infrastructure works with private land development is frequently difficult given differing imperatives and constraints applying to the parties involved. As the case for NEIL pointed out, the development of the land involved has a long, complex and challenging history. However, we conclude that the confirmation of the modified NOR, with the conditions including a five year lapse term as proposed in the decision, would provide strong direction and encouragement to Auckland Transport and achieve that policy.

Proposed Auckland Unitary Plan (PAUP)

[164] Mr Thomas gave evidence that there is no proposal for a road link consistent with the NOR in the PAUP. Some interim guidance has been issued from the Independent Hearings Panel. However, his main point was that while that there is little in the way of guidance that is relevant to this matter other than an endorsement that it is appropriate to enable higher densities around centres and corridors or close to public transport routes, social facilities or employment opportunities. He considered that this location achieves all those requirements, and this lends weight to the lost opportunity for additional intensive residential activities if the land is taken for roading.

[165] Mr Thomas also referred to Policies 10 and 11 and suggested that these policies seek a *balance* (although this word was not used in either policy) between placemaking and transport movement and accessibility, and place weight on the failure to resolve a positive design interface with the adjacent development and also on upgrading the existing road corridor as opposed to a new corridor. The modifications and conditions we propose to the designation mean that both policies would be achieved.

[166] In any case we need give the notified provisions of the PAUP little attention given the stage the PAUP has reached, with submissions being heard and decisions yet to issue.

Overall conclusion on plan provisions

[167] It is clear that the planning documents as a whole support intensification of residential development on the NEIL land and within the Fairview Catchment. They

also enable, and in fact require, adequate infrastructural facilities including transportation. The Plan itself is silent as to whether that is provided by an improvement to Fairview Avenue or by an extension to Medallion Drive. Nevertheless, Medallion Drive would be consistent with those principles, provided it does not interfere with the intensification of residential development.

[168] The core question that this Court has asked itself is whether there is a solution which achieves both these key intents, namely:

(a) setting a corridor to allow the road to be constructed;

(b) establishing controls, if necessary, on the outer boundary where the parties can't reach agreement;

(c) ensuring sufficient room to enable the construction of the road and ancillary works; and

(d) encouraging the parties to find agreement so that the works can be developed in common.

[169] In reaching the conclusions we have about a reduced designation width, we consider these intents can be met.

Lapse period

[170] In that regard we come to the question of the lapse period. Auckland Transport sought a lapse period of ten years. We consider their reasoning for this to be contradictory. On the one hand they were saying that there was a necessity for the works and on the other that they did not want to construct the works for the next ten years. Given Mr Lanning advising the Court that funding had been provided for the purchase of the land, and they now had a fund available to meet the cost of the construction of the road, we found the suggestion of a ten year lapse period unsustainable. On the other hand, NEIL sought a lapse period in the order of 6 months or a year. Given the necessity to try and acquire the land and then give necessary notices under the Public Works Act, finalise design, let contracts and enable construction, we consider those periods are too short.

[171] The default period in the Act is five years. We have concluded that, with the narrowed corridor, and conditions that specify vertical levels for the road that allow integration with proposed adjoining land uses, the potential impacts upon NEIL

construction should be limited. There is clearly a mutual benefit to adopting a common earthworks and design policy and approach, but we cannot require this. NEIL could continue with the construction of its development, if approved, without awaiting the completion of the roading by Auckland Transport. It is clear that the roading is urgent and should have been attended to some years ago.

[172] In the circumstances of this case we have concluded that, with the narrower designation, the standard period of five years is appropriate, being that term recognised by Parliament as being an appropriate period for a party to invoke a designation.

The commissioner's decision under s 290A

[173] We have discussed various portions of the Commissioner's decision through this document. Although we consider a modified designation is generally appropriate we note that the Commissioner did not engage in significant discussion about the extent of the designation given his conclusions that the parties would reach an agreement as to the necessary earthworks along the boundary between the NEIL development and the road.

[174] It is clear that that has not occurred. In general terms, therefore, we have agreed with the concept of a designation but not with either its extent or the period for which it is settled. We consider that there needs to be demonstrated reasons to depart from the five year set out in the statute rather than just an assumption that the parties will require more time. Given the potential impact of such extra time, not only on the NEIL property but on the Fairview Catchment generally, we have reached a very different conclusion as to the lapse period.

Part 2 of the Act

[175] It is clear that the Act seeks to enable people and communities to provide for their wellbeing. In particular in this case that includes sufficient land for residential use and appropriate infrastructure including roading. The NEIL site is clearly ideal for intensive residential development, being:

(a) close to a public transport hub;

(b) encouraging cycling and walking;

(c) close to local schools, public transport, retail areas including the new retail on Oteha Valley Road, and community facilities;

(d) adjacent to arterial roads;

(e) close to the town centre;

(f) close to the motorway.

[176] To enable development on the NEIL site and to the north of Oteha Valley Road, there needs to be improved access for people and traffic.

[177] While the consideration of alternatives in respect of Fairview Avenue had shortcomings, by the time of the hearing further work had been done, and traffic expert conferencing had agreed that Fairview Avenue is roughly equivalent to the Medallion Drive extension in traffic engineering terms. There was some disagreement about what the cost implications of the two alternatives would be given these depend very much on the land to be acquired (for the Medallion Drive extension) and the extent of the works needed for the Fairview Avenue upgrade, including the design of the bridge, numbers of lanes, pedestrian and cycling provision, and whether the relocation of the water supply pumping station might be involved.

[178] We agree with the traffic engineers' position in 2011 that, in any evaluation of alternatives, Medallion Drive extension has advantages. Although we initially were concerned as to whether or not it would provide any improvement in terms of connectivity, evidence analysed by the Court towards the end of the hearing indicate that in fact contrary to the expectation, a strong proportion of the traffic using Fairview Avenue or Medallion Drive extension would be travelling to the south down Medallion Drive. Although this seems counter-intuitive, the modelling, agreed by the traffic engineers, seems to indicate that of the 6,000 vehicles per day, some 600 would be travelling south in the am peak.

[179] Although one would be expecting the majority of that traffic to be heading to the motorway, the modelling shows around one third moves to the west and one third to the east, leaving around one third travelling from the Medallion Drive extension through to Medallion Drive itself. An analysis of figures from the modelling of the upgraded Fairview Avenue alternative shows a similar number of vehicles likely to be travelling the same route. In other words, although one third carry on to the west and one third go to the east, approximately one third go to the south. This strengthens an

argument that Medallion Drive extension provides better connectivity and that it provides the same selection to the east and west yet a more direct route to the south.

[180] The Medallion Drive extension itself also provides an additional option for all forms of transport. It involves a safe, legible and fully pedestrian and cycling route and will add to existing pedestrian and cycle facilities in the area as Fairview Avenue will also be still available for pedestrians and cyclists. We contrast that with the NEIL land use proposal which is yet to be granted land use consent which does not involve public access through the NEIL land other than a pedestrian and cycleway route secured by an easement.

[181] In short, the Medallion Drive extension provides better connectivity and thus better enables people and communities to provide for their social, cultural and other requirements.

[182] We recognise the shortcomings in the consideration of alternatives and particularly their potential adverse effects. In many cases this would be fatal to a designation of this sort. However in this case we note that the removal of the designation itself may have significant consequences in respect of a re-design of the NEIL development already proposed. It may involve having to provide alternative connections to Oteha Valley Road given the current state of Fairview Avenue. In addition, the shortcomings of the analysis of the two alternatives were cured during the extensive work undertaken before the hearing and as a result of the material placed before the Court and the lengthy cross-examination and questioning.

[183] We were told that the proposed position and design of the buildings on the NEIL land had been worked on for a long period of time, and a major re-design may bring into play an entirely new range of issues. When we keep in mind that the Act requires us to *manage physical and natural resources in a way or at a rate to enable people and communities* we acknowledge that this brings into relevance a question of timeliness and proportionality.

[184] To date, Auckland Transport, and previously the North Shore City Council, has failed to provide infrastructure at a rate to enable the provision of housing in this area. The response of the District Plan through PC32 was to delay the subdivision of certain land below high thresholds until such infrastructure was provided. However, given the clear need for further housing, the failure to provide infrastructure for over a decade is difficult to see as fulfilling the purpose of the Act.

[185] We acknowledge that the extent of the designation notified and now sought could have the effect of blighting the development of this area of land for the period of this designation, or until construction is concluded. This is because there is a significant area beyond the road corridor which could be developed for intensive residential use but could not be utilised until such time as it was re-vested in NEIL.

[186] Given that Auckland Transport is seeking a period of ten years for the designation it is likely to be more than a decade before that land could be utilised. Even a shorter lapse period of five years does not ensure the road will be constructed within that time or the residual land re-vested. NEIL then has the choice of either:

(a) developing now, and having to avoid that designated land entirely. This will mean that it will be essentially sterilised for further development in the future; or

(b) would need to restrain from developing that portion of the site until such time as the land was available. In our view that would be an unacceptable effect on the land use and currently could affect between 3 and 5 buildings.

[187] For the reasons we have already stated, we conclude that greater certainty will be provided to the development of this area and to the Fairview Catchment generally by providing for a reduced designation roading corridor. This will have the advantage of enabling development not only of the NEIL land on the basis of its current application for consent, but also making direct provision in meeting the terms of PC32 for development.

Conclusion

[188] Looking at the overall questions under s 171 and Part 2, including the narrower designation and a lapse period of five years we are satisfied that such a modified designation would meet the purpose of Part 2 and enable the development of the NEIL land and other land in the Fairview Catchment if implemented.

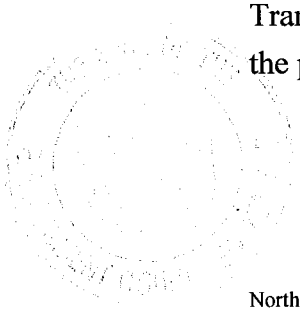
[189] Although we recognise that the Fairview Avenue alternative may achieve the purpose of the designation and the Act we have concluded that Medallion Drive extension provides improved connectivity and efficiency for motor vehicles, cyclists and pedestrians. The need for an improved road has been clear since the 1990s and is now urgent and the failure to construct this has had a significant effect on the development of this area.

[190] The regulatory regional and district planning documents also reinforce the requirement that the infrastructure should enable development. There has been a consistent failure to resolve this issue for over a decade and urgently since 2011.

[191] To that extent we acknowledge that the designation can achieve the purpose of the Act only if it does not conflict with reasonable development on the NEIL land beyond the infrastructure necessary for the road. After nearly three years since the NOR was notified, there has still been a failure of the parties to commit to a design that avoids impact beyond the corridor. Our response in those circumstances is to confirm a corridor sufficient to allow the road construction. This enables the infrastructure and the housing development. If a consequence of that are higher construction costs, we note that there has been more than adequate opportunity for resolution. We refer in this regard to two previous decisions of the Environment Court and the Commissioners' decision on this designation. We conclude that an agreement should be reached between the parties but we are not going to hold up the development further because of the parties' unwillingness or inability to reach an agreement.

[192] To that end the question arises whether the Court could include within the designation a condition that the designation can be relied on for the development by NEIL, to avoid any argument arising on the consent application that the development cannot occur until a road is actually constructed. Given the shorter lapse period and the narrowed NOR we cannot see any argument that the development of NEIL is constrained until the road is built. References to this decision (and others) should be sufficient to counter any such argument for the NEIL land.

[193] It has been clear to us from the commencement of this case, and upon our original reading of the papers, that Auckland Transport and the developer need to reach an agreement so that they can have a common earthworks arrangement in respect of the area around the roading corridor. Many attempts seem to have been undertaken to do this, but after in excess of ten years no real progress was made until just prior to this hearing. We note that nearly 30 Joint Witness statements have been prepared, including extensive witness statements from the traffic engineers and the planners. Despite all this, agreement has still to be reached on the Auckland Transport corridor/NEIL land development interface. However, we cannot insist that the parties do this even if it is in their best interests.



Conditions

[194] Conditions are required to ensure the above. The conditions to secure these outcomes need to be certain, workable and enforceable.

[195] We recognise there is an outline plan process, but we see that as dealing with matters of detailed design rather than the outcomes required of the proposed corridor extension. The outline plan process is one that only involves the Auckland Council and Auckland Transport and not NEIL. To that extent our view is different from that of the Commissioner at the first instance hearing.

Directions

[196] For the reasons set out in detail in the Decision the Court will confirm a modified NOR subject to the following:

(1) It is to be based upon:

(a) the operational road corridor shown in Annexure **D** attached to this decision, and covering a maximum width of 22m with the exception of areas specified in (2) and (3);

(b) a vertical profile for the road as shown in Annexure **D** (or better).

(2) In addition, the Designation over 1 and 2 being lots 2 DP199126, being 1,531m^2 owned by the Auckland Council, is to be designated in full, and lot 1 DP340400, being 856m^2, is designated in full.

(3) In addition to the operational road corridor there shall be an additional area provided as follows:

(a) an area necessary to construct the bridge abutments,

(b) to connect with Fairview Avenue to the west of the proposed roundabout and on the eastern side of the roundabout to connect with the existing roading designation,

(c) any area essential to allow construction of the road corridor or supporting infrastructure such as retaining walls;

(4) The parties are encouraged to reach an agreement in respect of access for the purposes of construction of their respective activities.

(5) By 30 June 2016 Auckland Transport is to produce and circulate an indicative plan of the modified designation area in accordance with this decision. The indicative plan is to identify the specific land identified in A1 and A2, and any further areas required under A3. Reasons for the extent of any additional area required for construction purposes are to be provided. In undertaking its assessment of construction needs, Auckland Transport is to minimise the effect on the NEIL development proposal adjacent to the road corridor.

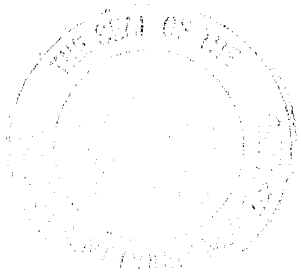
(6) Auckland Transport is to provide proposed consents and conditions for the modified designation within a further ten working days.

(7) NEIL then has fifteen working days in which to advise Auckland Transport and the Court whether it agrees with the area proposed to be designated in line with the Court's directions in the Decision, and particularly any additional area required for construction by Auckland Transport, as well as on the proposed conditions. NEIL is to advise of any concerns and ways in which these might be addressed, including any substitute condition wording.

(8) Auckland Transport has a further ten working days to consider and advise NEIL and the Court of its response to any matters raised by NEIL.

(9) The Court will then make a decision on the overall extent of the land to be designated, and the conditions to which the designation will be subject. In making this decision the Court will have regard to the memoranda lodged by the parties and, if necessary, convene a further hearing or conclude the matter on the papers.

(10) Once the extent of the designation has been decided by the Court, Auckland Transport is to undertake a survey and prepare a plan that clearly identifies the area of the designation to be confirmed by the Court, and submit this plan to the Court within twenty working days.

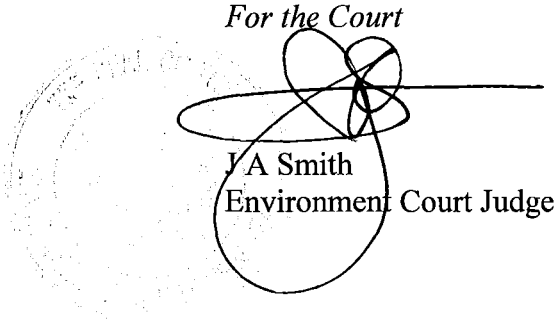


Costs

[197] Any applications for costs are reserved and application is to be made on issuing the final decision in accordance with directions given at that time.

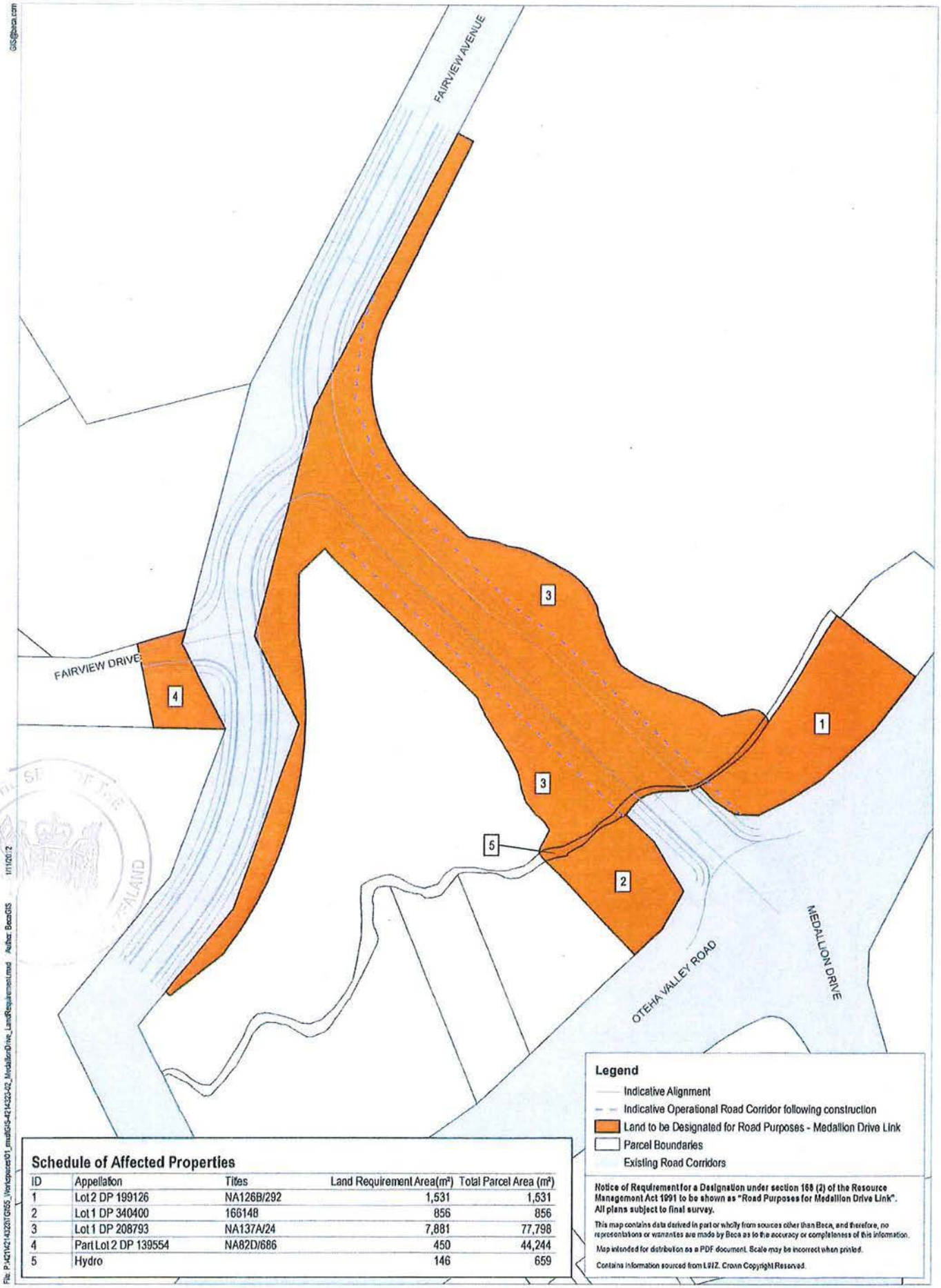
SIGNED AT AUCKLAND THIS 29th day of April 2016

For the Court



J A Smith
Environment Court Judge

A



Schedule of Affected Properties

ID	Appellation	Titles	Land Requirement Area(m²)	Total Parcel Area (m²)
1	Lot 2 DP 199126	NA126B/292	1,531	1,531
2	Lot 1 DP 340400	166148	856	856
3	Lot 1 DP 208793	NA137A/24	7,881	77,798
4	Part Lot 2 DP 139554	NA82D/686	450	44,244
5	Hydro		146	659

Legend

- Indicative Alignment
- Indicative Operational Road Corridor following construction
- Land to be Designated for Road Purposes - Medallion Drive Link
- Parcel Boundaries
- Existing Road Corridors

Notice of Requirement for a Designation under section 168 (2) of the Resource Management Act 1991 to be shown as "Road Purposes for Medallion Drive Link". All plans subject to final survey.

This map contains data derived in part or wholly from sources other than Beca, and therefore, no representations or warranties are made by Beca as to the accuracy or completeness of this information.

Map intended for distribution as a PDF document. Scale may be incorrect when printed.

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Map Scale @ A3: 1:1,000

0 5 10 20 30 m

Revision	Author	Verified	Approved	Date
1	HEC	BP	KM	01/11/2017

Title: **Medallion Drive Link**
Land Requirement Plan

Client: Auckland Transport

Project: Medallion Drive NoR

Beca

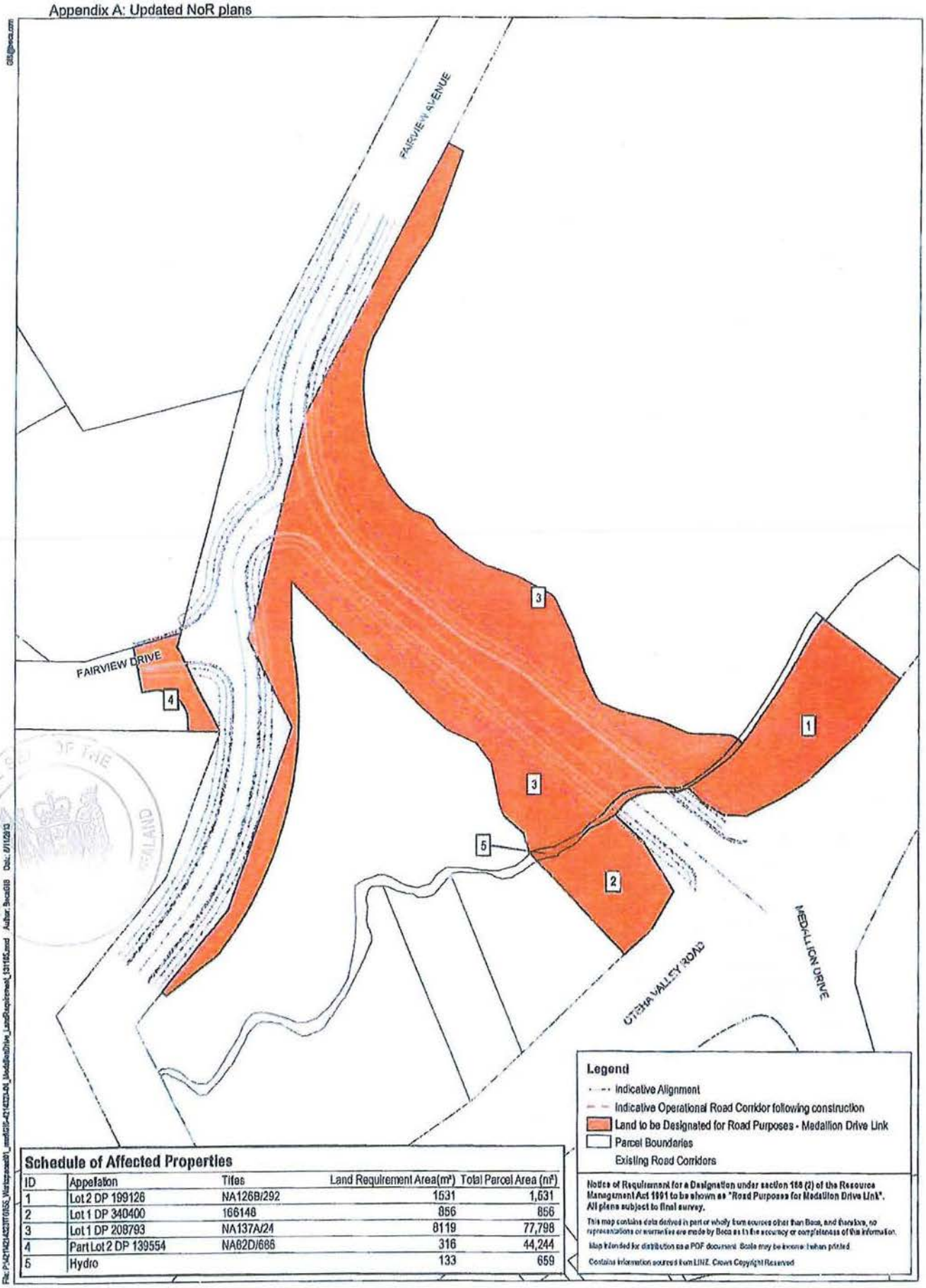
Discipline: GIS

Drawing No: GIS-4214323-02

File: P:\421\42143231\GIS\5_Workspaces\01_mxd\GIS-4214323-02_MedallionDrive_LandRequirement.mxd Author: BecaGIS 1/11/2017
GIS@beca.com

B

Appendix A: Updated NoR plans



Schedule of Affected Properties

ID	Appellation	Titles	Land Requirement Area(m²)	Total Parcel Area (m²)
1	Lot 2 DP 199126	NA126B/292	1631	1,631
2	Lot 1 DP 340400	166148	856	856
3	Lot 1 DP 208793	NA137A/24	8119	77,798
4	Part Lot 2 DP 139554	NA62D/686	316	44,244
5	Hydro		133	659

Notice of Requirement for a Designation under section 168 (2) of the Resource Management Act 1991 to be shown as "Road Purposes for Medallion Drive Link". All plans subject to final survey.

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Map Scale @ A3: 1:1,000

0 5 10 20 30 m

Title: **Medallion Drive Link**
Land Requirement Plan

Client: Auckland Transport

Project: Medallion Drive NoR

Beca

Discipline: GIS

Drawing No: GIS-4214323-04

C

Map Scale @ A3: 1:1,000

0 5 10 20 30 m

DRAFT

Title: DRAFT
Medallion Drive Link
Aerial Plan of Proposed Designation and Indicative Alignment
FOR DISCUSSION ONLY

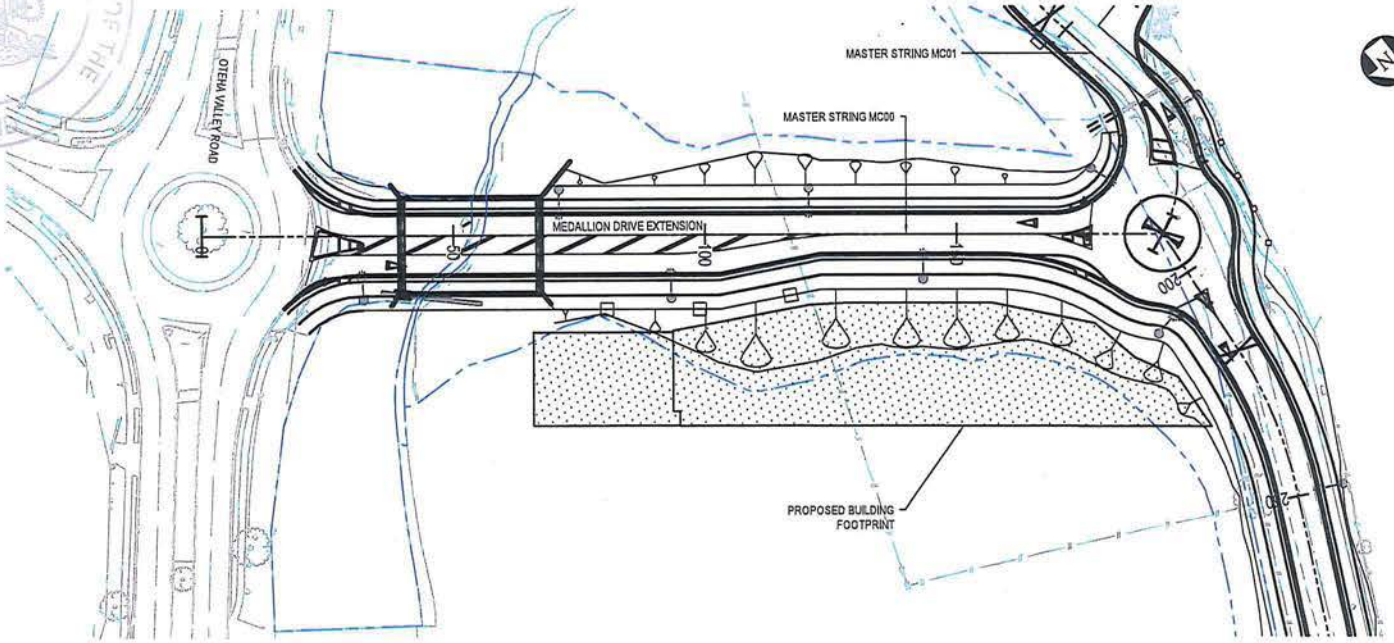
Client: Auckland Transport

Project: Medallion Drive NoR

Beca

Discipline: GIS

Drawing No: GIS-421432-01

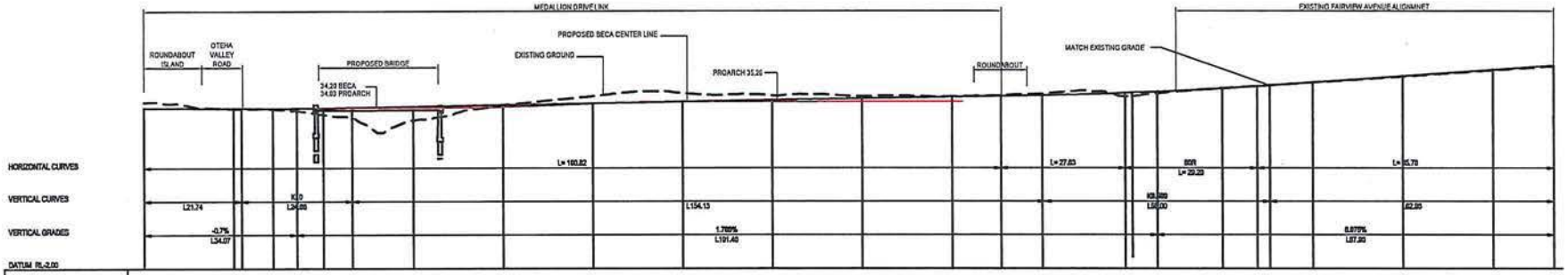


LEGEND:

- DESIGNATION BOUNDARY
- EXISTING SURFACE
- PROPOSED SURFACE
- 1A GROUND INTERFACE = 3.0:1 SLOPE

GEOMETRY LEGEND:

D = STRAIGHT LENGTH
R = RADIUS
CL = TRANSITION
L = LENGTH
P = GRADIENT



LONGITUDINAL SECTION

SCALE 1:500 (HOR)A3 1:1000A3
SCALE 1:500 (VER) 1:1000A3

PRELIMINARY
NOT FOR CONSTRUCTION

No.	Revision	By	Chk	Appd	Date
A	REVISED VERTICAL ALIGNMENT NOVEMBER 2016	JR	JR		05.02.16

Drawing Originator: Beca

Original Scale (A1) 1:500
Reduced Scale (A3) 1:1000
* Refer to Revision 1 for Original Signature

			Approved For Construction
Design	JAR	05.02.16	
Drawn	JAR	05.02.16	
Dsg Verifier			
Dwg Check			

Client: Auckland Transport
An Auckland Council Organisation

Project: MEDALLION DRIVE LINK
OTEHA VALLEY RD TO FAIRVIEW AVE
VEMBER 2016 ALIGNMENT

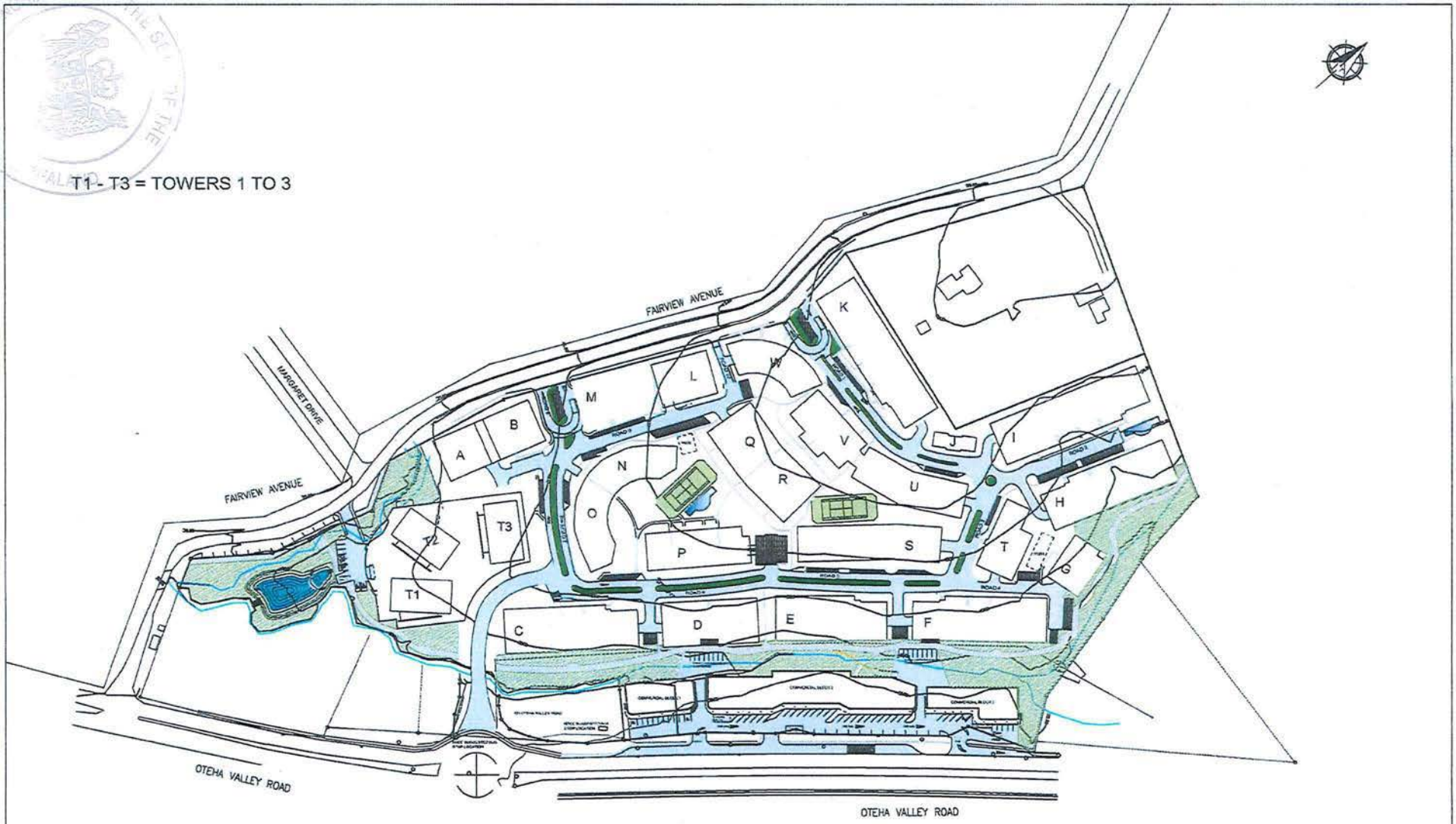
Title: MEDALLION DRIVE LINK
PLAN & LONGITUDINAL SECTION

Discipline: CIVIL
Drawing No.: 3818845-CK-100
Rev.: A

DO NOT SCALE

IF IN DOUBT ASK.

T1 - T3 = TOWERS 1 TO 3



PC32 ALTERNATIVE ACCESS SKETCH

PRELIMINARY

FAIRVIEW HEIGHTS
OTEHA VALLEY ROAD
ALBANY, AUCKLAND
LOCATION PLAN

214 Church Street
PO Box 1105
Palmerston North
Phone 06 357 9540
Fax 06 357 3697

Drawn: MDW/MA
Checked:
Approved:

Job No: 2606
Date: MAR 2007
Scale: 1:1000 @A1, 1:2000 @A3
Drawing No: SK500c

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