

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKAU**

**Decision [2022] NZEnvC 220**

IN THE MATTER OF

an appeal under s 174 of the  
Resource Management Act 1991

BETWEEN

WEIRONG CHEN

(ENV-2020-AKL-169)

Appellant

AND

NEW ZEALAND TRANSPORT  
AGENCY – WAKA KOTAHI

Respondent

Court: Chief Environment Court Judge D A Kirkpatrick  
Environment Commissioner K Prime  
Environment Commissioner R M Bartlett

Hearing: 17 August 2021

Appearances: B Carruthers for Appellant  
C Sheard and R Krzanich for Respondent

Date of Decision: 2 November 2022

Date of Issue: 2 November 2022

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**DECISION OF THE ENVIRONMENT COURT**

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A: The proposed alteration to designation 6766 in the Auckland Unitary Plan is confirmed.

B: Costs are reserved.



## REASONS

### Introduction

[1] This is an appeal against the decision of a requiring authority in relation to proposed road works on private land. The New Zealand Transport Agency (**NZTA**) (also known as Waka Kotahi) proposes to undertake safety improvements on State Highway 16 (**SH16**) between Huapai and Waimauku, including the introduction of median barriers, construction of turnaround facilities with right turn bays, widening of shoulders and addition of side barriers (**the project**). Land in various locations adjacent to the highway will be needed to accommodate these works and NZTA has notified its requirement to alter the existing designation for the state highway to include its works on that land.

[2] The particular location with which this case is concerned is in the vicinity of a property at 601 SH16. The owner of the land is Good Assets Ltd in which Mr Chen, the appellant, is a director and shareholder. The main issues on appeal relate to whether the requirement has been properly examined in light of alternatives or is otherwise reasonably necessary in light of the adverse effects it may have on the people and businesses which occupy the land. No notice under the Public Works Act 1981 to take this land has yet been issued: this will only occur if the alteration to the designation in respect of this property is confirmed.

[3] As a state highway, the road is vested in the Crown<sup>1</sup> and controlled by NZTA.<sup>2</sup> It is subject to a designation as a state highway in the Auckland Unitary Plan numbered 6766, without conditions or attachments. NZTA<sup>3</sup> is the requiring authority for state highways<sup>4</sup> and so has financial responsibility in

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<sup>1</sup> Government Roding Powers Act 1989, s 44.

<sup>2</sup> Government Roding Powers Act 1989, s 61.

<sup>3</sup> Established under s 93 of the Land Transport Management Act 2003.

<sup>4</sup> The Resource Management (Approval of Transit New Zealand as Requiring Authority) Notice 1994, *New Zealand Gazette*, 3 March 1994, No. 20, page 978.

respect of this designation. Its proposal involves an alteration to the designation of the state highway. The stated project objectives are

1. Reduce the probability and severity of predicted DSI [death or serious injury] crashes by at least 30 - 50% (8 – 20 DSI) within 10 years.
2. Increase the length of existing below 3.5 star rated corridor to 3.5 star or above within 10 years.
3. Maintain travel time between Kumeū and Brigham Creek Road over the next 10 years.

[4] NZTA says that it has had particular regard to all the matters that it must, including the need for the safety improvements and the possible alternatives to them.

[5] The Auckland Council is the territorial authority in this area. It appointed independent hearing commissioners to consider NZTA's proposal to alter the designation and to hear submissions on it, including Mr Chen's submission in opposition. After a hearing and site visit, on 17 September 2020 the commissioners found, among other things, that adequate consideration had been given to alternatives and that the alteration to the designation was reasonably necessary to achieve NZTA's objective, and accordingly recommended to NZTA that the notice of requirement to alter the existing designation be confirmed. NZTA accepted this recommendation on 21 September 2020. Mr Chen's appeal is against NZTA's decision to accept the recommendation. The Council took no part in this appeal.

[6] Mr Chen opposes having a turnaround on the property on the basis that it is not needed as little traffic comes from the west and the turnaround will only serve traffic going to 12 properties which could be served equally well by the main turnaround at Trigg Rd. If there has to be one, then he seeks some benefit to the property, such as amending the design to provide for right turns out so that one can travel directly to the east rather than having to travel some way to the west and use the turnaround near Matua Rd. If that cannot be done,

then he seeks that the turnaround be relocated to avoid interfering with the established grape vines and the existing entranceway. He accepts that it could still be on the property.

[7] Mr Chen says that he has been poorly treated by NZTA who did not engage with him before including this turnaround in the design of the project.

[8] Mr Chen's counsel submits that the case for the NZTA in support of the designation is inconsistent and reliant on broad assertions about the project rather than focussed on the particular concerns of a property owner in relation to a particular property.

### **Background**

[9] The site at 601 SH16 comprises approximately 9.3 ha of land on the southern side of the road. It is principally occupied by a well-established vineyard and associated winemaking business. Adjacent to the site at 609 SH 16 is a more recently established restaurant which shares the same vehicle access to and from the state highway.

[10] In this vicinity SH16 is a busy two lane highway on undulating topography with relatively frequent bridge structures. In 2019, traffic counts showed it was carrying approximately 15,500 vehicles per day. There is a posted speed limit of 80 km/h. SH16 is identified as a strategic transport corridor in the Auckland Unitary Plan: it is the main alternative to State Highway 1 as a route between Auckland and Northland. Approximately 4% of the average annual daily traffic is in heavy vehicles.

[11] The proposed alteration to the existing designation is in respect of SH16 between Huapai and Waimauku, a length of approximately 3.6 km. NZTA's standard analyses of road conditions, including the New Zealand Roadside Assessment Programme called KiwiRAP, gives this section of road a relatively low rating of 2 out of 5, indicating serious deficiencies in some features such

as poor roadside conditions or many minor deficiencies such as insufficient provision for overtaking, narrow lanes or poorly designed intersections. In 2016 this section was identified as having an unforgiving design coupled with high traffic volumes contributing to a high number of head-on and runoff crashes resulting in death or serious injury.

[12] Between 2011 and 2020 there were one fatal and 10 serious injury crashes on this section of road resulting in 15 casualties. The crashes are recorded as resulting from rear-end, crossing/turning, straight road and loss of control events. A risk analysis indicates that 60% of this section has a high head-on outcome risk. Three of the intersections, at Joyce Adams Place, Foster Road and Matua Place, have been identified as presenting medium-high to medium-low risk. Overall, this section of SH16 is classified by NZTA as high risk because of its crash history, traffic volumes and road safety rating.

[13] In light of these assessments, NZTA proposes a combination of engineering treatments between Trigg Road near Huapai to the east and Wintour Road near Waimauku to the west. A flexible median safety barrier will be installed. Side barriers will be installed in a number of locations. Intersections will be improved as will road markings and signs.

[14] To meet access needs along this section of the highway there will be breaks in the median barrier in five locations:

- a) one in the west at the intersection with Joyce Adams Place;
- b) one midway along at the intersection with Foster Road; and
- c) three at the location of proposed turnarounds to be built between Matua Road and Trigg Road in the east being:
  - i) a smaller one on the northern side of the highway near the intersection with Matua Road;
  - ii) a smaller one on the southern side at 601 SH16; and

- iii) a larger one on the southern side further east near the intersection with Trigg Road.

[15] The two breaks in the median barrier at the road intersections will allow right turns off and onto the state highway to and from Joyce Adams Place and Foster Road. The breaks at the proposed turnarounds beside the highway are not connected to any road and so will only allow right turns off the highway to enable vehicles travelling in one direction to cross the opposing lane and turn around in order to access properties on the other side of the highway.

[16] There will be two primary turnaround facilities: one at Trigg Road (at the eastern end) and one at Foster Road (at the mid-way point). The existing Waimauku roundabout between Muriwai Road, SH16 and Waimauku Station Road will service the western end. There will be two secondary turnaround facilities at 601 SH16 and opposite 641 SH16.

[17] The break at Foster Road, which is roughly at the mid-point of this section of the highway, will also have a large turnaround facility to enable articulated heavy vehicles to reverse course at that point and access properties on the other side of the highway. The Trigg Road turnaround will also accommodate such vehicles. The two smaller turnarounds will not accommodate articulated heavy vehicles.

### **The issues with the turnaround at 601 SH16**

[18] The focus of this proceeding is the area of land at 601 SH16 on which NZTA proposes to locate one of the smaller turnarounds. Mr Chen has a proprietary interest in this land and NZTA does not. The main matters in issue between them are whether adequate consideration has been given by NZTA to alternative locations for this turnaround and whether the turnaround and the designation for it are reasonably necessary for achieving the relevant objectives of NZTA. As this turnaround is a component of a larger project, it is

necessary to consider and seek to understand all of the works as the improvements are intended to be a cohesive design and to offer overall improvement of this section of the road. The particular issues affecting the property can then be seen in that context.

[19] The turnaround at 601 SH16 is proposed to be located in the same place as the existing access to the property at that address. The highway will need to be widened beyond the existing road reserve to accommodate the formation for the turnaround. Some of the neighbouring property's land is therefore proposed to be acquired for that purpose. As well, the entrance to the property will accordingly have to be relocated some distance back from its existing location and some existing grape vines will have to be removed. Overall, the area of land identified as being required for NZTA's purposes is 1079 m<sup>2</sup>.

[20] The principal objective for this project is to improve traffic safety along this section of the highway. The principal method of pursuing that objective is to construct a median barrier along its length to avoid collisions. Associated safety measures include providing side barriers and increasing road shoulders. The costs of that method include restricting full access to and from properties along that section of highway, including those on roads and accessways which intersect that section. To mitigate those restrictions on access, NZTA proposes the four turnarounds described above. The costs of the turnarounds include the acquisition of private land. NZTA says that it has sought to balance a minimising of the need to acquire private land for its works with the benefits of providing reasonable access to and from properties along this section of the highway.

[21] Mr Chen says that the balance which NZTA seeks is not a project objective. Further he says that the length of the highway to be affected by the median barrier is not so great as to warrant the works proposed by NZTA. On that basis, providing two intersections and four turnarounds goes beyond

what NZTA's own guidance documents provide for and so are, or at least the turnaround at 601 SH16 is, not reasonably necessary to achieve NZTA's objective.

[22] Mr Chen also says that NZTA's consideration of alternatives, at least in relation to works on his property, has been late, rushed and flawed. He says that the alternative of deleting this turnaround has not been properly considered and an alternative in another location on the property was not fully investigated. Even if there should be a turnaround on his property, he says that there has been inadequate consideration of the conditions under which such works should be undertaken.

### **Statutory framework**

[23] The provisions of the Resource Management Act 1991 (**the Act**) governing designations are in Part 8 at ss 166 – 186. The most relevant statutory matters applying to our consideration of this appeal are in s 171, including the matters to be considered and to which regard must be had when considering a requirement for a designation:

(1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—

- (a) any relevant provisions of—
  - (i) a national policy statement:
  - (ii) a New Zealand coastal policy statement:
  - (iii) a regional policy statement or proposed regional policy statement:
  - (iv) a plan or proposed plan; and
- (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
  - (i) the requiring authority does not have an interest in the



land sufficient for undertaking the work; or

- (ii) it is likely that the work will have a significant adverse effect on the environment; and
- (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
- (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

[24] The Court in making its decision on appeal under ss 174(1) and 290 of the Act is in the same position as the territorial authority at first instance. Under ss 171(2) and 290 the Court may confirm, modify or withdraw the requirement and may impose conditions.

[25] The considerations under s 171(1) of the Act, particularly those as to alternatives in s 171(1)(b) and reasonable necessity in s 171(1)(c), evince a purpose of controlling the effects of public works, particularly where those effects include the acquisition of private property or other derogation from the rights of a person with an interest in that property.

[26] The phrase “having particular regard to” in relation to relevant considerations has been carefully analysed by the High Court as follows (footnotes omitted):<sup>5</sup>

[64] Plainly the phrase “shall have particular regard to” conveys a stronger direction than merely “to have regard to”. Section 7 (which includes the phrase) is one of the four sections in Part 2 which *McGuire* described as being “strong directions”.

[65] The issue is most recently informed by the discussion of Part 2 in *King Salmon*. ...

[66] While NZTA submitted that the (a) - (d) matters in s 171(1) were to be carefully weighed in coming to a conclusion, no submission was advanced in the course of argument on the interpretation issue to the effect that the matters to which particular regard was to be had were

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<sup>5</sup> *NZ Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [56] – [68].

required to be the subject of extra weight. On that issue I share the view of Sir Andrew Morritt V-C in *Ashdown v Telegraph Group Ltd*:

It was submitted that the phrase ‘must have particular regard to’ indicates that the court should place extra weight on the matters to which the subsection refers. I do not so read it. Rather it points to the need for the court to consider the matters to which the subsection refers specifically and separately from other relevant considerations.

[67] In the event NZTA and the respondents appeared to be on the same page on the interpretation of the phrase. Both sides cited the decision of the Planning Tribunal in *Marlborough District Council v Southern Ocean Seafoods Ltd* where the following view was expressed:

The duty to have particular regard to these matters has been described in one case as “a duty to be on inquiry” *Gill v Rotorua District Council* (1993) 2 NZRMA 604, 2 NZPTD Part 5. With respect in our view it goes further than the need to merely be on inquiry. To have particular regard to something in our view is an injunction to take the matter into account, recognising it as something important to the particular decision and therefore to be considered and carefully weighed in coming to a conclusion.

[68] I agree that that is an appropriate interpretation provided that the reference to “take the matter into account” is understood in the sense explained at [63] above [being of paying attention to a matter in the course of an intellectual process where the decision-maker is free to attribute such weight as it thinks fit to the specified matter but can ultimately choose to reject the matter.]

[27] The consideration of alternatives is required by s 171(1)(b) to be adequate. That standard has been considered by the High Court as follows:<sup>6</sup>

[137] The section requires that where either scenario exists not only must there be consideration of alternative sites but that such consideration should be “adequate”. It appeared to be common ground that the meaning of “adequate” was as stated by the Environment Court in *Te Runanga o Ati Awa Ki Whakarongotai Inc v Kapiti District Council*:

... The word ‘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’. ...

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<sup>6</sup> *NZ Transport Agency v Architectural Centre Inc* fn 5 at [137], citing with approval *Te Runanga o Ati Awa Ki Whakarongotai Inc v Kapiti District Council* (2002) 8 ELRNZ 265 at [153].

[28] As well, where private land is affected, the consideration should include a counterfactual where no private land is involved and be proportionate to the extent of the effects:<sup>7</sup>

[121] The section 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 need to be.

[29] The requiring authority does not have to clear away suppositious or hypothetical suggestions, but if there is some evidence that an alternative exists, then the Court must have particular regard to whether it was adequately considered by the requiring authority. It is not the landowner's burden to demonstrate the efficacy of an alternative.<sup>8</sup>

[30] A useful summary of the correct approach to the consideration of alternatives, as adopted by the High Court in *Queenstown Airport Corp. Ltd v Queenstown Lakes DC*, is as follows:<sup>9</sup>

- a) the focus is on the process, not the outcome: whether the requiring authority has made sufficient investigations of alternatives to satisfy itself of the alternative proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate consideration does not mean exhaustive or meticulous consideration.
- b) the question is not whether the best route, site or method has been chosen, nor whether there are more appropriate routes, sites or methods.
- c) that there may be routes, sites or methods which may be considered by some (including submitters) to be more suitable is irrelevant.

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<sup>7</sup> *Queenstown Airport Corp. Ltd v Queenstown Lakes DC* [2013] NZHC 2347 at [121].

<sup>8</sup> *Queenstown Airport Corp. Ltd v Queenstown Lakes DC* fn 7 at [122] – [124].

<sup>9</sup> *Queenstown Airport Corp. Ltd v Queenstown Lakes DC* fn 7 at [18], citing *Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project 2009* at [177].

- d) the Act does not entrust to the decision-maker the policy function of deciding the most suitable site; the executive responsibility for selecting the site remains with the requiring authority.
- e) the Act does not require every alternative, however speculative, to have been fully considered; the requiring authority is not required to eliminate speculative alternatives or suppositious options.

[31] The meaning of “reasonably necessary” in s 171(1)(c) has been interpreted as follows:<sup>10</sup>

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

[32] The High Court has explained this interpretation as follows:<sup>11</sup>

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

[33] Further, the following principles have been identified:<sup>12</sup>

- (a) The words “requirement” and “reasonably necessary” in ss 168(2) and 171(1)(c) of the Act (and in s 24(7) of the Public Works Act 1981) are statutory indicia that any proposed works must be clearly justified by reference to the objective of the notice of requirement.
- (b) The concepts of “reasonably necessary” and “essential” may be interchangeable;<sup>13</sup>

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<sup>10</sup> *Queenstown Airport Corp. Ltd v Queenstown Lakes DC* fn 7 at [94], citing *Re Queenstown Airport Corporation Limited* [2012] NZEnvC 206 at [51].

<sup>11</sup> *Queenstown Airport Corp. Ltd v Queenstown Lakes DC* fn 7 at [95].

<sup>12</sup> *Queenstown Airport Corp. Ltd v Queenstown Lakes DC* fn 7 at [93] – [97].

<sup>13</sup> *Minister of Land Information v Seaton* [2012] 2 NZLR 636 (CA) at 644-645.

- (c) A requirement that derogates from private property rights calls for closer scrutiny;<sup>14</sup>
- (d) The assessment of the exercise of the power to compulsorily acquire land under s 24(7) of the Public Works Act 1981 and that of the designation power under the Act both deal with the coercive powers of public authorities to derogate from private property rights and should be interpreted in a consistent way, so that a threshold between essential and desirable may be in error.

[34] Equating “essential” with requiring the “best” site to be selected sets the test beyond what is “reasonably” necessary and significantly limits the capacity of a requiring authority to achieve the purpose of sustainable management.

### **Was adequate consideration given to alternatives?**

[35] The evidence of Ms Carlyle, an expert planning consultant for NZTA explained that the initial assessment of alternatives was undertaken for the whole corridor (stages 1 and 2). A wide range of high-level treatments were considered in the following categories:

- (a) Full corridor safety treatments:
  - (i) Median treatments, e.g. painted flush median, wire barrier median;
  - (ii) Roadside treatments, e.g. widening shoulders; and
  - (iii) Other treatments, e.g. intersection improvements; pavement improvements; signage; speed limits,

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<sup>14</sup> *Deane v Attorney-General* [1997] 2 NZLR 180 (HC); and is to be distinguished from planning regulation simpliciter: *Falkner v Gisborne District Council* [1995] 3 NZLR 622 (HC); *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112.

- (b) Efficiency treatments by section, e.g. additional lanes.
- (c) Coatesville-Riverhead intersection treatments.

[36] Following completion of the long list assessment four short listed options were presented for the project. These included:

1. Existing layout, plus baseline;
2. Existing layout with double yellow line median plus baseline;
3. Existing layout with wide centreline plus baseline: and
4. Existing layout with wire median plus baseline (turnarounds required).

The 'baseline' involves retaining the existing road alignment and includes widened shoulders to meet current standards and maximum side barriers where possible (taking into account constraints of existing side access points including driveways).

[37] Ms Carlyle's evidence was that an options assessment workshop was held in May 2017, which resulted in the recommendation of Option 4: Existing layout with median safety barrier plus baseline (turnarounds required). The recommendation for the primary turnaround locations was:<sup>15</sup>

- (a) Station Road (new) loop road facility;
- (b) SH16/Muriwai Road/ Waimauku Station Road intersection; and
- (c) Foster Road.

[38] Ms Carlyle's evidence was that an option endorsement workshop was

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<sup>15</sup> There was brief consideration of alternative locations for the primary turnaround bays in the SSBC Report Appendix P – Technical Review (memo) for options endorsement - section E turnaround facility.

held in June 2017, and that the Single-Stage Business Case Report and preferred options were endorsed by the NZTA Board in December 2017. Following this workshop and further investigation of the Station Road turnaround, the turnaround was discounted due to safety concerns around the visibility of turning vehicles and the need for heavy vehicles to cross two lanes of faster traffic. The current proposal for a turnaround at Trigg Road was investigated and preferred over the Station Road option as it offered a solution for the heavy vehicles needing to perform a u-turn at a reasonable cost and preserved access for residents located on Trigg Road.

[39] Mr Rahman, an expert civil engineering consultant for NZTA, assessed the position of the primary turnaround facilities in his evidence. His opinion was that the turnaround facilities at Trigg Road (at the eastern end) and Foster Road (mid-way) and the existing Waimauku roundabout (at the western end) will provide sufficient turning facilities so that a detour length of no more than 3km is required. His opinion was that the Trigg Road turnaround is necessary in order to prevent motorists from undertaking an unsafe turnaround on Trigg Road and to provide safe access for local residents. The Foster Road turnaround is appropriate because it is in the middle of the project corridor, is away from the railway line and has good lines of sight for drivers.

[40] Mr Chen's argument is that NZTA has not given adequate consideration to alternative methods and in particular that NZTA has not considered measures such as painted medians or raised visible median lines. He also argued that NZTA has not had enough time to assess the effect of dropping the speed limit to 80km/h.

[41] In addition Mr Chen raised the possibility of an alternative location for the secondary turnaround point at 601 SH16. His suggestion was that the turnaround point remain on the property at 601 SH16, but that it be located further to the east of the main entrance to the property. Another alternative

suggested by Mr Chen was a westbound and eastbound turnaround or T-intersection at the entrance of 601 SH16.

[42] Mr Rahman assessed the options available for improving the safety of the road in his evidence and stated that:

- (a) A baseline option of retaining the existing road alignment with widened shoulders and side barriers, where possible, does not meet the objective of the project to reduce DSI between 30% to 50%;
- (b) The baseline option with a double yellow centreline does not meet the objective of the project to reduce DSI between 30% to 50%;
- (c) The baseline option with a wide centreline meets the project's safety investment objectives, but there is residual risk of head-on DSI due to vehicles being able to cross the median. In Mr Rahman's opinion the risk and severity of head-on crashes resulting in DSI is high, as this option does not address the potential for rear-end crashes where vehicles waiting in the lane to cross to an opposite road or access way are struck from behind and pushed into the oncoming lane.

[43] In Mr Rahman's opinion Option 4, the baseline option with a wire rope median barrier with turnaround facilities, meets the safety objectives of the project and provides for increased head-on DSI protection and prevention through the addition of a median barrier by preventing cars from crossing the centreline and head on crashes.

[44] In his opinion the wire rope median barrier is essential in order to achieve the reduction in probability and severity of predicted DSI crashes and to increase the length of existing below 3.5 star rated corridor to 3.5 star or above.



[45] Mr Rahman considered whether the reduction in the speed limit to 80km/h would be sufficient to achieve the objectives of the project as suggested by Mr Chen. His evidence was that the reduced speed limit would only reduce the severity of crashes if vehicles comply with the speed limit and travel at lower speeds. In his opinion it will not address or prevent cross-centre line crashes and therefore will not meet the objective of reducing DSI by between 30% and 50%.

[46] Mr Newsome, a senior safety engineer with NZTA, supported Mr Rahman's position that reducing the speed limit alone without the median barrier would not be sufficient to address the existing safety issues on this stretch of SH16.

[47] Ms Carlyle's evidence also addressed the assessment of alternatives undertaken for the secondary turnaround facilities by the project team in 2019:

- (a) Nine options were identified for a potential secondary turnaround facility between the primary turnarounds. As noted in the evidence of Mr Rahman, these were identified at locations where the maximum number of local residents and businesses could benefit from them and at locations where impacts on private property could be minimised.
- (b) The options were assessed on a comparative basis by the following technical discipline leads: Civil Design, Transportation engineering, Stormwater engineering, Ecology, Landscape and Visual Design, RMA Planning. Two options catering for vehicles going towards the east and four options catering for vehicles going towards the west were retained.
- (c) Options sketches were developed to understand the footprint of the shortlisted secondary turnaround facilities. The options were

also tested against visibility requirements.

- (d) A multi-criteria assessment framework was confirmed for the short list option assessment. Each option was assessed by a subject matter expert against critical success factors and other factors, using a 7-point scale scoring system and assessment commentary.

[48] An options assessment workshop was held on 7 May 2021 to discuss and challenge the provisional option assessment scoring.

- (a) For the eastbound secondary turnaround facility, Option 7 (opposite 641 SH16) was identified as the preferred option given it met the critical success factors and scored better than the alternative option in terms of the safety and constructability criteria.
- (b) For the westbound secondary turnaround facility, Option 4 (601 SH16) was identified as the preferred option given it scored best against the critical success factors such as safety, transport, constructability and consentability, and scored positively against other categories such as urban design and social effects. It was considered that any potential adverse effects on the environment due to this turnaround could be appropriately managed and mitigated.

[49] An alternative location for the secondary turnaround at 601 SH16 was considered as part of Option 5 (601 SH16 – East (Westbound)) however it was not considered to be as favourable as Option 4. Option 4 utilises the existing entrance at 601 SH16 and does not require complex engineering because it will be constructed on existing hardstand. In comparison Option 5 would involve constructing the turnaround point in a flood plain. The potential for flooding effects contributed to the high risk contestability score for Option 5.

[50] Ms Carlyle's evidence also noted that a combined eastbound and westbound facility was also considered at 601 SH16 to allow for both left-out and right-out turning movements. The additional right hand turn would have required a T-intersection to be designed. However, this would encroach on the flood plains to the east and the restaurant to the west and maintaining safe vehicle manoeuvrability was considered difficult. The provision of a right hand turn out of 601 SH16 would also duplicate the turnaround to be located opposite 641 SH16 meaning that turnaround would no longer be required. Removing that turnaround would impact four properties which would otherwise use this turnaround. For this reason this option was found to be unfeasible.

[51] The final recommendation for the secondary turnaround facilities was opposite 641 SH16 (eastbound) and 601 SH16 (westbound) within this section of SH16.

[52] Ms Carlyle's opinion was that the provision of the two separate turnaround facilities 400m apart reflects the best outcome in terms of spacing of turnaround facilities, community access, the area of land required and ease of construction.

[53] Mr Rahman's evidence was that the turnaround at 601 SH16 has positive transport effects due to smaller detour distances required. Vehicles who wish to turn right and head east towards the city from Coopers Creek will only be required to detour a distance of 800m. Furthermore, the turnaround at this location is not expected to compromise safety or accessibility at 601 SH16.

[54] His opinion was that the turnaround 601 SH16 is at the most appropriate location, which is at the mid-point between the primary turnaround facilities, which are approximately 1.9km apart. The turnaround facility at this location will benefit 13 properties including 601 SH16. The maximum detour distance is just under 2 km for the property located at 695 SH16.

[55] Ms Dines, an expert planning consultant called by Mr Chen, opined that there were deficiencies in the 2021 options assessment and the timing of that assessment. As a result of those deficiencies her opinion was that an adequate and careful assessment of the options was not made.

[56] Ms Dines' concerns regarding the 2021 options assessment was that alternative assessments are typically undertaken in the early stages of a project before the final form of proposed development is determined. She argued that the 2021 options assessment was completed after the AEE was prepared, the NoR lodged and confirmed, Mr Chen's appeal filed and Court-assisted mediation had taken place. In her opinion this is not good practice and raises the concern that the outcome of the 2021 options assessment could have been pre-determined or arbitrary as the alteration to designation 6766 had already being confirmed and an evidence timetable for Environment Court proceedings had been set.

[57] Ms Dines also raised concerns about "double counting" in the 2021 options assessment. In her evidence she referred the User Guidance section of the NZTA's Multi Criteria Analysis User Guidance (MCA User Guidance) which states:

"Care should be taken to avoid double counting in selecting and evaluating criteria"

[58] In addition, under the heading "Number of criteria", the guidance states:

"The number of criteria should generally reflect the risk, opportunity, complexity and variety of the options assessed. As a rule, practitioners should aim for about 8 to 12 criteria in an MCA – and no more than 15. Including too many criteria can result in criteria scoring 'balancing out', or key criteria being outweighed by multiple other criteria. Also, double counting is more likely to occur if too many criteria are included."

[59] In section 6.2.1 of the 2021 options assessment, the MCA criteria are listed. One of the criteria is Consentability. The description of this criterion is:

the degree to which option can avoid, remedy or mitigate effects in accordance with the RMA framework.

[60] Conversely in Table 1 of the User Guidance, the consentability considerations are:

“What is the level of consenting complexity/difficulty? Are there risks of this adversely impacting on required project timeframes or other aspects of delivery?”

[61] Under the Other Factors bullet point in section 6.2.1 of the 2021 options assessment, a range of effects are listed including matters in relation to urban design, social issues, natural environment, public health, cultural and heritage effects and construction disturbance. Each of these matters is an effect that is addressed under the RMA framework. In Ms Dines’ opinion, the May 2021 options assessment therefore double counts these matters, which according to the User Guidance should be avoided.

[62] Ms Dines also raised concerns about discrepancies in the assessment of some of the criteria at section 6.4.3 of the 2021 options assessment, which assesses the west bound turnaround facility. For example:

- (a) Option 5 has a score of -3 for both Consentability and Flooding hazards however the flooding hazard is used to justify the -3 rating in both cases. Her opinion was that this is double counting.
- (b) For the Public Amenity criteria, Option 4 appears to have been assessed with mitigation planting in place, while Option 5 has been assessed without mitigation. The options should be treated equally.
- (c) For the Sustainable Land Use Opportunities criteria, the scoring and assumptions for Option 4 does not appear to relate to the Criteria description.
- (d) For the Personal and Property Rights Criteria, the taking of a similar area of land appears to have been assessed differently for

### Option 4 and 5.

[63] In addition, Ms Dines says that there were 19 criteria and sub-criteria used in the 2021 Options Assessment. The MCA User Guidance recommends practitioners aim to use 8-12 criteria and no more than 15. In Ms Dines' opinion, this project does not seem overly complex, and she did not consider that 19 criteria and sub-criteria are necessary. In addition, the inclusion of 14 criteria and sub-criteria relating to RMA effects with all criteria being given equal weight is likely to skew the result of the options assessment strongly towards environmental effects, when the project objectives are related to safety.

[64] Finally, Ms Dines referred to section 7 Recommendations of the 2021 options assessment which refers to a combined eastbound and westbound turnaround facility that was also considered. Her understanding was that this was done at Mr Chen's request, but in her opinion this option does not appear to have been assessed in the same way as either the long list of options or the short list of options.

[65] We have considered all of this evidence. Despite Ms Dines' criticisms we are satisfied that NZTA made sufficient investigations of alternatives and did not do so on a cursory basis. As noted in the *Queenstown Airport* case the Act does not require NZTA to consider every alternative. Its obligation under s 171(1)(b) is to give adequate consideration to alternative sites and methods. We find that NZTA did so, and that the timing of this consideration did not detract from the assessment.

[66] We also note that although Ms Dines argued that the alternative options were not adequately considered, she did not offer any evidence to support a different option.

[67] We also conclude from the evidence of the witnesses for NZTA that the

alternative preferred by Mr Chen, of a raised and painted medium, was carefully considered by NZTA as an option but that it was appropriately found to not fulfil the objectives of the project.

[68] It is clear from the evidence that NZTA and its advisors carefully considered alternatives in relation to the options for improving the safety of this part of the state highway as well as the location of the primary and secondary turnaround locations.

[69] It is also clear that NZTA considered alternative locations for the secondary turnaround points and the location and type of turnaround to be established at 601 SH16, including whether a T intersection would be a more appropriate method of achieving the objectives of the project at that location.

[70] Following our site visit we noted that the topography and the relatively deep channels on the side of the road would make utilising a location further to the east of the main entrance at 601 SH16 more complicated than using the established entrance which is at the current level of the road.

[71] We are satisfied on the evidence and from what we observed that a turnaround located further to the east of the property would not provide a better outcome in comparison to the preferred turnaround location at the entrance to 601 SH16. We are also satisfied that NZTA considered the alternative location further to the east of the property as part of option 5 (601 SH16 – East (Westbound)).

### **Is the work or designation reasonably necessary?**

[72] Section 171(1)(c) of the Act requires consideration of whether the work or designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.

[73] NZTA is satisfied that the section of SH16 between Huapai and

Waimauku presents a significant safety risk due to the unforgiving corridor design and the high volume of traffic which results in an unacceptable number of high severity head-on and run-off road crashes.

[74] Recent crash data obtained for the period from 2011 to 2020 shows there were a total of 11 fatal and serious injury crashes on this stretch of road consisting of one fatal and 10 serious crashes. These crashes resulted in one fatality and 14 serious injury casualties.

[75] Mr Newsome's evidence identified the reasons for poor safety as:

- (a) An unforgiving corridor design leading to an unacceptable number of high severity head-on and run-off road crashes;
- (b) The current intersection design is leading to an unacceptable risk of high speed crashes which has potential to be exacerbated with increased growth; and
- (c) The changing function and increasing use of roadside access points is leading to increased crash risk.

[76] Mr Newsome referred to the High Risk Rural Guide which sets out the following statistics on methods for improving high risk rural roads:

- (a) Median barrier – 30-100% reduction in crashes.
- (b) Wide median / clear zones – 25-40% reduction in crashes.
- (c) Shoulder widening – 14-35% reduction in crashes.
- (d) Auxiliary lanes – 14-35% reduction in crashes.
- (e) Lower the posted speed limit – >30% reduction in crashes.

[77] Currently, there is no physical separation between opposing traffic lanes to provide protection from vehicles crossing the centreline. To address this



issue, and reduce the risk of head-on crashes, physical separation of opposing traffic is proposed. Wire rope median barriers are considered the most effective method as they provide physical separation, are more forgiving than other physical barriers and are appropriate for a single lane road environment.

[78] The provision of side barriers will reduce the severity of crashes, and shoulder widening will lower the current run-off road risk by providing additional space for recovery. Widened shoulders will also provide resilience to the corridor by allowing distressed vehicles to stop off the highway and minimise the disruption to through-traffic.

[79] The evidence of Mr Rahman is that the inclusion of wire rope median and side barriers as well as widening of the carriageway shoulder are predicted to reduce the occurrence of crashes resulting in death and serious injury by 60% in 10 years.

[80] Continuous median barriers will restrict right turn movements from some private driveways and side roads. Four turnaround locations (two primary and two secondary) have been included in the project at intervals where there is a break in the median barrier in order to mitigate the effects of the median barrier on owners and occupiers of these properties, including several businesses. The design at these turnaround locations includes right turn bays for vehicles to safely wait before they turn right into the turnaround facilities.

[81] Three primary turnaround facilities have been provided at the SH16/Muriwai Road/Waimauku Station Road intersection, Foster Road and Trigg Road. Two secondary turnaround facilities have been provided at 601 SH16 and opposite 641 SH16 to provide local access for property owners.

[82] These proposed turnaround facilities provide opportunities for vehicles

to perform a turnaround manoeuvre as safely as possible. The evidence of Mr Rahman was that when determining the location of the turnaround facilities NZTA considered the following criteria:

- (a) Turnaround locations to be provided where practicable at spacings no greater than 3 km between turnaround facilities, as per the Safe Roads Alliance draft technical guidance on primary turnaround facilities design for the wider Safe Roads programme;
- (b) Criteria for secondary turnaround locations was adopted so that detour length of no more than 3 km is required (i.e. the distance between each accessway and the turnaround facility, and back);
- (c) The primary turnaround facilities will accommodate larger vehicles such as a semitrailer. The secondary turnaround facilities are designed to accommodate an 8m rigid truck;
- (d) The turnaround facilities are at locations with adequate sight distances for vehicles to manoeuvre safely to enter and exit the turnaround facilities;
- (e) The turnaround facilities will be within the existing road reserve as much as possible to minimise impacts on the private or railway land.

[83] In summary, the various components of the project are said to be necessary to achieve the project objectives for the following reasons:

- (a) Widening of the corridor to accommodate a 1.5m flush median and 1.5 to 2m shoulder widening – the wider median and the shoulder widening will allow more room for motorists that lose control either cross-centre line or run-off road reducing the frequency and severity of these crashes.
- (b) Right-turn bays for turnarounds and at intersections and

associated turnarounds are required to ensure that vehicles can access properties safely. It is not practicable to implement median barriers preventing access to properties without the provision of appropriate turning facilities. Insufficient provision of turning facilities has the potential to encourage drivers to attempt to make unsafe manoeuvres.

- (c) Wire rope safety barriers through the median and a combination of wire rope safety barriers and guardrails at three selected locations will significantly reduce head-on and cross-centreline run off road crashes.
- (d) The presence of a median barrier will direct turn movements at private accessways to intersections offering good visibility and the refuge of a right turn bay auxiliary lane.
- (e) Widened bridges will provide more space for vehicles and greater safety margins.
- (f) Stormwater management is necessary to mitigate the stormwater effects of the project.

[84] Ms Dines' opinion is that if the turnaround at 601 SH16 were not included in the project there would still be four turnaround points provided along the length of the project corridor, being at Trigg Road, opposite 641 SH16, at Foster Road and at the Muriwai/Waimauku Station Road roundabout. This would result in less than 3km between the turnaround locations. In her opinion this demonstrated why a turnaround point at 601 SH16 is not necessary. She argued that the project should be amended by removing the turnaround point from 601 SH16. Her opinion was that removal of this turnaround point would not interfere with the project's objectives.

[85] As Mr Chen only contests the location of the turnaround facility at 601 SH16 the issue to be determined might not be whether the works as a whole

are necessary, but only whether the turnaround location at 601 SH16 is reasonably necessary to achieve NZTA's objectives. We acknowledge Mr Chen's concern not to have land taken unnecessarily but agree with the evidence for NZTA that this turnaround is reasonably necessary on the basis that it is approximately midway between the two primary turnaround facilities at Trigg Road and Foster Road, each approximately 1.5km away. While the traffic planning guidelines may indicate that fewer turnarounds on a 3.6 km length of highway could, in some circumstances, be satisfactory, in the absence of any expert traffic evidence we find that there is a clear justification for the turnaround at this location.

[86] In particular, we find that it is not practicable to implement median barriers preventing access to properties without the provision of appropriate turning facilities. Insufficient provision of turning facilities could result in drivers attempting to make unsafe manoeuvres.

[87] The question of whether effects on a road, including effects experienced by travellers and frontagers, are positive or adverse is one that may depend on the perspective of the person assessing the effects to a greater degree than for other effects. The primary purposes of roads are to enable travel between places and to enable access to and from those places. Reducing travel times is only beneficial if it can be achieved while maintaining a reasonable level of safety: the beneficial value of reduced travel time must be set against the costs of potential of injuries and deaths associated with faster travel. Enabling access must be done in a way that is consistent with the character of the road, so that limitations are likely to be necessary as the level of use of the road increases. In at least those ways the rights of a property owner in relation to their frontage must be considered in the context of the rights of persons travelling on the road.

[88] The proposed turnaround at 601 SH16 has excellent sight lines and there is enough space available to complete the turnaround in a single

movement. On the evidence and supported by our viewing of the site, its position strikes the right balance between the need to install a median barrier for safety purposes and the need to provide ongoing access to properties along the corridor. The turnaround at this location is not expected to compromise safety or accessibility to the property at 601 SH16 and vehicles that wish to travel towards the city from 601 SH16 will turn right and head east and only be required to detour a distance of 800m.

[89] We consider that the project will significantly improve the safety and reliability along this strategically important route and that the location of the turnaround at 601 SH16 is in a suitable position between the primary turnaround points at Foster Road and Trigg Road.

[90] The loss of some of Mr Chen's land to provide for the turnaround at this location is an adverse effect on his property rights requiring close scrutiny. Having examined the evidence, we conclude that the loss is clearly justified by the purpose of the proposed work.

### **The effects on the environment**

[91] Under section 171(1) of the Act the decision maker must, subject to Part 2, consider the effects on the environment of allowing the land requirement with particular regard to the relevant statutory provisions.

[92] The AEE Report addressed:

- (a) cultural effects - the project has been designed to address matters of interest to mana whenua groups;
- (b) archaeological effects - there are no known archaeological or heritage values of significance; and
- (c) operational noise effects - the assessment of operation traffic noise effects concluded that there will be no adverse noise effects from

the use of the turnarounds.

[93] The effects of the project were assessed by Ms Carlyle who concluded that the project will result in a number of significant permanent positive transportation and safety outcomes for the local community and visitors and for freight movements and that any short term construction effects can be appropriately managed. The key positive effects she identified are:

- (a) Improved safety of the SH16 corridor, which will assist in reducing the severity of head-on and run-off road accidents and lower the risk of potential death and serious injury of road users.
- (b) Reducing the possibility and severity of a crash also has positive economic effects by lowering the potential for delays in freight delivery and/or damage of goods.
- (c) Reducing the crash risk reduces the potential for spills, fire and the potential contamination of/damage of the surrounding environment.

[94] The potential for adverse effects was also addressed in the evidence called for NZTA, as discussed below.

### ***Traffic and construction effects***

[95] Mr Rahman's evidence addressed traffic effects during construction. For the first half of the construction programme, works will be undertaken on the northern side of SH16 adjacent to the railway corridor. Works will then be undertaken on the southern side of SH16, where most of the residential and business properties are located, during the second half of the construction programme. The staging of the construction works will minimise disruptions for the adjacent properties including the utilities connections servicing these properties.

[96] In addition, works will be mostly undertaken during the day. Night-time works may include bridge construction works and other online works such as median barrier installations, road resurfacing and markings. Two lanes of traffic will be retained during the daytime peak hours under temporary traffic management. Lane closures may be implemented during off-peak daytime hours or at night. Access to the adjacent properties during these times will be negotiated with the landowner to ensure access is maintained as required.

[97] There will be some noise and vibration effects on adjacent properties, but any noise from the construction of the road can be managed appropriately via a construction noise management plan and future road noise is likely to be comparable to current levels.

### ***Effects on landscape and natural character***

[98] Ms Cambridge, a landscape architect for NZTA, gave evidence that approximately 200 exotic trees will be removed from the project corridor in order to allow for construction. Revegetation planting is proposed that will tie in with the existing landscape. Ms Cambridge and Ms Carlyle both considered that the impact of this part of the project will be positive and will involve significant wetland and riparian planting along existing stream corridors and new stormwater facilities. Planting will also reduce the prominence of the retaining walls that are necessary to support the road due to its elevation above the surrounding landscape. Ms Carlyle considers that the adverse visual effects in the vicinity of the site will be low to moderate and of limited visibility.

[99] At the entranceway to 601 SH16 there will be a partial loss of vines and some increased hardstand. Ms Cambridge's evidence is that the proposed mitigation at this site of native planting will be consistent with the existing pockets of native planting along the corridor and will provide an improved

level of amenity for people accessing the property at 601 SH16.

***Effects on the use of land***

[100] Ms Carlyle's evidence is that there are 14 properties partially required for pavement widening of the road shoulder, vehicle turnaround facilities, the relocation of network utilities and provision of new stormwater infrastructure. The loss of land will be the subject of the compensation regime under the Public Works Act 1981.

***Privacy and security effects***

[101] Ms Cambridge's evidence concludes that there will be very low adverse effects on privacy at 601 SH16 because vehicles will only use the turnaround for short periods of time. The vineyard gate will be retained which will mean there is no change to the level of security. Mr Rahman's evidence supported this and stated that the turnaround is not expected to compromise the safety or accessibility of 601 SH16.

***Relevant Statutory documents***

[102] Ms Cambridge identified the relevant statutory documents as being the National Policy Statement on Urban Development 2020 (**NPS-UD**) and the Auckland Unitary Plan (**AUP**)

**NPS-UD**

[103] The NPS-UD aims to ensure that New Zealand's towns and cities are well functioning urban environments that meet the changing needs of our diverse communities. It came into effect on 20 August 2020 and replaced the National Policy Statement on Urban Development Capacity 2016.

[104] This project is located within Auckland, a Tier 1 urban environment, and the site (being a state highway) is considered to be nationally significant infrastructure under Section 1.4 of the NPS-UD.



[105] Ms Cambridge identified the following objectives and policy of the NPS-UD as being relevant to the project:

- (a) Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.
- (b) Objective 6: Local authority decisions on urban development that affect urban environments are: integrated with infrastructure planning and funding decisions ...
- (c) Policy 10 b): Tier 1 ... local authorities engage with providers of development infrastructure and additional infrastructure to achieve integrated land use and infrastructure planning.

[106] The NPS-UD also directs that Tier 1 intensification developments can be modified to provide for qualifying matters, including “any matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure”.

[107] Ms Cambridge’s opinion was that the project is consistent with the NPS-UD because it aims to reduce both the number and seriousness of crashes along this corridor by implementing safety improvements. Her evidence was that the installation of median barriers and safe turnaround facilities within this peri-urban environment will support current users to move safely and efficiently. Furthermore, it will improve the safety of this transport corridor for the future urban community.

#### AUP

[108] Ms Cambridge considered that the following provisions of the Regional Policy Statement (**RPS**) Chapters B3 – Infrastructure, Transport and Energy and H22 Strategic Transport Corridor Zone are relevant to the project:

**B3.1 Issues:** The quality of the environment and the well-being of people and communities, including Auckland's crucial role in New Zealand's economy, are affected by choices about the management of and investment in infrastructure.

Realising Auckland's full economic potential while maintaining the quality of life for its inhabitants will need to address:

- (1) efficiency in developing, operating, maintaining and upgrading infrastructure;
- (2) integrating the provision of infrastructure with urban growth; ...

**Objective B3.2.1:** (1) Infrastructure is resilient, efficient and effective;

(2) The benefits of infrastructure are recognised, including:

- (a) providing essential services for the functioning of communities, businesses and industries within and beyond Auckland; ...
- (d) providing for public health, safety and the wellbeing of people and communities; ...

(3) Development, operation, maintenance, and upgrading of infrastructure is enabled, while managing adverse effects on:

- (a) the quality of the environment ...
- (b) the health and safety of communities and amenity values;

(4) The functional and operational needs of infrastructure are recognised.

**Objective B3.3.1:** (1) Effective, efficient and safe transport that:

- (a) supports the movement of people, goods and services; ...
- (d) avoids, remedies or mitigates adverse effects on the quality of the environment and amenity values and the health and safety of people and communities.

**Policy B3.2.2:** Provision of infrastructure: (1) Enable the efficient development, operation, maintenance and upgrading of infrastructure; ...

**Policy B3.2.2:** Managing adverse effects: ... (8) Avoid, remedy or mitigate the adverse effects from the construction, operation, maintenance or repair of infrastructure.

**Policy B3.3.2:** Managing transport infrastructure: (1) Enable the effective, efficient and safe development, operation, maintenance and upgrading of all modes of an integrated transport system;

- (2) Enable the movement of people, goods and services and ensure accessibility to sites;
- (3) Identify and protect existing and future areas and routes for developing Auckland's transport infrastructure; and
- (4) Ensure that transport infrastructure is designed, located and managed to: (a) integrate with adjacent land uses ...

**Policy B3.3.2:** Managing effects related to transport infrastructure: ...  
 (7) Avoid, remedy or mitigate the adverse effects associated with the construction or operation of transport infrastructure on the environment and on community health and safety.

**Objective H22.2:** (1) Railway and state highway corridors are used safely, effectively and efficiently for the transportation of people and goods in an integrated manner; ...

(3) Potential effects of the location and design of noise mitigation measures on adjacent development are managed.

**Policy H22.3:** (1) Provide for the operational requirements of transport activities and a range of appropriate transport related activities;

(4) Enable the provision of works and measures such as noise mitigation, landscaping and artworks that enhance infrastructure and minimise its adverse effects on adjoining development existing at the time of infrastructure construction.

[109] Ms Cambridge's view was that the project is consistent with the issues, objectives and policies in both the RPS and the district plan sections of the AUP which emphasise the need to manage the road network in a way that protects safety, manages adverse effects and ensures accessibility to sites. In her opinion the proposed works are necessary and the land is required to improve the safety of the corridor which will therefore enable the state highway to be used safely, effectively and efficiently to transport people and goods. Given that the median barrier will restrict movements, turnaround facilities have been included to minimise detour distances and provide safe access to residential and business sites.

#### Part 2 of the Act

[110] Ms Carlyle reviewed the assessment of Part 2 in the AEE report

made the following points:

- (d) Section 5: The objective of the project is to improve road safety and protect the health and wellbeing of road users along the project corridor. The works will provide for the sustainable long-term use and safety requirements of the community, many of the effects of the project are positive, and the potential adverse effects of the project are able to be avoided, remedied or mitigated.
- (e) Section 6: There are no outstanding natural features and landscapes within the area of works. Whilst some indigenous vegetation will be removed to enable the works, native species will be used for the extensive replacement planting. The project has recognised and provided for the relationship of Maori and their culture and traditions with their ancestral lands through early and ongoing engagement as the project has developed. The project does not affect any items of historic heritage or protected customary rights. An accidental discovery protocol will be in place in the event of the discovery of any kōiwi or archaeological remains.
- (f) Section 7: The works will maintain the amenity values of the project corridor, and in some locations improve amenity, through the extensive replacement planting proposed. Given the dynamic rural landscape, and the extent of proposed landscape planting along the corridor the effects on the road users are positive, and from an urban design and amenity perspective the effects on the entrance to the site at 601 SH16 will be positive.
- (g) Section 8: The project has taken into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). Consultation was undertaken with mana whenua,<sup>16</sup> and mana whenua will be offered

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<sup>16</sup> See section 7 of the AEE.

the opportunity to provide a karakia at the commencement of the project, be involved in the cultural induction and work with the construction contractor to protect cultural values.

[111] Ms Carlyle's opinion is that the project is consistent with Part 2 of the Act and any actual and potential effects will be appropriately avoided, remedied or mitigated.

[112] Ms Dines agreed with the conclusion that the effects of the project will be minor or will be able to be suitably managed and that the installation of the median barrier, the widening of the road shoulders, installation of side barriers and the proposed intersection improvements will improve the safety of the road. Ms Dines also agreed that the project is consistent with Part 2 of the Act and with the issues, objectives and policies in both the RPS and District Plan section of the AUP.

### **Overall evaluation**

[113] We are satisfied the project is consistent with Part 2 of the Act and the NPS-UD and that the NZTA had particular regard to and carefully weighed the issues, objectives and policies in both the RPS and District Plan section of the AUP when it considered the alteration of the designation.

[114] Adequate consideration has been given to alternatives, particularly in relation to the site at 601 SH16. Having considered all the evidence the Court is satisfied that the project will not have any adverse effects on the environment that cannot be appropriately mitigated as described in the evidence for NZTA.

[115] We accept the evidence that there will be considerable positive effects resulting from the project, namely the improved safety of the state highway between Huapai and Waimauku with a reduction in the occurrence and severity of head-on and run-off road accidents. The works and the

alteration to the designation are reasonably necessary to achieve the project objectives.

[116] The proposal does require the acquisition of private land. We do not pre-empt the assessment of that, as may be required under the Public Works Act 1981 but observe, for the purposes of this assessment under the RMA that the adverse effects of such acquisition are not so great as to outweigh the positive effects of improving traffic safety on the part of SH16.

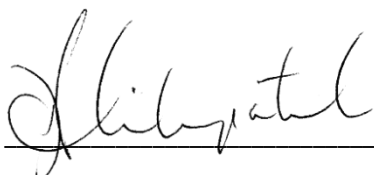
### **Outcome**

[117] The proposed alteration to designation 6766 in the Auckland Unitary Plan is approved.

[118] The appeal is dismissed.

[119] Costs are reserved. Any application for costs must be made within 15 working days of receipt of this decision. Any response to such application must be made within 10 working days.

For the Court:



**D A Kirkpatrick**  
**Chief Environment Court Judge**

