

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a Notice of Requirement for designation by the Hamilton City Council to the Hamilton City Council and Waikato District Council for the construction and operation of a stormwater swale corridor in the Rotokauri area in Hamilton City and in the Waikato District, known as the 'Rotokauri Greenway'

RECOMMENDATION TO HAMILTON CITY COUNCIL AS TERRITORIAL AUTHORITY

PURSUANT TO SECTION 168A RESOURCE MANAGEMENT ACT 1991

&

**RECOMMENDATION TO HAMILTON CITY COUNCIL AS REQUIRING AUTHORITY BY
WAIKATO DISTRICT COUNCIL**

PURSUANT TO SECTIONS 168 & 171 RESOURCE MANAGEMENT ACT 1991

APPOINTMENTS

The Hamilton City Council (HCC) and the Waikato District Council (the Territorial Authorities) confirmed the appointment of Murray Kivell as the independent Hearing Commissioner Chair and Ms Loretta Lovell and Mr Nigel Mark-Brown as independent Hearing Commissioners, pursuant to Sections 34 and 34A of the Resource Management Act 1991 to hear the two Notices of Requirement in accordance with the provisions of the RMA.

The two NoRs has been lodged by the HCC as a RA contemporaneously, to the HCC and the WDC as the TAs.

The nature of the actual delegations by the respective Councils to the Hearing Panel was clarified in the RA closing legal submissions, and we confirm that:

1. For the HCC NoR, pursuant to s168A, the Hearing Panel is empowered to **recommend** to the HCC (as TA) what its decision **should** be. It follows that HCC (as TA) will then make its decisions on the NoR; and
2. For the WDC NoR, pursuant to ss 168 and 171, the Hearing Panel is empowered to **recommend** to the HCC (as RA), what its decision on the NoR **should** be and HCC (as RA) will then make its decision on the NoR.

RECOMMENDATIONS REPORT: ROTOKAURI GREENWAY

RECORD OF DECISION & RECOMMENDATION PURSUANT TO SECTION 168A & 171 OF THE RESOURCE MANAGEMENT ACT 1991

DEFINITIONS

In this Decision we use the following terms:

AEE	Assessment of Effects on the Environment Report
CIA	Cultural Impact Assessment
EMP	Ecological Management Plan
HCC	Hamilton City Council
HNZPT	Heritage NZ Pouhere Taonga
ICM	Integrated Catchment Directorate of the WRC
ICMP	Integrated Catchment Management Plan
MMP	Mudfish Management Plan
NoR	Notice of Requirement
NZTA	New Zealand Transport Authority
RA	Requiring Authority
RMA	Resource Management Act 1991 and its amendments
RSP	Rotokauri Structure Plan
THAWK	Te Haa o Te Whenua o Kirikiriroa
WDC	Waikato District Council
WRC	Waikato Regional Council

DETAILS OF THE APPLICATIONS

Application Reference: HCC	A114 (Operative District Plan)
Site Address/Locality	Rotokauri, Hamilton
Applicant's Name	Capital Projects Unit, Hamilton City Council as RA
Owner's Name	Refer NoR for Rotokauri Greenway & Assessment of Environmental Effects, Volume 1 Section 2 Proposed Designation and Table 1, and Appendix A for overall land requirement plan
Legal description of site	Refer to Notice of Requirement for Rotokauri Greenway & Assessment of Effects: Volume 1, Section 2, Table 1 and Appendix B.
Land subject to NOR	Approximately 27.5 hectares (inclusive of approximately 2.3 hectares in Waikato District)

RECOMMENDATIONS REPORT: ROTOKAURI GREENWAY

	A further 0.57 hectares is required for 'temporary works', all of which is located within the HCC boundary
Description of Application	NoR for the above-mentioned titles for "stormwater purposes" A duration of ten years is sought for the designation
HCC Land Use zoning: Operative District Plan	Multiple zones as recorded on the Rotokauri Structure Planning Maps
Waikato District Land Use zoning: Operative District Plan Proposed District Plan	Rural Zone, Reserve Zone and within Waikato River Catchment policy area As above, with Significant Natural Area and within Hamilton Basin Ecological Management Area
Lodgement Date	30 April 2018 with Hamilton City, and 27 February 2018 (with Waikato District)
Further Information Request (S92)	13 June 2019 from the Applicant, and other information informally provided from WRC
Limited Notification Date & Parties	25 July 2019 and 30 July 2019 respectively S42A report, section 5 and Appendix C
Submissions Received: HCC WDC	18 plus 1 late submission (refer Appendix B, s42A report) 5 plus 2 late submissions (refer Appendix C, s42A report)
Pre-hearing Meeting	N/A
Hearing Dates Convened	17, 18 and 19 February 2019 (adjourned)
Directions 1 Directions 2	25 November 2019 – Evidence exchange 30 January 2020 - Response to NZTA enquiry
Site Visit Completed	Monday 17 February 2020 <u>Attendees at site visit:</u> Hearing Panel members Kivell, Lovell, Mark-Brown Craig Sharman and Kylie O'Dwyer
Appearances at hearing	<u>Applicant (HCC as RA):</u> Lachlan Muldowney, legal counsel Craig Sharman, project manager/planner Roger Seyb, stormwater engineer Thomas Abbott, landscape architect/urban designer Ben Frost, landscape architect, visual assessment Sian France, hydrogeologist, groundwater Nathan McKenzie, geotechnical engineer Sian Keith, archaeologist Dean Miller, ecologist <u>Submitters:</u> Noel Smith – tabled memorandum Fraser McNutt on behalf of Rotokauri Development Ltd, Rotokauri Farms No 1, Rotokauri Farms No 3 and Hounsell Holdings Ltd Mike Wood NZTA Stuart Finlan – tabled memorandum on behalf of NZTA Murray and Sheryl Gower Charlotte Muggeridge, adviser to the Gowers

	<u>HCC and WDC (as territorial authorities):</u> Marianne Mackintosh, legal counsel Kylie O'Dwyer, consultant reporting planner Allan Leahy, stormwater engineer Andy Mott, geotechnical engineer David Cameron, environmental engineer Alexy Simmons, archaeologist Kirsty Thorpe, landscape architect and urban designer
Hearing Close	3 March 2020

RECOMMENDATION 1

The RECOMMENDATION is set out below.

Acting under delegated authority from the **Hamilton City Council** and pursuant to Section 168A of the Resource Management Act 1991, the Panel **recommends** to the **Hamilton City Council as Territorial Authority** that the Notice of Requirement for a new designation for the Rotokauri Greenway be confirmed SUBJECT to the Designation Conditions applying as set out in **Schedule 1** to this Recommendation Report.

RECOMMENDATION 2

The RECOMMENDATION is set out below.

Acting under delegated authority from the **Waikato District Council** and pursuant to Sections 168 and 171 of the Resource Management Act 1991, the Panel **recommends** to the **Hamilton City Council as Requiring Authority** that the Notice of Requirement for a new designation for the Rotokauri Greenway be confirmed SUBJECT to the Designation Conditions applying as set out in **Schedule 1** to this Decision and Recommendation Report.

DECISION & RECOMMENDATIONS REPORT

TABLE OF CONTENTS

	<u>Page No.</u>
1 Introduction	6
2 The Notice of Requirement - Overview	7
3 Relevant Statutory Provisions	9
4 The Applicant's Evidence Presented	11
5 The Submitters' Evidence Presented	20
6 The Section 42A Report & Responses	28
7 Resource Management Considerations	30
8 Part 2 RMA Matters	60
9 Overall evaluation under sections 168 and 171 RMA	62
10 Recommendation 1 to Hamilton City Council as TA	63
11 Recommendation 2 to Hamilton City Council as RA	63

Schedule 1: Common Set of Conditions to the Designations

1 INTRODUCTION

- 1.1 This report (in support of our Recommendations) is with respect to two NoRs lodged by HCC as a RA, to designate land within Hamilton City and Waikato District to accommodate the construction and operation of a stormwater swale corridor, known as the 'Rotokauri Greenway' (the Greenway).
- 1.2 An extensive set of documents was lodged in support of the NoR. These are listed in paragraph 1.2.1 of the section 42A Council officer's report (**s42A report**) and is accepted by the Panel:

Notice of Requirement for Rotokauri Greenway and Assessment of Environmental Effects dated 4 December 2018 prepared by Beca Limited. The report includes the following appendices:

- Appendix A: Land Requirement Plans;
- Appendix B: Certificate of Titles;
- Appendix C: Design Report;
- Appendix D: Landscape and Visual Effects Assessment;
- Appendix E: Ecological Assessment;
- Appendix F: Archaeological Assessment;
- Appendix G: Preliminary Site Investigation;
- Appendix H: Urban and Landscape Design Report;
- Appendix I: CIA – Rotokauri Structure Plan 2001 Excerpt;
- Appendix J: Consultation Documentation.

Additionally, the following report was provided which the Design Report states was included with the information lodged to support the NoR: Rotokauri: Hydrogeological Interpretive Report to Support ICMP, CH2M Beca, 2016

- 1.3 An equally extensive set of technical reports were prepared by the Council reporting team, and these are listed in paragraph 1.2.3 of the s42A report as follows:
- Technical Specialist Report – Stormwater prepared by Stantec NZ dated 13 December 2019;
 - Technical Specialist Report – Geotechnical Design prepared by Stantec NZ dated 10 December 2019;
 - Technical Specialist Report – Landscape Visual and Urban Design Matters prepared by Stantec NZ dated 18 October 2019;
 - Technical Specialist Report – Ecological Assessment prepared by Stantec NZ dated 5 December 2019;
 - Technical Specialist Report – Contaminated Land prepared by Stantec NZ dated 15 October 2019; and
 - Technical Specialist Report – Archaeology prepared by Simmons and Associates Ltd dated 6 September 2019.
- 1.4 The key 'planning' documents that inform this NoR are:
- that is part of the Hamilton City Operative District Plan;
 - Rotokauri ICMP a guidance document promoting an integrated approach to the management of stormwater and implementing the best practicable options in this catchment; and
 - Comprehensive Stormwater Discharge Consent (**CSDC**) held by the Hamilton City Council for various stormwater discharges from the City's stormwater networks which includes the authorisation of the discharge from the existing

Rotokauri drain into Lake Rotokauri. This consent governs the nature of any new stormwater discharges authorised by the WRC.

2 THE NOTICE OF REQUIREMENT – OVERVIEW

Purpose and Objectives

- 2.1 The purpose of the designation as described within the NoR is for “stormwater purposes”.
- 2.2 The objectives of the project are described as “*The project objective for the requiring authority is to designate and construct a stormwater management corridor to enable urban development to occur in Rotokauri that meets the broader objectives of the Rotokauri Structure Plan (the RSP) and the Rotokauri Integrated Catchment Management Plan (the ICMP)*”.
- 2.3 The project Purpose was a matter discussed in some detail throughout the hearing and we address this matter further in *Section 7 Resource Management Considerations*.
- 2.4 The critically important stormwater function is described in the following terms in the s42A report (section 4.2):

The design aims to ensure that the Greenway will function as a key means to achieve ICMP targets for contaminant removal and flood attenuation, whilst ensuring the in-stream ecological habitat is optimised. The design is currently in concept (detailed design is yet to commence) and includes the main corridor together with a series of wetland treatment areas, some of which are located outside of the designation. Inclusion of the wetlands that are outside the designation within the concept design is intended to demonstrate the functionality and effectiveness of the corridor to achieve the ICMP targets, but the location and extent of the wetlands will be designed and provided by private developers in accordance with the requirements of the ICMP¹.

The Greenway is a corridor containing a low-flow conveyance channel, a series of linear treatment wetlands, and a series of wetland/ponds to manage high stormwater flows during large rainfall events. The Greenway is divided into five basins which are defined by culverted road crossings. All of the channel and wetland elements will be incorporated within each basin. Each culvert serves as a flow-restriction mechanism allowing attenuation of flows in larger rainfall events. The culvert at Exelby Road has been sized to limit discharge to Lake Rotokauri to its existing maximum flow.

.....

The final downstream section of the Greenway then runs from the western side of the Exelby Road culvert to the existing sediment pond near Lake Rotokauri.

- 2.5 Drawing on the commentary in section 4.3 Recreation and Transport Function, we also record:

¹ The NoR states that the inclusion of all wetland areas within the designation area would have required a higher degree of design detail to be undertaken for these elements and would have had the effect of prescribing the location and extent of these stormwater elements within the growth cell which HCC does not wish to do.

The Greenway is also intended to be an attractive public open space and recreational environment for the community and incorporates an off-road walking and cycling path along its length. The Greenway will connect primary nodes within Rotokauri being the Waiwhakareke Natural Heritage Park, the future sports park near Rotokauri Road, the WINTEC campus, the suburban centre commercial node near Te Wetini Drive, the future northern commercial hub and reserve and Lake Rotokauri. As outlined within the NoR documentation, the Greenway provides opportunities to create a linear parkland environment and an ecological 'green corridor' comprising a restored stream and wetland environment with planting of indigenous wetland and forest species.

- 2.6 A detailed description of the corridor segmented by chainage is detailed in section 4.4 drawing from the AEE itself, and we record that for our purpose, we adopt this description of the greenway.
- 2.7 In summary, we note that 'the Greenway' is a 3.8km long corridor that will function as the principal stormwater management and drainage channel in the Rotokauri area. The Greenway will also be a public recreational space incorporating a walkway/cycleway along its length and is expected to become an ecological corridor through the re-creation of indigenous vegetation and habitats. The Greenway varies in width from 20 metres to approximately 100 metres at its widest point.

Construction Programme

- 2.8 The NoR and section 4.5 of the s42A report outlines the construction programme. The Greenway construction programme is based on HCC's Long-Term Plan (LTP) infrastructure funding programme. The LTP 2018-2028 has Greenway construction funding timed for year 7, being the 2024/2025 financial year. Based on the envisaged three-year construction programme, completion of the Greenway will be in 2027.
- 2.9 The NoR states that construction of the Greenway is likely to be undertaken over three construction seasons. The construction process will commence from Exelby Road and proceed in a downstream to upstream direction.
- 2.10 The indicative staging proposed is as follows:
- Stage 1 – Construction of Basins 4 and 5, with the associated wetlands within this section of the Greenway.
 - Stage 2 – Construction of Basin 3, with the associated wetlands within this section of the Greenway.
 - Stage 3 – Construction of Basins 1 and 2, with the associated wetlands within this section of the Greenway.

Diversion drains will be used to temporarily divert the existing flow within Rotokauri drain for each basin whilst the Greenway corridor is constructed.

Overlapping Designations

- 2.11 We record that The NoR outlines two locations where the land subject to the NoR overlaps with the Transport Agency's designation for the Waikato Expressway (E99). The NoR states that the NZTA intend to uplift these areas of their designation pursuant to section 182 of the RMA. The Panel accepts that this is a separate statutory process that can proceed independent of our decision making, and for this reason is not discussed further.

Designation Lapse Period

- 2.12 The NoR seeks a lapse date of ten years for the designation to align with the City Council's LTP funding and construction timing. We understand that the RA does not intend to purchase the land earlier than year seven of the LTP (2024/2025 financial year), unless obligated to through the provisions of the Public Works Act 1981 or section 185 of the RMA.

Outline Plan of Works (OPW)

- 2.13 The NoR states that the RA will submit an Outline Plan of Works (OPW) pursuant to section 176A of the RMA prior to construction works commencing on site. The Panel simply notes that this will be an obligatory step conditioned as part of the suite of conditions to the designations.

Other Resource Consents

- 2.14 The RA and the Council advisers agree that regional resource consents are required and will be sought from WRC following the completion of detailed design of the Greenway. We record that the WRC advise that the replacement of the Rotokauri drain with the Greenway, and the associated detention of water before release into Lake Rotokauri, will alter the existing hydrology of the catchment and this will require a consent for the damming, diversion and associated discharge of the Rotokauri drain (into Lake Rotokauri). Further, WRC has advised that this activity will be assessed in its entirety, including the modified culvert structure at Exelby Road, being the ultimate controlling device, and all associated discharges to Lake Rotokauri including downstream effects. Other resource consents anticipated include consents for earthworks, works within a stream (Rotokauri drain), stream diversions associated with construction, installation of culverts and diversion of groundwater.

3 RELEVANT STATUTORY PROVISIONS

- 3.1 The s42A report details the RMA framework that the Panel is required to consider this matter under. We accept and adopt that assessment as is detailed in section 6.1 of that report.
- 3.2 The NoR has been lodged under sections 168 (Notice of requirement to territorial authority) and 168A (Notice of requirement by territorial authority) of the RMA. The NoR is assessed in accordance with the provisions of sections 168A(3) and section 171(1) of the RMA.
- 3.3 For completeness, we record that the decision to limited notify the designation is reported in separate reports for the two territorial Councils in July 2019.

Section 168A and 171 RMA 1991

- 3.4 The decision-making framework (evaluation framework) generally is similar under these two provisions under s168A(3) and 171(1).
- 3.5 The key evaluation criteria which are the same as between section 168A(3) and (3A) (Notice of requirement by territorial authority) and section 171(1) (Recommendation by territorial authority) states:

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

(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.

(3A) The effects to be considered under subsection (3) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the requirement, as long as those effects result from measures proposed or agreed to by the requiring authority.

The above is reproduced from S168A.

3.6 Section 168A(4)(a-d) then states that the **territorial authority** may **decide** to:

- confirm the requirement;
- modify the requirement;
- impose conditions;
- withdraw the requirement.

3.7 As noted, the delegation from Hamilton City Council to the Hearing Panel provided authority for it to make a recommendation back to Hamilton City Council as the territorial authority. Accordingly, the final decision on the NOR to Hamilton City Council will be made by Hamilton City Council as the territorial authority.

3.8 Section 172(2) states that the **territorial authority** may **recommend** to the **requiring authority** that it:

- confirm the requirement;
- modify the requirement;
- impose conditions;
- withdraw the requirement.

3.9 Section 172 records that, in relation to a **recommendation under section 171**, the **RA** has thirty days from receiving the Council's recommendation to determine whether to accept or reject the recommendation in whole or in part.

3.10 An evaluation of the NOR pursuant to these common provisions is provided in *Section 7 Resource Management Considerations*, and *Section 9 Overall Evaluation under sections 168 and 171 RMA*, of this report.

3.11 We now turn our attention to the consideration of the evidence of the Hamilton City Council as Requiring Authority.

4 THE APPLICANT'S EVIDENCE PRESENTED

Overview

- 4.1 All expert evidence was pre-circulated in accordance with the timeframes set out in the RMA. We have read all the materials prior to the hearing and during the hearing took notes regarding the Applicant's, as well as the submitters' and the Councils' presentations and responses to our questions.
- 4.2 For this reason, the summaries of the evidence presented, are not intended to provide a full coverage of the matters raised. The focus is on matters of relevance to our consideration of the applications. Where expert evidence is discussed within later stages of the decision, we do not repeat them here.
- 4.3 Finally, while statements of expert evidence were pre-circulated, at the hearing we also received and considered supplementary statements of evidence from:
- Craig Sharman;
 - Roger Seyb;
 - Nathan McKenzie; and
 - Dean Miller.

Lance Haycock

- 4.4 Mr Haycock is the HCC Programme Manager for Rototuna, Ruakura and Rotokauri (growth cells). He provided a witness statement during the hearing.
- 4.5 In his statement Mr Haycock laid out the background of the Greenway Corridor and the urban development which it will support. He detailed the plans which have been put in place to support the developments and therefore the Greenway.
- 4.6 Mr Haycock set out the known issues for the catchment and subsequent constraints for development included:
- a) *Existing poor water quality status of the two main lakes which are subject to various cross agency improvement initiatives;*
 - b) *High groundwater levels combined with low permeability soils which limit the potential for widespread use of soakage;*
 - c) *Extensive flood management issues which require significant flood storage mitigation within the development area to safeguard downstream flood protection levels of service; and*
 - d) *Moderate to high erosion susceptibility in the upper headwater areas of the catchment, along with high erosion susceptibility and existing hotspots in the downstream reach of the Rotokauri Drain.²*
- 4.7 Mr Haycock was of the view that the Best Practicable Option proposed in the ICMP to address these challenges was to establish an open 'green corridor' network. He set out his reasoning on the basis of the Greenway providing major drainage, stormwater

² Haycock Witness Statement at para 12

treatment, and ecological protection and enhancement. He was also confident that through the urban design process which has been undertaken, the mixed-use features of the corridor will be achieved and will integrate with the Greenway's primary stormwater conveyance function.

4.8 Finally, Mr Haycock noted:

HCC has made funding decisions as reflected in the HCC 10-Year Plan and annual plan which provide for the project. Developers within Rotokauri are strongly supportive of the project which will enable development to occur. All that remains is for the regulatory aspects to be completed, so that the project can commence. On that basis, HCC seeks your approval (and recommendation to approve) the NORs.³

4.9 In response to the funding of the Greenway during questioning by the Panel, Mr Haycock noted that funding is specifically allocated. Given this, the lapse period sought was 10 years rather than the 5 years allowed under the RMA. While it would be preferable to move faster Mr Haycock could not guarantee that this would be the case.

Craig Sharman

4.10 Mr Sharman is an experienced planner currently employed by Beca Limited in the position of Senior Associate – Planning and is a team leader for the Beca Hamilton Planning Team.

4.11 Therefore, Mr Sharman provided in his evidence in chief:

- a. An overview of the Rotokauri Greenway project and its role within the urban development plans within Hamilton, from a planning perspective;
- b. A summary of the assessment of the NoR pursuant to the RMA;
- c. Discussion with respect to the submissions received; and
- d. A response to the s42A report.

4.12 By way of explanation for the need of the NoR, Mr Sharman stated:

"The Greenway corridor as a public work and the designation of the corridor have been assessed as being "reasonably necessary" to achieve the requiring authority's objectives for the project, given that the Rotokauri Greenway is the stormwater management solution required to enable the planned urbanisation of the entire RSP area to proceed. Further, that the urbanisation of Rotokauri is a key part of HCC's obligations under Future Proof to provide industrial and residential land for development. The east to the margins of Lake Rotokauri in the north-east, involves a multitude of properties in different ownership. The nature of the route is that the entirety of the corridor is required to be protected to enable the corridor to function effectively for urbanisation."⁴

4.13 In his supplementary evidence, Mr Sharman dealt with the following:

- a. *Responses to proposed amendments to designation conditions contained within the statements of evidence prepared on behalf of submitters;*

³³ Haycock Witness Statement at para 18

⁴ Sherman Evidence in chief at para 8

- b. *Additional stormwater modelling results for Lake Rotokauri contained within supplementary evidence being presented by Mr Seyb, and related supplementary evidence presented by Mr Miller in respect of ecological matters associated with any lake level changes.*
- c. *Additional evidence being presented by Mr Miller in respect of Black Mudfish within the Rotokauri catchment; and*
- d. *Further discussions with the section 42A reporting team regarding proposed designation conditions.⁵*

4.14 Mr Sharman also provided updated sets of conditions reflecting discussions both with submitters and the s42A report writer during hearing and was available to respond to Panel questions during hearing.

Roger Seyb

4.15 Mr Seyb is a Senior Technical Director – Water Resources with Beca Ltd. Mr Seyb provided both Evidence in chief and supplementary evidence during the hearing. Mr Seyb's evidence is discussed in detail in the effects section of the decision.

4.16 In his evidence in chief Mr Seyb set out:

- a. the civil and stormwater infrastructure design for the Proposal including the extent of land required for the Greenway;
- b. the effects of the civil and stormwater design;
- c. considers matters raised by submitters and the s42A report; and
- d. comment on draft conditions.

4.17 Mr Seyb noted that in his evidence that:

The extent of the designation sought is for the Greenway channel and adjacent footpath/cycleway/maintenance access. As a general rule, the designation does not cover adjacent wetlands and their associated flood storage - these will be part of future subdivisions by private developers.⁶

4.18 He further stated:

In my opinion, the preliminary design identifies sufficient land to deliver the main Greenway works designed in accordance with the Rotokauri ICMP and appropriately provides for stormwater management methods to manage effects arising from urban development. Future resource consents provide a mechanism to consider potential effects of diversion in conjunction with the development of detailed design for future developments.

In my view, and subject to my recommended NOR conditions, there are no civil engineering or stormwater matters that should preclude the confirmation of the Notice of Requirement for the designation.⁷

4.19 In his supplementary evidence Mr Seyb set out:

- a. a summary of the further modelling results;
- b. Compared the results to those presented in the Rotokauri ICMP;

⁵ Sharman Supplementary evidence at para 5

⁶ Seyb Evidence in chief at para 13

⁷ Seyb Evidence in Chief at paras 20-21

- c. Commented on the further modelling results with respect to lake levels; and
- d. Responded to the evidence of Mr Tim Wilson and Mr Ghassan Basheer of WRC.⁸

4.20 In his analysis of the further modelling data Mr Seyb stated that in his view:

I agree that the volume of runoff to Lake Rotokauri will increase as a result of the RSP development. An increase in erosion potential for the lake outlet channel can be considered through the detailed design process. I do not agree that the RL 22.8 lake operating level is relevant as a trigger for considering whether mitigation is required.⁹

4.21 In his final conclusion, Mr Seyb stated:

Flood modelling of Lake Rotokauri lake levels has been undertaken. Comparison of the latest results with those from the ICMP shows that the latest modelling gives lake level changes smaller than previously set out in the ICMP. The results therefore show that the NOR Rotokauri Greenway design is consistent with the ICMP.¹⁰

4.22 In respect to the matters raised by Mr Wilson and Mr Basheer he stated:

"I note that Mr Basheer's email (appended to Mr Wilson evidence) states that the Greenway design should be consistent with the ICMP design criteria and principles. I consider that the latest flood modelling results show that is consistent."¹¹

Thomas Abbott

4.23 Mr Abbott is a Senior Associate Landscape Architect and Urban Designer at Beca Limited. Mr Abbott provided in his evidence a description of how the landscape and urban design principles guided the initial design of the Greenway with reflection upon the RSP, District Plan and Hamilton City Design guides.

4.24 Mr Abbott went on to say:

The Rotokauri Greenway Project offers significant urban design benefits to achieving the vision of the wider RSP. The Greenway corridor is a significant piece of infrastructure for the RSP, which will play an important role in integrating land use, drainage functions, and transport planning.¹²

4.25 While reflecting on the negatives that could arise if there were a lack of connectivity and functionality between the Greenway and adjacent land Mr Abbott noted that there were measures which would facilitate positive outcomes. They included:

Urban design treatments including but not limited to new native planting, wayfinding signage, street furniture and lighting are all design responses that will improve the amenity and safety of the corridor. New walking and cycling facilities that run the length of the corridor will connect cyclists and pedestrians to community facilities such as the proposed sports park and open space networks, transport hubs, residential areas, schools and the

⁸ Seyb Supplementary Evidence at para 5

⁹ Seyb Supplementary Evidence at para 12

¹⁰ Seyb Supplementary Evidence at para 39

¹¹ Seyb Supplementary Evidence at para 30

¹² Abbott Evidence in Chief at para 12

Rotokauri Town Centre.

- 4.26 Mr Abbott was of the view that the presence of an Urban Design and Landscape Framework (**UDLF**) along with the proposed NoR conditions, would provide an appropriate structure to deliver the positive outcome sought, and that he was supportive of this approach.
- 4.27 Mr Abbott noted that no submissions were received with respect to landscape and urban design. He has accepted the proposed changes identified in the s42A report and based upon Council expert Ms Kirstie Thorpe.
- 4.28 Based on his evidence therefore Mr Abbott confirmed that there were no reasons from a landscape and urban design perspective for him not to support the designation.

Ben Frost

- 4.29 Mr Frost is a registered Landscape Architect at Beca Ltd. Mr Frost states in his evidence that having prepared the Landscape and Visual Assessment (**LVA**) he is of the view that:

Effects on landscape character resulting from construction are assessed as low – moderate. Following the completion of the Greenway, the landscape effects will be positive.¹³

- 4.30 Specifically, the Greenway would be constructed within a highly modified rural environment. An environment that would also be substantially changed by proposed development. The perception of the visual effects of the Greenway would therefore change as those developments came on line. He noted that once completed:

Following the construction of the Greenway (3 - 20 and 20+ year time horizons) there will be positive visual effects resulting from the maturing vegetated corridor. As development spreads across the Rotokauri area, the Greenway will provide a degree of respite and act as a counterpoint to the built environment from both elevated views and those in close proximity.¹⁴

- 4.31 A single submission relating to landscape and visual effects was received and responded to in Mr Frost's evidence. Specifically, the submission of Mr and Mrs Gower sought screening along the boundary of their property. Mr Frost considered that the property in question had a low sensitivity to visual effects given the lack of dwelling or occupied buildings. His recommendation was that planting was not required.

- 4.32 In his final comments Mr Frost stated:

Based on my findings there will be low to moderate landscape and visual effects during the construction of the Greenway. Following construction there will be positive landscape and visual effects. The conditions proposed will ensure a high amenity resource is created for residents. For the reasons outline in my evidence, I support the designation of the Greenway from a landscape and visual perspective.¹⁵

¹³ Frost Evidence in Chief at para 14

¹⁴ Frost Evidence in Chief at para 16

¹⁵ Frost Evidence in Chief at para 39

Sian France

4.33 Ms France is a technical director in hydrogeology at Beca Ltd. In her evidence Ms France set out the following:

- a. The explanation of the existing groundwater regime relevant to design and construct the Greenway;
- b. Described how excavation and long-term dewatering of the Greenway could result in changes to the groundwater regime such as changes in groundwater levels or a potential reduction in surface water levels;
- c. Described the results of monitoring and numerical groundwater modelling which has been used to assess the potential changes to the groundwater levels; and
- d. Outlined the proposed monitoring which will be used to confirm this assessment.

4.34 Again, as with other experts, Ms France's evidence is discussed more extensively elsewhere. Ms France however stated in her conclusion to her evidence that:

In my opinion, whilst the construction and long-term operation of the Greenway will result in measurable and permanent groundwater drawdown, this is likely to be of small magnitude and to have a less than minor effect on the overall groundwater regime.

The design work undertaken to date has already included restrictions on swale depth, to limit the potential for effects on Lake Waiwhakareke. Further design changes to the depth and width of the Greenway are not expected as a result of matters relating to groundwater.

In my view, any further assessment on matters relating to groundwater are unlikely to impact the designation.

A condition setting out the need for monitoring of groundwater levels and lake level has been proposed, and I expect that the regional consent conditions for groundwater diversion will address this in more detail.¹⁶

Nathan McKenzie

4.35 Mr McKenzie is a Technical Director in Geotechnical Engineering at Beca Ltd. In his evidence in chief he set out the following:

- (a) Provided an overview of the existing geotechnical site conditions of relevance to design and construction of the Greenway;
- (b) Described the assessment of the liquefaction hazard of the existing site and how the proposed Greenway could change the liquefaction hazard;
- (c) Described how the change in liquefaction hazard could affect existing developments and new development;
- (d) Outlined proposed future measures, including treatment concepts and further assessment to mitigate any increase in the liquefaction hazard;
- (e) Described the assessment of the ground settlement effects due to changes in groundwater levels likely to be caused by the Greenway.
- (f) Described how these predicted ground settlements could affect existing development and new development;
- (g) Outlined proposed future measures, including treatment concepts and further assessment, to mitigate the effects of ground settlement caused by the Greenway on existing and future development;

¹⁶ France Evidence in Chief at paras 57-60

- (h) Described the assessment of slope stability for the Greenway; and
- (i) Outlined proposed future measures, including treatment concepts and further assessment, to mitigate potential adverse stability effects caused by the Greenway.

4.36 In his concluding comments Mr McKenzie stated:

The Greenway and surrounding area are underlain by soils that are expected to experience liquefaction in a moderate to large earthquake event. The Greenway is expected to increase the liquefaction hazard locally around the swale, due to an increased potential for lateral spreading as a result of the excavated swale slopes.

4.37 Mr McKenzie noted that it would be likely that further assessments would be required. Conditions have been proposed to reflect identified constraints and recommend mitigation measures. His final comment was:

In my view, any further assessment on matters relating to ground settlement, liquefaction hazard and slope stability are unlikely to impact the Greenway designation.¹⁷

Sian Keith

4.38 Ms Keith is a principal archaeologist and the director of Sian Keith Archaeology Ltd.

4.39 In her evidence in chief Ms Keith summarised her view of the archaeological values of the land subject to the NoR and the effects of the NoR on those values. In her view the area east of Exelby Road will not have impacts on archaeological values and there is no expectation that archaeological material will be encountered. Ms Keith's recommendation was that earthworks be dealt with via Accidental Discovery Protocol.

4.40 In respect to the west of Exelby Road Ms Keith stated:

I have determined that the area to the west of Exelby Road will potentially hold archaeological values. This is based on the presence of a swamp pa recorded c.200m to the north on the lakeshore (S14/5) and an adjacent pa on the higher ground immediately to the east of the swamp pa. This second pa is detailed in two cultural reports and is named Te Uhi Pa (S14/486). I have recommended that HCC apply to Heritage NZ Pouhere Taonga (HNZPT) for an Archaeological Authority to manage the risk of encountering archaeology in the land to the west of Exelby Road.¹⁸

4.41 Ms Keith responded in her evidence to the sole submission relating to the Archaeological evidence provided by HNZPT. In that she stated:

"HNZPT have put in a submission concerning the wording of proposed designation Condition 7, on the basis that it may "result in confusion with regard to the management of archaeology". This has subsequently been resolved with an agreement on changes to the wording of Condition 7. HNZPT have provided written approval of the changes to the wording."¹⁹

4.42 That condition 7 and wording were provided within Ms Keith's Evidence in Chief.

¹⁷ McKenzie Evidence in Chief at para 111.

¹⁸ Keith Evidence in Chief at para 14

¹⁹ Keith Evidence in chief at para 16

Dean Millar

- 4.43 Mr Millar holds the position of Principal Environmental Scientist with Tonkin & Taylor Ltd and specialises in water quality and aquatic ecology resource evaluation and management work in freshwater environments.
- 4.44 Mr Millar stated in his evidence that the Ecology Report he completed described the existing aquatic and terrestrial ecological values within the Greenway footprint and the Lake Rotokauri receiving environment. It also provided an assessment of ecological effects for the proposal covering construction and recommendations in regard to managing ecological effects. The assessment of terrestrial ecology values and effects for the project as presented in the Ecology Report were undertaken by Senior Terrestrial Ecologist Mr Trevor Connolly.
- 4.45 Mr Millar stated in his evidence that he was confident that the identified adverse ecological effects could be managed to a low level and he supported the draft EMP conditions subject to some minor amendments and the inclusion of provision for at risk species the Black Mudfish which has been identified in the vicinity of the Greenway.
- 4.46 In respect to the Black Mudfish, Mr Millar proposed in his evidence that an adaptive management approach be taken to assess the extent of the black mudfish population and to facilitate the transportation of the species while the Greenway was constructed and their habitat potentially affected. During the hearing under questioning by the panel it was made clear that there have been difficulties with establishing the species outside of their natural habitat. Thus, suggesting that a precautionary approach and adaptive management would be preferred. Mr Millar acknowledged in his evidence that with respect to the Black Mudfish, the involvement of land owners and developers adjacent to the Greenway would be required. Mr Millar noted that the preferred approach to manage the species should be developed further and included as part of the EMP for the Greenway Corridor.
- 4.47 In respect to concerns raised by the WRC and WDC submissions with respect to water level change and effects on marginal wetland habitat in Lake Rotokauri Mr Millar stated:

The Raupo vegetation around the lake margin is most important from an ecological perspective because it is nesting habitat for the threatened Australasian Bittern, that are known to be present, and several other wetland bird species. Any significant reduction in the area of Raupo around the lake is likely to have an adverse effect on wetland birds, especially Bittern, and should be avoided if possible.²⁰

- 4.48 Further, in summary he stated:

In summary, there is potential for adverse effects to occur if elevated water levels are maintained for longer durations. A more detailed assessment of hydrological effects is needed to support a more robust ecological assessment²¹.

²⁰ Millar Evidence in Chief at para 39

²¹ Millar Evidence in Chief at para 17

4.49 It was his understanding that further modelling was contemplated and would be completed for this purpose, among others.

4.50 In his supplementary evidence, Mr Millar provided further clarification of his findings based on the further modelling results produced by Mr Seyb. Having assessed the data Mr Millar noted that it suggested:

“..that the important Raupo vegetation would be intermittently subject to increased depths of up to 0.2m for the MPD scenario and for a “typical” rainfall year. This is less of an increase than discussed in my EIC (0.5m). The modelling also suggests for a “typical rainfall year the duration that Raupo is subject to deeper water would not change for the MPD scenario, being typically a week or less.”²²

4.51 Based on the new data Mr Millar was of the view that the likelihood of Raupo dieback at the lake was low.

4.52 Mr Millar set out in his Evidence in Chief his recommendations for condition amendment and a new condition 34 with respect to a management plan to manage adverse effects of the Greenway on Black Mudfish. He further detailed his proposed adaptive management process for the Black Mudfish in his supplementary evidence. This included engagement with adjacent landowners and developers.

4.53 Ultimately in his final conclusion Mr Millar stated:

Overall, I support the designation of the Greenway corridor. There is strong potential for the project to achieve an improved ecological corridor and outcome relative to the existing Rotokauri Drain habitat. I am confident that on the whole, ecological effects identified in my evidence can be managed and support the proposed EMP conditions. I would however highlight the importance of further investigation and careful management of matters relating to Black Mudfish and Lake Rotokauri water level change.²³

Applicant’s Right of Reply

4.54 Legal Counsel Mr Muldowney provided the RA’s Right of Reply in writing following the adjournment of the hearing. The legal submission reflected on a number of matters raised during the hearing. They included:

- a. Purpose of the Designation;
- b. The status of the ICMP;
- c. Effects to be assessed;
- d. Further geotechnical information;
- e. Ecology – black mudfish, lizards and bats;
- f. Cultural conditions;
- g. Erosion settlement control; and
- h. Urban design conditions.

²² Millar Supplementary Evidence at para 10

²³ Millar Evidence in Chief at para 46

- 4.55 A further set of conditions was also attached. We refer to this set of Conditions in the balance of this Decisions report. This set provides the basis of the Conditions to the Designations set out in Schedule 1.
- 4.56 Each of the matters above are discussed within this decision. The Panel appreciates the assistance provided from all the parties who participated in this hearing.
- 4.57 Ultimately based upon the evidence presented and the final legal submissions, the RA seeks the Hearings Panel's recommendations to confirm the NORs subject to the conditions attached to that submission.

5 THE SUBMITTER'S EVIDENCE PRESENTED

Overview

- 5.1 The Panel has reviewed all the submissions made and the submitter evidence provided. The Panel acknowledges the support and where opposed, the concerns and issues raised, by submitters.
- 5.2 Twenty-three submissions were received in total. Eighteen were submitted with respect to the HCC NoR and five in response to the WDC NoR.
- 5.3 Of those:
- a. Four submissions were in full support of the NoRs;
 - b. Two submissions supported with conditions;
 - c. One submission supported with amendments;
 - d. Six supported with comments; and
 - e. Ten opposed the NoR's in their entirety.
- 5.4 Eight submitters attended the hearings and presented written expert and oral lay evidence to the Panel. One submitter, Mr Noel Smith did not attend however a statement was provided and tabled on his behalf. The other submitters were:

Rotokauri Development Limited;
 Hounsell Holdings Limited;
 Rotokauri Farms No. 1 and No.3;
 THAWK;
 WRC;
 WDC;
 NZTA; and
 Murray and Sheryl Gower.

Submitter Themes

- 5.5 The themes varied based upon the respective positions of the submitters with those in support including those with proposed amendments or comments stating:
- They supported the concept of the greenway corridor and stormwater management.
 - They felt that consultation had occurred and was on-going. However, there was the perception that there was insufficient information on the greenway to determine the impact or effects on submitters or their properties.

- Some submissions suggested that there could be better alignment between development and the greenway including options of shared use with developers such as water storage and ecological enhancement.
- One submission was concerned that the use of their land would be curtailed and that they would face both the cost of developing wetlands and visual disruption on their land.
- One submission by HNZPT sought changes to the accidental discovery protocol to ensure there were no conflicts between the protocol and an HNZPT authority.

5.6 Those submitters who were opposed to the NoR raised the following issues:

- The downstream properties near Lake Rotokauri will directly bear the environmental costs of flooding and subsidence should the greenway fail to contain all the stormwater;
- There is not enough data to provide reliable conclusions from the modelling that the greenway will not cause higher water levels in Lake Rotokauri and subsequently affect the native habitat around the lake;
- They did not agree with the RA's contention that the effects on Lake Rotokauri were not matters for consideration by the Panel;
- The overall design of the Greenway Corridor should be agreed between the three councils with all costs paid by the RA;
- There was no provision for the road connecting Rotokauri Rise and Te Wetini Drive;
- There will be constraints on neighbouring farming enterprises with some submitters concerned that the greenway will make the use of their land uneconomic;
- Reasonable compensation for the loss of land and the loss of economic farming unit; and
- Participation in the design and development processes.

5.7 All of the submissions were summarised in Appendix B of the section 42A report which also was a helpful aid to the Panel in our considerations.

5.8 We now also set out in summary only, the presentations made by submitters during hearing.

Rotokauri Development Limited, Hounsell Holdings Limited & Rotokauri Farms No. 1 and No.3

5.9 The three submitters presented jointly at the hearing and were represented by Planner Mr Fraser Mc Nutt, freshwater consultant Mr Richard Montgomerie and engineer Mr Barnardus Beaurain.

5.10 In his summary statement, representative planner Mr Fraser McNutt set out the main points for the three submitters; they were:

General support for the proposed NoR, its overarching purpose, function and requirement to be expedited to facilitate and support the urbanisation of the Rotokauri catchment.

Exploration and enablement of interim attenuation options for flood storage purposes, prior to the completion of the Greenway scheduled for 2028.

*Acknowledging the ecological environment within the Rotokauri catchment, its maintenance, enhancement and future co-existence with a soon to be highly modified urban environment.*²⁴

- 5.11 With respect to interim attenuation Mr McNutt noted that the urban enablement of his clients' land is largely reliant on both the timing and design of the Greenway. He proposes that notwithstanding the s42A report deeming the request to allow for interim stormwater storage within the designation to be out of scope, that works which are in line with the purpose of the greenway should in fact be provided for.

*These works would be for the purpose of flood attenuation from neighbouring urban development (as is the purpose of the final Greenway solution) and would necessitate the duplication of subsequent earthworks and land modification outside of the designation prior to the Greenway completion in 2028.*²⁵

- 5.12 During questioning by the Panel Mr Beaurain noted that as currently designed the greenway would meet only 80% of the stormwater drainage needs for the area. Mr Beaurain noted that with redesign the Greenway Corridor could increase and optimise storage to provide for the remaining 20%.

- 5.13 Mr McNutt proposed that in doing so:

*The environmental benefits of utilising the future Greenway corridor include, reduction in ecological disturbance, groundwater disturbance and risk of sediment discharge. There are also benefits that relate to reduced heavy vehicle movements, utilisation of cut locally and a reduction in the quantity of Regional consents.*²⁶

- 5.14 Mr McNutt proposed the inclusion of an advisory note to provide for interim works for stormwater attenuation while noting that this would not undermine the purpose of the NoR, nor prevent or hinder the RA implementing the final greenway design.

- 5.15 With respect to the ecological environment Mr McNutt proposes that there should be a synergy between the designation and the activities that will be required of developers both in and outside the greenway as part of developing adjacent land. Mr McNutt noted:

It is my view that providing the opportunity within the Greenway corridor, as expected within the ICMP for ecological enhancement and/or offsetting would provide an additional option to enable development within the Rotokauri catchment. As outlined in Mr Montgomerie's evidence, in order to achieve the objectives of enhancing biodiversity it is likely that habitat enhancement within and potentially outside of immediate development footprints including within the Greenway corridor will be required.

*Allowing for these sorts of works within the designations purpose would add certainty and opportunity when applying for s176 Requiring Authority approval. Additionally, it could add flexibility and opportunity for development proceeding through the s176A Outline Plan approval process.*²⁷

- 5.16 Mr Montgomerie reiterated this and stated in summary:

²⁴ Summary Statement F Mc Nutt at para 2.3

²⁵ Summary Statement F McNutt at para 2.17

²⁶ Summary Statement of F McNutt at para 2.19

²⁷ Summary Statement of F McNutt at paras 2.22 and 2.23

An integrated ecological solution such as that afforded by the Greenway project is likely to deliver better ecological outcomes compared to an ad hoc development approach. To assist in achieving this outcome I recommend that the maintenance and enhancement of ecology be encompassed with the purpose of the Greenway designation and specifically the Environmental Management Plan (EMP).²⁸

- 5.17 Both Mr McNutt and Mr Montgomerie in their evidence provided proposed wording to allow for ecological offsetting to be considered in the future Greenway EMP, including addition of an MMP and proposed condition.

- 5.18 Mr Montgomerie set out their position:

The Greenway project is a significant opportunity to not only manage stormwater and improve water quality but also to improve habitat for a range of species. With adequate planning and careful design, the wetlands that form a key part of the Greenway project can be used to significantly enhance the habitat quality and biodiversity in the catchment.

To achieve this outcome will require careful consideration of habitat requirements, protecting and enhancing some areas of existing habitat, creating suitable habitat in the wetlands e.g. utilising water level controls and relocating fish to suitable habitat from areas impacted by development.²⁹

- 5.19 Mr McNutt also proposed that the Designation purpose be extended to include not only the proposed additional purpose of “walking and cycling” as cited in the s42A report but that the purpose should also incorporate the ecological role that the Greenway corridor would provide for. We note that the RA has subsequently included “ecological/habitat restoration design elements” as one of the ancillary purposes of the Greenway Corridor.³⁰ The designation ‘purpose’ is a matter further discussed in some detail in our *Section 7 Resource Management Considerations*.

Te Haa o Te Whenua o Kirikiriroa (THAWK)

- 5.20 THAWK submitted in support of the application. As part of ongoing work agreed with the RA and following filing of the THAWK submission a CIA was completed and a number of recommendations made therein.

- 5.21 During the THAWK presentation it was stated that the iwi expectation was that the CIA recommendations would replace the current cultural conditions within the NoR. However, upon questioning by the Panel it was confirmed that the relevant condition was condition 7 which allowed for engagement with THAWK on the CIA recommendations, rather than the insertion of the recommendations themselves. Further questioning also led to confirmation that the condition 5 as worded was redundant, given it provided for the completion of the CIA after approval of the NoR.

- 5.22 The Panel were concerned that the efficacy of condition 7 as a replacement process for the CIA recommendation this was not the THAWK position based on their presentation at the hearing. The Panel asked the RA’s Legal Counsel to provide further clarification of the Cultural Conditions (including any need to change condition 7 to reflect upon the THAWK presentation), as part of his closing submission.

²⁸ Summary Statement of R Montgomerie at para 2.2

²⁹ Summary Statement R Montgomerie at paras 3.14 and 3.15

³⁰ Supplementary Evidence C Sharman attached conditions

5.23 Mr Muldowney in his closing confirmed that the condition 5 in the NoR document requiring a CIA was redundant and should be deleted. With respect to the recommendations contained in the CIA, legal counsel stated:

“The RA also confirmed that HCC and THaWK will engage regarding the implementation of the recommendations in the CIA, which will be implemented through a variety of processes, including the Greenway designation.”

WRC & WDC

5.24 The WRC and WDC were represented at the hearing by planner Tim Wilson and the Regional Council’s stormwater expert, Mr Ghassan Basheer.

5.25 In his Statement of Evidence Mr Wilson set out the interests of the two councils and the matters of concern for each. In respect to the WRC, Mr Wilson noted:

The ICM directorate delivers zone-based catchment management, river system management, land drainage, flood control programmes and asset management activities. These activities are undertaken alongside a set of activities which are delivered regionally and include hazard management and community safety activities, biodiversity and natural heritage operations, biosecurity operations and land management advisory services. ICM’s interest in the NoR is primarily related to their catchment management, land drainage and flood control programme responsibilities, as well as their natural heritage operations.³¹

5.26 The WRC had three primary issues with the NoR. They were:

- *The NoR documents did not provide an adequate assessment of the effects of the NoR on the hydrodynamics of Lake Rotokauri, particularly as a result of additional volumes of stormwater entering the lake over a prolonged period.*
- *The NoR did not consider the effects of additional stormwater on the surrounding drainage catchment and its ability to maintain the current level of service.*
- *The NoR did not provide an adequate assessment on potential erosion effects on the Lake Rotokauri outlet and downstream drainage network.³²*

5.27 The WRC is concerned about the potential for additional water volumes entering Lake Rotokauri from the Greenway discharge having adverse effects on the ecological values of Lake Rotokauri causing:

- *A change in hydrological regime may change the habitat types at Lake Rotokauri; and*
- *An increase in open water habitat through elevated lake levels at the expense of wetland swamp habitat is not a desirable outcome.³³*

5.28 In respect to the WDC, Mr Wilson stated:

³¹ Statement of Evidence T Wilson at para 4.1

³² Statement of Evidence T Wilson at paras 4.3 and 4.4

³³ Statement of Evidence T Wilson at para 4.5

Lake Rotokauri and much of the surrounding wetland are part of a Crown reserve that is managed by WDC. The drainage network that falls within the Crown reserve is the responsibility of WDC, whereas ICM is responsible for the drainage network outside the Crown reserve boundary.³⁴

- 5.29 The WDC concerns were reflective of the significant habitat programme of native habitat restoration undertaken around Lake Rotokauri over the last 10 years. Further, a 5-year ecological enhancement programme was implemented in 2015 within the Lake Rotokauri catchment. Future projects are also planned for which the WDC and partners will be responsible.

- 5.30 Given this:

The programme is a significant commitment to improve and protect the biodiversity values of Lake Rotokauri alongside enhancing recreational opportunities for the community.

The WDC submission largely focused on the impacts of additional stormwater on Lake Rotokauri and the surrounding drainage network and improving the connections to the public cycleway/walkways within the Crown reserve. To that end, the submission requested that the Greenway corridor connects with the existing and planned future public cycleway and walkways within the Rotokauri Reserve.³⁵

- 5.31 Mr Wilson questioned the accuracy of modelling and the implications in the event that the modelled impacts were found to understate the actual impacts. Recently received modelling raised significant concerns for both Mr Wilson and Mr Basheer. Mr Basheer stating in an email attached to Mr Wilson's statement:

In terms of flooding effects on surrounding land, it is not clear how the Requiring Authority are determining these effects. In my opinion, a flooding effects on a rural property starts to count at a point when the area become water logged. The Lake operating level range is considered the acceptable level that adjacent landowners can tolerate. Increasing lake levels beyond this range is considered a significant flooding effect that requires mitigation.

While these effects are not ongoing, these do cause pasture damage and loss of production.³⁶

- 5.32 Further, Mr Basheer suggested further mitigation measures that the RA could undertake:

- a. *Extending the designated are in this NoR to include the drain between Exelby Road and the Lake to provide another stage of storage and attenuation as well manage increased effects on this drain.*
- b. *Replacing the existing fixed weir with a variable height weir, such as a collapsible weir, self-regulating gate, or other level control installation.*
- c. *Compensation for the land owners on parts of their properties, specifically lands that are below an agreed level. This should be associated with excluding these areas from future development.*
- d. *Upgrading the outlet drain and weir to increase outlet discharges.³⁷*

³⁴ Statement of Evidence T Wilson at para 4.6

³⁵ Statement of Evidence T Wilson at paras 4.8 and 4.9

³⁶ Email dated 5 February 2020 G Basheer

³⁷ As above

- 5.33 During the hearing the new data was discussed with both Mr Wilson and Mr Basheer. Mr Basheer noted that the modelling was yet to be peer reviewed. He did not however agree with RA expert Mr Seyb's view that the modelling supported Mr Seyb's view that the effects of the stormwater discharge on the lake would be small. Rather, Mr Basheer was of the view that an assessment was required to determine how the water would move and the risk to pasture were the discharge to influence groundwater levels.
- 5.34 Mr Basheer noted that while all the models to date were measured at the outlet of the lake, none were measured at the land on the opposite side from the outlet. He was of the view that this work was required to better assess the effects on pasture and the lake. Further, Mr Basheer suggested that different models give different results and that with the lack of full peer reviewed data, a conservative approach was warranted. In doing so the councils would avoid dealing with future land issues.
- 5.35 Ultimately, while Mr Wilson acknowledged that regional consents would be required for the Greenway Corridor and following Mr Muldowney's question of the Councils' views of the condition precedent in Condition 57, Mr Wilson stated that the WDC and WRC wanted to ensure that the NoR provides for conditions which reflect the need for adequate information to allow for mitigation to take place.
- 5.36 Upon request by the Panel, Mr Wilson agreed to provide further draft wording for the condition(s) of concern. That wording (for conditions 39 and 43) was provided prior to the adjournment of the hearing by way of a supplementary memorandum dated 18 February 2020.

NZ Transport Agency (NZTA)

- 5.37 The NZTA submitted on a number of technical matters and provided proposed conditions to resolve their concerns. Those matters related to the Greenway's likely effect upon the State Highway 1 corridor within Hamilton City that is adjacent to the NoR.
- 5.38 Amendments were requested for the following:
- a. *Amend proposed condition 43 to clarify that the extent of the Transport Agency infrastructure to be considered shall include that infrastructure within the Mangaheka Catchment. In the alternative, I consider that this condition could identify the specific Transport Agency infrastructure to be assessed;*
 - b. *Remove proposed condition 44 as the stormwater pond and land was transferred from the Transport Agency to the Hamilton City Council in 2017;*
 - c. *Amend proposed condition 45 to make this condition clearer regarding the level of service in Culvert E;*
 - d. *Amend proposed condition 47 (all sub-clauses) to include the words NZ Transport Agency to ensure consistency with condition 48;*
 - e. *Amend proposed condition 47(b) by replacing the word immediately with following to address the Transport Agency's concern that the post construction period is too short to account for the effects of ground resettlement; and*

- f. *Add an additional condition (provision number 54) that provides for a longer period of post construction monitoring of ground settlement near existing Transport Agency infrastructure.*

- 5.39 Were these amendments and conditions made, Mr Michael Wood, a Principal Planning Advisor stated that the Transport Agency would support the NoR for the Rotokauri Greenway Corridor.
- 5.40 During the hearing Mr Michael Wood made a brief statement in response to the changes made by the RA after his statement had been filed. On the basis of those changes the Transport Agency was of the view that there were no further issues of concern and confirmed that the Agency now supported the NoR in full.

Murray and Sheryl Gower

- 5.41 Mr and Mrs Gower and their representative Ms Charlotte Muggeridge attended and presented at the hearing.
- 5.42 Mr and Mrs Gower have a long history of dealing with government agencies and the HCC with respect to their land. This includes having been engaged with the HCC for some time on the matter of the greenway and its implications for their land. The Gowers seek clarity and certainty in their dealings now.
- 5.43 In their submission Mr and Mrs Gower sought confirmation of contact persons to speak to at the WRC as part of the process of establishing the Greenway and any stormwater concerns the Gowers might have, screening of their property and agreement that as they were not developers they would not be forced to provide and pay for a wetland on their property to support the Greenway.
- 5.44 Subsequent to filing of the submission and in her presentation, Ms Muggeridge stated:
“the Gowers support the location of the Rotokauri Greenway, that is, as it runs along the boundary of their property - as opposed to the centre of it. They confirm that they have been provided with a Waikato Regional Council contact person to assist with any questions they have on stormwater issues and likewise with the New Zealand Transport Agency contact that was provided by Hamilton City Council to the Gowers relating to historical land acquisitions.”
- 5.45 Following the filing of their submission and during the hearing it was confirmed that the Gowers would not be forced to provide or pay for a wetland. The Gowers withdrew their request that the RA provide screening on their land.
- 5.46 In her presentation Ms Muggeridge discussed the temporary construction area of 856 m² proposed to be placed on the Gowers land. Specifically, she stated:
While the land is to be designated, the designation land should be minimised, and the Gowers would like confirmation that a lease or licence to occupy will be entered into with Hamilton City Council before construction commences. The Gowers understand the reasoning behind the request for this land to be included as a part of the designation, but are surely going to be compensated for this use of their land and for professional costs associated with this process?
- 5.47 While the matter of agreements relating to the Greenway is outside of the scope of this decision, the Panel has sympathy for Mr and Mrs Gower seeking certainty from the RA

of the process and for the use of their land albeit temporarily. While temporary in nature the designation will still impact them. We therefore urge the RA to facilitate both technical and legal arrangements with the Gowers and to do so as practicably as possible.

Noel Smith

- 5.48 Mr Smith raised a number of concerns about the increased volume of water entering into Lake Rotokauri. In summary:
- a. The susceptibility of the lake to hydrological changes;
 - b. The possible effects on the land adjacent to the lake including potential subsidence;
 - c. Modifications to the lake's weir outlet;
 - d. The possible effect on the channels downstream of the lake;
 - e. The effects of drain alterations on the rural drains and the landowners whose properties the drains pass through.
- 5.49 Mr Smith sought the withdrawal of the NoR and for the three councils to engage in an appropriate regime for the development of the Greenway.
- 5.50 Mr Smith tabled a further statement for the hearing. He did not attend in person.
- 5.51 In his submission he noted that he had worked closely with the WRC and WDC. He confirmed that he therefore supported the joint submissions from both councils.
- 5.52 He also noted that notwithstanding being potentially out of scope, he remained of the view that the outlet channels from the lake will be negatively impacted by the Greenway and that consideration needs to be made on those effects going forward and would ask that the commissioners are directive in this area.

6 THE SECTION 42A REPORT & RESPONSES

Legal Counsel for Territorial Authorities Submissions

- 6.1 Ms Marianne Mackintosh presented a submission on behalf of the HCC and WDC as Territorial Authorities. The purpose of the submission was to respond to questions posed by the Panel *"..regarding the distinction between those effects related to the objective of the Greenway which are to be considered as part of the NoR process, and those which fall to a future assessment and detailed consideration of effects as part of the Waikato Regional Council consent process."*³⁸
- 6.2 Ms Macintosh acknowledged the distinction between the statutory considerations for a NoR versus a resource consent and the fact that an outline plan is contemplated to be completed after the NoR is confirmed. She does equally acknowledge however that the commissioners must determine in their own minds whether the effects can be satisfactorily dealt with. Further discussion on this point is provided later in the decision. :6.3 In response to the Panel's questioning as to what effects were within scope for consideration and which were not, Ms Macintosh acknowledged that there was no clear distinction in this case, no bright line. On that basis she was of the view

³⁸ Territorial Authority Legal Counsel Legal Submissions at para 2

that it would be artificial to draw a line and that all the evidence before the Panel should be considered to determine if the Greenway and therefore the basis for the NoR was feasible. Under questioning Ms Macintosh agreed that the assessment could be one of determining that for all intents and purposes the Greenway was not “fanciful” and could therefore proceed to resource consenting following confirmation of the NoR.

- 6.4 The Panel also sought clarification with respect to the ICMP and its legal standing. Ms Macintosh confirmed that the development of the ICMP was a condition of a resource consent. The document itself was not approved as part of a consent application or plan change. The ICMP is implemented through the Waikato District Plan, however it sits outside of the plan itself. It has nonetheless been certified by the relevant councils including the WRC and WDC.

Section 42A Report

- 6.5 The s42A Report (dated 22 January 2020) and Addendum (dated 18 February 2020), prepared by Ms Kylie O’Dwyer, Consultant Planner provided a response to the resource management issues raised by the application.
- 6.6 The Addendum was supported by further technical reports completed by the Territorial Authority technical experts:
- a. Technical Specialist Supplementary Report – Stormwater (prepared by Allan Leahy, Stantec)
 - b. Technical Specialist Supplementary Report – Geotechnical (prepared by Andy Mott, Stantec)
 - c. Technical Specialist Supplementary Report – Ecology (prepared by David Cameron, Stantec)
 - d. Technical Specialist Supplementary Report – Archaeology (prepared by Alexy Simmons, Simmons and Associates)
 - e. Technical Memo – Contaminated Land and Air Quality (prepared by Dr. Paul Heveldt, Stantec)
 - f. Technical Memo – Landscape, Visual and Urban Design (prepared by Kirstie Thorpe, Stantec)
- 6.7 All of the technical experts attended the hearing to answer Panel questions bar Mr Heveldt who was available if needed by phone. We refer to the experts questioned and where not referred to in other parts of the decision, summarise their responses further below.

Kylie O’Dwyer

- 6.8 Ms O’Dwyer affirmed in the s42A report, that subject to further information requested in that report the NoR was in accordance with the relevant planning instruments and iwi environmental plan. The proposal was consistent in her view with the purposes and principles of the RMA. and the environmental effects assessed as being able to be adequately managed through the recommended conditions.
- 6.9 At the hearing, Ms O’Dwyer summarised her opinions and observations on the proposal, based on the discussions held prior to and issues which had been raised

during the hearing. Ms O'Dwyer also provided further amended conditions with the Addendum.

- 6.10 Outstanding issues identified in the s42A report requiring resolution prior to confirmation were repeated in the addendum. They were stormwater and geotechnical matters and to a lesser extent archaeological. Ms O'Dwyer provided an overview of all the identified proposal effects, evidence and the technical experts evidence and recommendations for each.
- 6.11 Following review Ms O'Dwyer concluded in her addendum that:

The information sought through the Section 42A Report has been sufficiently responded to by the Requiring Authority. On the basis of the evidence provided and the supporting supplementary technical reports, I can confirm the preliminary conclusions reached in the Section 42A Report. I therefore recommend that the designation can be confirmed, subject to the recommended conditions.³⁹

Allan Leahy – Stormwater

- 6.12 Mr. Leahy attended and (with Mr. Seyb for the RA) answered questions raised by the Panel with respect to the stormwater evidence presented and questions which had been raised by submitters (WRC and WDC specifically). The detail of Mr. Leahy and Mr. Seyb's presentations are dealt with later in this decision. However, for our purposes Mr. Leahy confirmed that in his view with respect to the stormwater information and data that he had reviewed the Greenway had a high probability of being consented at the point that regional consents were required.

Andy Mott - Geotechnical

- 6.13 Mr. Mott responded to questions relating to the geotechnical evidence before the Panel. Mr Mott advised the Panel that all the geotechnical matters had been satisfactorily resolved by way of the proposed designation conditions.

David Cameron - Ecology

- 6.14 Mr. Cameron was questioned with respect to the efficacy of the adaptive management conditions with respect to Black Mudfish. Having heard the evidence of submitters and of Mr. Millar and the questions put by the panel Mr. Cameron was given the opportunity to comment on the efficacy of the condition relating to the Black Mudfish. Mr. Cameron did not consider that there was a need to amend the condition.

7 RESOURCE MANAGEMENT CONSIDERATIONS

- 7.1 We now canvass the principal resource management issues raised during the hearing and provide our determination/opinion on those matters in each case. We refer to our ***Schedule 1 Conditions to the Designation***, where required, to note the confirmation, amendment or deletion of any relevant condition. For the record, *Schedule 1* is based on the final recommended set of Designation Conditions provided by the RA in closing.

³⁹ S42A Addendum at section 5, page 16

7.2 We address two over-arching considerations first; specifically:

- The “Bright line” Test; and
- Purpose of the Designation.

The “Bright Line” Test

7.3 An issue raised both within evidence and during the hearing was the relevance of any future effects upon Lake Rotokauri caused by stormwater channelled to the lake through the Greenway corridor. Specifically, the question was raised whether such effects were within the purview of the Panel and their recommendations to the Councils.

7.4 In his Opening Submission, RA Legal Counsel, Mr Muldowney stated:

The evaluation of effects prescribed by sections 168A and 171 of the RMA calls for consideration of those effects on the environment of allowing the requirement. These effects must be distinguished from any other effects that may arise through any associated activities, in this particular case, stormwater discharges which are conveyed to, and ultimately discharged from, the designated works. The Court must confine its consideration to the matters that have been applied for⁴⁰.

7.5 Mr Muldowney then stated as further rationale for this position that:

The distinction between effects arising from the works which are to be designated, and other effects, arising from associated activities, is necessary in the present case because the NORs are not accompanied by any related stormwater discharge consent applications to the Waikato Regional Council. There is a good resource management reason for this. The ultimate nature and characteristics of the stormwater discharges will be determined incrementally as development proceeds within the catchment. Each development will be required to contribute to the overall capture, detention, and conveyance of stormwater. Understanding the nature of these developments will be important in finalising the detailed design of the works ahead of the submission of the outline plan of works under s 176A of the RMA.⁴¹

7.6 Finally, he reflected on the manner by which the Panel might conclude what was clearly not a bright line test in this instance. Specifically, he referred to the Environment Court decision in *Re Queenstown Airport Corporation Limited*⁴². In that case, the Court reflected on the manner with which they would determine a designation for an airport extension in advance of further regulatory approvals. The Panel finds it helpful to cite a section of that decision as set out in Mr Muldowney’s Opening Submission:

“We have been careful to consider not only the risk to public safety arising out of the use of land, but to be satisfied that QAC can still achieve its objective for the NoR subject to any future restrictions that may be imposed to adequately mitigate those risks. We have drawn the line at the point of

⁴⁰ *Sustainable Matata v Bay of Plenty Regional Council* [2015] NZEnvC 90 at [53].

⁴¹ Requiring Authority Opening Submissions at para 32

⁴² [2017] NZEnvC 46 referred to in Requiring Authority Opening Submission at para 33

mitigating any residual risk as that is an operational matter, only indirectly related to the use of land, for QAC and the Director of CAA.”

7.7 Mr Muldowney suggested that while there was no “Bright Line” in this instance between the Greenway and the effects on Lake Rotokauri it was incumbent on the Panel to consider and draw the line in accordance with the Queenstown case. RA Planner Mr Sharman during questioning by the panel compared the two sides of the “line” to one side relating to “Digging a Trench” the practical activity for which the NoR was providing for and the other side being the “effects of discharge” which were matters better left to the regional consent process.

7.8 Finally, a condition precedent (Condition 56) was offered by the RA. As set out by Mr Muldowney, the intent of Condition 56 was to alleviate any remaining concerns the Panel might have by:

Furthermore, any residual risk relating to completing the works but failing to secure the ultimate stormwater discharge consent is obviated by the condition precedent which requires that the consent be secured before commencement of construction.⁴³

7.9 Ms Marianne Mackintosh also provided useful legal opinion on this matter, as counsel for the S42A reporting team. Ms Mackintosh is in broad agreement with Mr Muldowney. For completeness, we record Ms Mackintosh’s opinions as follows:

Mr Muldowney for the RA outlined the statutory framework applying to the consideration of the NoRs. Counsel concurs with that outline and the submission that the assessment of the NoRs is subject to the provisions of Part 2 of the RMA.⁴⁴

Counsel further concurs with counsel for the RA that the evaluation process for a designation under the RMA is distinct from that of the resource consent process in section 104.⁴⁵ The outline plan of works process provided for by section 176A of the RMA contemplates further detailed design for the works to be provided following confirmation of a NoR. Nevertheless, within that context, the Commissioners must be satisfied, based on the evidence presented, that the effects on the environment of allowing the requirement can be avoided, remedied or mitigated satisfactorily.⁴⁶

And, under the subheading ‘Assessment of Effects of NoR and Relationship with WRC Consent’, Ms Mackintosh states:

However, as the Commissioners and the parties have acknowledged during the course of the hearing process, given the purpose and objective of the Greenway, it is challenging to separate the “effects on the environment of allowing the requirement” from the effects which will be assessed in detail through the future resource consent applications to the Waikato Regional Council. In that sense, there is no “bright line” distinguishing between these matters.⁴⁷

⁴³ Requiring Authority Closing Submissions at para 35

⁴⁴ The High Court decision in *New Zealand Transport Agency v Architectural Centre Inc* [2015] 1991 (HC) is the highest authority on the point – as set out in paragraph [46] of Mr Muldowney’s opening legal submissions.

⁴⁵ Refer to paragraph [35] of the opening legal submissions on behalf of the RA.

⁴⁶ Territorial Authority Legal Submissions at para 3-4

⁴⁷ *Re Queenstown Airport Corporation Limited* [2017] NZEnvC 46, cited in paragraph 33 of the opening legal submissions on behalf of the RA.

In my submission, it would be artificial to completely ignore the effects which will ultimately be generated by the functioning of the Greenway in the context of evaluating the NoR and simply leave any consideration of the same for the regional council resource consent process.⁴⁸ The RA has effectively acknowledged this in its evidence and opening legal submissions.⁴⁹ In that regard, the territorial authorities have also provided (and will present) evidence on the effects of stormwater.

It is submitted that this approach is emphasised by the principle of integrated development and that the evaluation is subject to Part 2. In that regard, the issue could be considered as “any other matter” under section 168A(3)(d) and section 171(1)(d).⁵⁰

On that basis, it is submitted that an appropriate approach to take is to consider the evidence presented during the hearing and be satisfied that the ultimate function of the Greenway⁵¹ is feasible. Or, put another way, that based on the evidence it is feasible to obtain the resource consents required from Waikato Regional Council. Ultimately, the “condition precedent” provides the critical “backstop”, and the risk falls to the RA in respect of the process to obtain resource consents from Waikato Regional Council. This position essentially aligns with that presented by counsel for the RA.⁵²

7.10 In contrast to these legal submissions, Mr Wilson for the WDC and WRC stated in his evidence that he disagreed with this approach preferring an encompassing or holistic approach reflecting on the purpose of the greenway to channel stormwater and its effect on the receiving environment of Lake Rotokauri. Mr Wilson stated in his evidence:

“The NoR sees to designate land for the purpose of storm conveyance, for which the receiving environment is Lake Rotokauri. Therefore, for the designation to be confirmed, I consider that an assessment of the effects of the additional stormwater load on the ecological values of Lake Rotokauri should be required to satisfy s168A(3) and s171(1) of the RMA. As set out in Para.4.5 above, the key ecological effect that ICM and WDC are both concerned about, is the impact on the lakeside vegetation as a result of additional stormwater from the developed Rotokauri catchment. I understand the developed catchment may raise the lake level for prolonged periods of time, compared to the existing situation and this is highly likely to result in ecological changes to the Lake.”⁵³

7.11 While the RA did not agree with Mr Wilson’s submission on this point it did take the precaution of presenting evidence on the potential extent and likely effects of stormwater discharged to Lake Rotokauri. Mr Muldowney in his closing submission set out in respect to this that:

“.. in order for the Hearings Panel to have sufficient evidence to conclude that

⁴⁸ Being the effects of stormwater discharge on the receiving environment.

⁴⁹ For example, paragraph 37 of the opening legal submissions on behalf of the RA.

⁵⁰ The relevance of “any other matter” was referred to in the context of a discussion of Part 2 by Justice Whata in *Queenstown Airport Corporation v Queenstown Lakes District Council* [2013] NZHC 2347, which was cited in the Court’s interim decision in *Minister of Corrections v Otorohanga District Council* [2017] NZEnvC 213, paragraph [22].

⁵¹ To “function as the principal stormwater management and drainage channel in the Rotokauri area”, NoR for Rotokauri Greenway and Assessment of Environmental Effects, 4 December 2018.

⁵² Territorial Authority Legal Submission at paras 7-10

⁵³ Wilson Evidence in Chief at para 6.8

the ultimate purpose of the designation can be achieved if the proposed works are completed, the RA has also presented evidence relating to effects on the downstream receiving environment, including lake levels at Lake Rotokauri.

This approach to the evidence is consistent with the Environment Court's approach to the grant of a resource consent where it has determined it may be "inappropriate to issue a decision granting a resource consent that will be impossible to exercise".⁸ Similarly, the RA has presented evidence confirming that the effects on the receiving environment associated with the ultimate stormwater discharge are acceptable, and that the discharge will be "consentable".⁵⁴

Panel Determination

- 7.12 Having considered the submissions of the RA, the submissions of legal counsel for the s42A reporting team and the views of Mr Wilson, the Panel takes the view that the Queenstown case reinforces the need to ensure that the NoR and Greenway can meet its purpose. That purpose (now primary to other ancillary purposes) includes the conveyance of stormwater. It is not unreasonable nor outside the realms of our Part 2 considerations to therefore consider the likelihood of effects of stormwater upon the receiving environment. In saying that we also acknowledge that is not for the Panel to take the step so far as to determine mitigations at an operational level or at a regional consenting level.
- 7.13 For reasons dealt with later in this decision however, we are in agreement with Mr Muldowney's submission in his Right-of-Reply and rely on the evidence of Mr Seyb and Mr Leahy when adopting the view that the RA has provided sufficient evidence to suggest that adverse effects caused by discharge to Lake Rotokauri can be managed via the Outline Plan of Works process and the full design of the Greenway. Amendments to the Conditions to the Designation including Conditions 42- 45 (Detailed Design Matters) reinforce the intention that this work will be undertaken and will be scrutinized in full through the Regional Council consents process. Further, Condition 56 - Waikato Regional Consents, will ensure that this assessment will occur prior to commencement of construction of the Greenway. A condition precedent (Condition 56) was offered by the RA and effectively acts as a 'backstop' to the proposal proceeding in the absence of all regional consents being obtained.

Purpose of the Designation

- 7.14 A theme considered throughout the hearing was the scope and detail of the Purpose statement for the designation. Some parties wanted more detail to be provided to make it clear that the 'Greenway' was more than a drainage/stormwater conveyance channel. The RA wanted the Purpose statement to be succinct but explored with the Panel and the parties some suggested additions to the statement that might equally serve the overall Purpose. One example was a modified Purpose statement that comprised a primary purpose and list of ancillary activities/design elements.
- 7.15 In his Right-of-Reply for the RA, Mr Muldowney encapsulates these arguments and then settles on the final preference of the RA as:

⁵⁴ Requiring Authority Closing Submissions at paras 30-31

Designations have been described as “notice to the world” of the use to which the land subject to a designation may be put⁵⁵. However, broadly worded designations can raise the issue of whether a current or proposed use of land is covered by, or included within, the designation⁵⁶.

And

In response to the s 42A report, Mr Craig Sharman included drafting for an amended Condition 1 in his supplementary evidence dated 17 February 2020 inserting a description of the designation’s purpose that included a subset of ancillary purposes, as follows:

...

The primary purpose of the designation is for stormwater collection, detention and conveyance purposes, with design elements incorporated within the designated corridor serving the following ancillary purposes:

- i) vehicle maintenance access tracks*
- ii) walkways and cycleways*
- iii) public art*
- iv) mana whenua cultural interpretation/story-telling design elements*
- v) park furniture and public toilets*
- vi) ecological/habitat restoration design elements, and*
- vii) interim works for stormwater attenuation⁵⁷.*

7.16 However, having explored the merits of various alternate wording and those offered by the s42A reporting team, the RA concluded:

*However, the RA’s preference is for the simple broad purpose statement of ‘stormwater collection, detention and conveyance purposes’. This purpose is reflected in the proposed Condition 1 in **Attachment 1**. The RA does not consider that the broader purpose condition will give rise to any interpretation issues, for the reasons explained below.*

7.17 The reasons given in support of this position for a broadly stated Purpose, summarised were:

- what an ordinary, reasonable member of the public who is considering a district scheme or plan would have taken from the designation (paragraph 20);
- having regard to the whole designation including the conditions attached to the designation (paragraph 21); and
- conditions to the designation therefore can assist interpret the broad purpose statement (paragraph 23).

Panel Determination

7.18 Having considered all the permutations of possible wording for a Purpose statement, the Panel accepts and adopts the RA’s position that the Purpose of the Designation is for stormwater purposes as this will provide for the establishment and operation of the Greenway as the primary means for stormwater management within the Rotokauri Structure Plan and is the essential prerequisite for the urbanisation of the growth cell.

⁵⁵ *Waimairi County Council v Hogan* [1978] 2 NZLR 587 (CA) at 590; *Titirangi Protection Group Inc and ors v Watercare Services Ltd* [2018] NZHC 1026.

⁵⁶ Requiring Authority Closing Submission at para 10

⁵⁷ Requiring Authority Closing Submission at para 13

7.19 Therefore, the Panel accepts that Condition 1 of the Designation reads:

The purpose of the designation is for stormwater collection, detention and conveyance purposes.

7.20 The Panel also records that Condition 2 states, and is unchallenged:

Where there is an inconsistency between the Notice of Requirement documentation and the designation conditions, the designation conditions shall prevail.

7.21 We reiterate that the suite of designation conditions covers the preparation and 'approval' of seven management plans along with detailed design to support an Outline Plan of Works. The Panel therefore considers the matters raised by submitters can and must be dealt with in a comprehensive manner as part of land use and regional consenting processes. In this way integrated resource management will be achieved.

Effects on the Environment

7.22 Our assessment and evaluation of the potential environmental effects arising from the proposed works covers the following topics:

1. Construction Related Nuisance and Traffic Effects;
2. Effects of suspended sediment discharges and sediment deposition;
3. Effects on fish spawning and migration disturbance;
4. Potential for Weed Invasion;
5. Stormwater Effects;
6. Effects on Lake Rotokauri Water Levels with respect to land drainage adjacent to the lake;
7. Effects addressed by further Modelling;
8. Swale design and interim storage;
9. Geotechnical Effects;
10. Lowering of the groundwater affecting Lake Waiwhakareke water levels;
11. Ecological Effects;
12. Landscape, visual and urban design effects;
13. Heritage and cultural effects;
14. Effects on Lizards and Bats; and
15. Positive Effects.

1 Construction Related Nuisance and Traffic Effects

7.23 These are effects occurring as a result of construction activities and occur only during construction. These include dust, construction noise and vibration and construction traffic effects and are discussed below.

Dust

7.24 Dust can create a nuisance effect for local residents or commercial/industrial occupiers in close proximity to the Greenway construction area. The RA proposes that dust nuisance be managed by way of a Construction Air Quality Management Plan, the requirements for which are included in conditions 23 to 28. These conditions have been reviewed on behalf of HCC by Dr Hevelt, National Environmental Scientist Specialist at Stantec. Dr Hevelt considers that the conditions are comprehensive and, if fully and conscientiously implemented, will ensure the maintenance of a high

standard of ambient air quality over the duration of the project and minimal environmental effects from emissions to air from construction activities. Dr Heveldt recommends one minor change to add words to condition 24 b (ii) to deal with cleaning down of roofs of houses where rainwater collection from such roofs is practiced.

- 7.25 We conclude that conditions nos. 23 to 28 which include Dr Heveldt's recommended minor change appear comprehensive to us and in light of Dr Heveldt's review find that dust nuisance can be appropriately managed by way of the proposed Construction Air Quality Management Plan and associated conditions.

Construction Noise and Vibration

- 7.26 Construction noise and vibration is proposed to be managed by way of a Construction Noise and Vibration Management Plan (CNVMP). The objectives, aspects to be addressed and noise and vibration criteria for the CNVMP are included in conditions 31-35.
- 7.27 The RA proposed amendments to the construction noise and vibration conditions as provided in the Section 42A report to:
- Better align with the flexible approach adopted in NZS 6803:1999;
 - Refer to the 'typical duration' limits under NZS 6803:1999 (construction over less than 20 weeks) rather than the 'long-term duration' limits. This is on the basis that construction works will be staggered and over three construction seasons; and
 - Added the 2000-0630 hour time range and a different noise standard for industrial and commercial areas.
- 7.28 The above proposed amendments have been reviewed by HCC and WDC Environmental Health Officers who concur with the changes, which are now incorporated within conditions 30-34.
- 7.29 We find that construction noise and vibration can be satisfactorily managed provided the relevant conditions are complied with.

Construction Traffic and Access

- 7.30 Access for construction traffic will be via maintenance access tracks connecting to several public roads along the length of the greenway. The delivery and removal of material will generate additional heavy vehicle traffic movements onto local roads and will need to be managed to mitigate potential effects. A Construction Environmental Management Plan (CEMP) will be prepared which includes procedures, methods and measures to address construction access and traffic management including effects on local roads and provision of a complaint process.
- 7.31 Conditions 19 to 22 set out the requirements for a CEMP.
- 7.32 The project AEE states that it is anticipated that the CEMP traffic requirements will be undertaken in accordance with individual approved Traffic Management Plans (TMPs). The AEE concludes that the potential construction traffic and access effects can be appropriately mitigated through the proposed CEMP and future TMPs, therefore effects are considered to be less than minor.
- 7.33 We note that the requirements for the CEMP appear comprehensive and include provision of a complaints process.
- 7.34 We accordingly find that provided the CEMP is competently prepared and operated the construction traffic and access effects will be appropriately managed.

Ecological effects during construction

- 7.35 The construction of the Greenway will involve significant deepening, widening and realignment of the existing Rotokauri drain. Receiving environments for the sediment discharges will be the Rotokauri Drain, the constructed downstream sections of the Greenway and Lake Rotokauri.
- 7.36 The general methodology for the construction of the Greenway is by construction in sections (basins) progressing from downstream to upstream with stream diversions to allow construction work to occur in the “dry”. This is the primary means by which sediment discharges and water quality effects on downstream receiving environments will be minimised as the works areas will be ‘cut-off’ from the flowing water within the Rotokauri drain. Fish within the Rotokauri drain will be moved to these stream diversions for the duration of works within each basin, before being returned to the main channel post-construction. However, as with any stream works and earthworks projects, there is potential for sediment discharges and deposition to occur.

2 Effects of suspended sediment discharges and sediment deposition

- 7.37 These effects can have adverse impacts on the receiving environment if not managed properly. Specific erosion and sediment control measures will be prepared within an Erosion and Sediment Control Plan (ESCP) which will be prepared during the detailed design stage. Preparation of an ESCP is required as condition to the designation.
- 7.38 The RA now propose that the ESCP for the project be supplied to HCC and WDC for their information only (rather than for certification as was proposed in the NoR). The reasons given for this are that erosion and sediment control is more a matter for WRC and conditions on the regional council consents for earthworks are likely to be more extensive and specific.
- 7.39 The Section 42A Hearing Report Addendum’s position is that it will be possible to prepare an ESCP that satisfies the requirements of both the territorial authorities and the WRC. The report recommends that the ESCP be provided to the relevant territorial authorities for their certification rather than information.
- 7.40 The RA counsel’s response in his reply is set out below:

ESCPs are live documents that are regularly modified as new areas or stages of works are commenced. Changes are often agreed verbally onsite between WRC officers and onsite personnel during regular site walkovers with formal written updates being provided at a later date (as compared to other plans such as a Construction Environmental Management Plan or Construction Noise and Vibration Management Plan that are approved prior to works commencing and do not often change).

Requiring updates and changes to the ESCP (and in particular the site or phase specific plans) to be certified by both WRC and HCC (and in some instances WDC), presents a significant additional administrative burden on the RA and a significant delay risk to construction works. Earthworks and the incidence of erosion and sediment deposition is closely monitored and enforced by WRC. Compliance with erosion and sediment control is the responsibility of WRC.

- 7.41 Our view is that as the WRC has primary expertise and responsibility for regulating erosion and sediment control effects and they should be solely responsible for certification of the ESCP. We also are mindful of the RA’s concerns that having a

requirement for certification by HCC could lead to additional administrative burden on the RA and a significant delay risk to construction works.

- 7.42 We accordingly agree with the RA request to change the ESCP condition so that it is submitted to the relevant territorial authority for information with subsequent updates being made available to the relevant territorial authority.
- 7.43 The adoption and implementation of robust erosion and sediment control methods in conjunction with diversion channels will significantly reduce the overall effects of sediment discharge and sedimentation. These erosion and sediment control methods will be outlined in a proposed ESCP prior to physical works commencing.

3 Effects on fish spawning and migration disturbance

- 7.44 Sediment discharges from earthworks areas, in-stream works and physical habitat changes due to in-stream works have the potential to disrupt migration and spawning for native fish species. This is particularly relevant for giant kokopu which are “At Risk” and may be spawning in the drain habitat, but also for other species that utilise the drain as a migration pathway such as eels, bullies and inanga. This disruption can be avoided and/or minimised through the sediment control measures in the proposed ESCP, timing the works to avoid key spawning and migration periods, and by well-designed temporary diversions for moving the fish into during construction of each basin.
- 7.45 Given the scale of in-stream and diversion works, it is unlikely to be possible to avoid key spawning/migration periods for all species present in the Rotokauri drain. In this respect, the Ecological Assessment in Appendix E of the AEE has recommended the following:
- Avoid in-stream works between May and August inclusive to avoid the peak spawning period for giant kokopu;
 - Where possible avoid in-stream works during the main in-stream works restriction period of August to December inclusive. This should minimise disruption to migration for giant kokopu, inanga, longfin eels and common bully. Note that works could occur within the August to December period with minimal impact but this depends on works methodologies which will be developed at later stages;
 - Where possible construct the Greenway “off-line” leaving the existing drain habitat intact until ‘livening’ of the new channel occurs (fish rescue will be necessary);
 - Where the above are not possible, construct a temporary diversion that provides for fish passage and potentially fish habitat while the Greenway is constructed (fish rescue will be necessary); and
 - Annual fish monitoring during construction and for a two-year period following completion of the Project.
- 7.46 Fish rescue and relocation work will need to be carefully planned with methodologies and timing developed in conjunction with works planning and staging. A generalised fish rescue methodology for in-stream and diversion works is provided for information purposes in Appendix D of the Ecological Assessment attached as Appendix E of the AEE. The exact method can be developed as part of an EMP for the project and refined by the ecologist at the time of construction. This is included in a proposed condition to designation. The fish rescue plan will cover the timing of fish rescue operations, fishing and fish handling methods and careful consideration of relocation sites for various species. Based on available native fish

information and the nature of the impacted drain sites, a mix of electric fishing and netting methods will likely be necessary.

4 Potential for Weed Invasion

- 7.47 Construction activities will result in bare earth surfaces, which if left un-vegetated are at risk of weed invasion with the opportunity to spread throughout Rotokauri. All bare earth surfaces will be re-sown with grass and/or replanted with native plants as soon as practicable, so there will be limited opportunities for weeds to establish on these sites.
- 7.48 The Section 42A Hearing Report Addendum stated that measures around weed management such as methods and procedures for washing down machinery and ensuring any topsoil or fill brought onsite is free of weed seeds or fragments will be included in the proposed Construction Management Plan.
- 7.49 We note that the relevant construction management plan is the Construction Environmental Management Plan (CEMP). Both the s42A report and RA final requested conditions do not include any weed management requirements within the CEMP conditions.
- 7.50 We have accordingly augmented the relevant CEMP condition (Condition 19) to include the following:
- “Weed management such as methods and procedures for washing down machinery and ensuring any topsoil or fill brought onsite is free of weed seeds or fragments.”*
- 7.51 We accept the conclusion of the Section 42A Hearing Report Addendum that overall, with careful works planning, scheduling and design in conjunction with an approved ESCP, EMP and CEMP, the potential adverse effects to ecology during construction are considered to be less than minor.
- 7.52 These are effects occurring as a result of construction activities and occur only during construction. These include dust, construction noise and vibration and construction traffic effects and are discussed below.

5 Stormwater Effects

- 7.53 There are a number of stormwater effects or stormwater related matters that have required further evaluation and discussion in response to submissions and/or the review carried out for the s42a Hearing Report. These are set out as follows.

Flooding impacts adjacent to Basin 5, immediately upstream of Exelby Road

- 7.54 This matter is of concern to the land owner, Orient Europharma (NZ) Co. Ltd who made a submission opposing the project on concerns about taking of land for stormwater control and that more flooding will occur than for other properties in the corridor due to the undersize culvert on Exelby Road. They are also concerned that addition of indicated wetlands will further exacerbate this flooding.
- 7.55 In his evidence for the RA Mr Seyb advises that the extent and depth 100-year ARI flooding will increase (up to 0.5 m) in some areas near basin 5 with the overall area of flooding adjacent to basin 5 similar post construction of the Greenway. For the 10 year ARI event, the Greenway design gives an increase in flood levels of 30 to 60 mm. As the Greenway main channel will be lower than the existing channel there may be improved drainage of the adjacent land during smaller rainfall events.
- 7.56 Mr Seyb explained that the Europharma land that will be required comprises the main channel and Wetland pond 11. The main channel would be constructed as the

first part of the main channel works and the land would be purchased from Orient Europharma under the current NoR process. Wetland pond 11 would only be required when Orient Europharma subdivides and develops their land. Its current size is larger than that required for treatment and attenuation of the Orient Europharma land and its footprint could be reduced if it was to service only the Orient Europharma land.

- 7.57 Mr Seyb explained further that the area of existing flooding would be a significant restraint on the amount of development and there would be flooding due to overland flow to the north in the event that the Exelby Road culvert is blocked.
- 7.58 Mr Leahy's review of this matter notes that given the topography, which will likely need regrading for development and the intended timeframes for construction of the Greenway, he believes it is unlikely that up to 0.5 m increase in a 100 year flood level will have a significant impact on the operations currently on the land. Mr Leahy considers that the impacts of the Greenway on this site, rather than being a purely stormwater impact will be incorporated within the land purchase stages rather than at this NoR stage.
- 7.59 We find that, based on the expert evidence we heard, that the operation of the proposed Greenway will not result in flooding of noticeable detriment to the current operations on the Orient Europharma land. We also find that the impact on the land of constructing the Greenway will be associated with the land take, rather than the operation of the Greenway.

Blockage of road culverts

- 7.60 In his Technical Specialist Report - stormwater – for section 42A reporting, Mr Leahy noted that the identification of overland flow paths arising from unforeseen high flows or blockage of road culverts was not provided for in the notified NoR. This was noted for the Exelby Road culvert and is relevant for all culverts used to throttle flows in the Greenway.
- 7.61 In his primary evidence Mr Seyb advised that a detailed design condition is proposed that identifies matters that need to be progressed as part of the detailed design process. This will include consideration of the risk of blockage at the Exelby Road culvert and other culverts will be designed to overflow at their respective road crossings to the next basin downstream.
- 7.62 In the Section 42A Hearing Report addendum under “Outstanding matters identified in the Section 42A report”, it was recommended that the detailed design condition be amended to include all culverts as recommended by Mr Leahy in his Technical Specialist Supplementary Report – Stormwater. The RA reply conditions include condition 42 (e) which is “methods to minimise the risk of blockage of all road culverts due to flood debris”.
- 7.63 Our finding is that this matter has been resolved by way of revision to condition 42(e).

Overland Flow to the north of Basins 3 and 4

- 7.64 As a response to concerns raised in the Section 42A Report, Mr Seyb proposed a condition on the designation to require that the overland flow route to the north of Basins 3 and 4 be maintained along the future arterial road in this area (condition 42 f.).
- 7.65 The Section 42A Hearing Report Addendum noted that Mr Leahy has assessed the proposed condition and concurs with the assessment and proposed condition. It is noted that this condition appears to relate to land currently outside the ownership of HCC, however it is also noted that the Rotokauri Structure Plan shows a future

arterial road in this location. It therefore appears likely that the overland flowpath can be provided for on this future arterial road.

7.66 We find that this matter is satisfactorily addressed by way of condition 42f

Impacts of the designation works on the performance of the SH1 Culvert E

7.67 NZTA raised this matter in their submission as they were concerned that the level of information provided was not sufficient to fully understand its potential impact on SH1 and associated infrastructure. This related to the possibility that flood levels in the Greenway may create a tailwater condition leading to reduced pipe capacity and upstream flooding.

7.68 In his primary evidence Mr Seyb proposed a condition (Condition 44) for an assessment to be undertaken to inform the detailed design and identify measures required to maintain the level of service of the culvert. In his evidence for NZTA Mr Woods advised that NZTA supports the NoR subject to some minor changes to conditions. This includes a minor change to the condition 44 in relation to the level of service not being reduced, which has been accepted by the RA. The s42a addendum report recommended that the last sentence of condition 44 be an advice note, which has also been accepted by the RA.

7.69 We find that as a relevant condition has been adopted which is satisfactory to the RA, HCC as regulator and NZTA this matter is resolved.

Channel erosion

7.70 For purposes of this discussion the effects of channel erosion are discussed separately for the channel from Exelby Road to Lake Rotokauri and for the channel downstream of Lake Rotokauri

Drainage channel from Exelby Road to Lake Rotokauri

7.71 Mr Leahy's technical review as part of the s42A report identified the need for a designation condition to require detailed design and future monitoring activities to include consideration of the erosive effects of the Greenway discharges on the channels downstream of Exelby Road to be considered and if necessary, addressed.

7.72 Mr Seyb in his evidence advised he had prepared a NoR condition for consideration of the effects of erosion on the channel between Exelby Road and Lake Rotokauri.

Drainage channel downstream of Lake Rotokauri (lake outlet channel)

7.73 Concerns that the proposed future additional stormwater volumes entering Lake Rotokauri via the Greenway will cause erosion problems for this channel were expressed in submissions by Noel Smith, Central Waikato Drainage Sub-committee and the WRC and in Mr Smith's tabled statement. The WDCs submission included concern about urban stormwater discharging through rural drainage networks and that they have not yet been convinced that the HCC will contribute its fair share to the drainage district annual funding especially as it is likely that additional capital and maintenance works will be required as a result of development within HCC.

7.74 Part of the WRC submission was that the NoR has not considered mitigation of expected elevated erosion levels to the lake outlet channel, which is a council drainage asset.

7.75 On behalf of the ICM, Mr Wilson prepared evidence in support of the ICM and WDC submissions. In his supplementary evidence Mr Wilson considers it reasonable to include a condition in the NoR relating to consideration of erosive effects of the Greenway discharge on the channel downstream of the lake outlet to Duck Road.

- 7.76 In Mr Seyb's evidence he noted that the risk of channel erosion downstream of the lake outlet is mitigated by the attenuation of water within Lake Rotokauri. He considers that assessment of the risk of increased volumes of water on the channel downstream of Lake Rotokauri is appropriate and that this is a matter which will be considered further through the resource consent application to WRC for diversion.
- 7.77 In his Technical Specialist Supplementary Report – Stormwater - for Section 42A Reporting, Mr Leahy commented that the erosive effects downstream of the Lake Rotokauri is an issue that he would expect to be covered in the subsequent consenting phases as any solutions may extend beyond the designation.
- 7.78 Our finding based on expert evidence summarised above and our understanding of the scope of matters to be addressed within the NoR is that erosion of the drainage channel downstream of Lake Rotokauri is a matter that is properly addressed through a subsequent regional consent process.

Drainage channel downstream of Lake Rotokauri (lake outlet channel)

- 7.79 Concerns that the proposed future additional stormwater volumes entering Lake Rotokauri via the Greenway will cause erosion problems for this channel were expressed in submissions by Noel Smith, Central Waikato Drainage Sub-committee and the WRC. The Waikato District Council's submission included concern about urban stormwater discharging through rural drainage networks and that they have not yet been convinced that the HCC will contribute its fair share to the drainage district annual funding especially as it is likely that additional capital and maintenance works will be re required as a result of development within HCC.
- 7.80 Part of the WRC submission was that the NoR has not considered mitigation of expected elevated erosion levels to the lake outlet channel, which is a council drainage asset.
- 7.81 On behalf of the Integrated Catchment Directorate of the WRC (ICM), Mr Wilson prepared evidence in support of the ICM and WDC submissions. In his supplementary evidence Mr Wilson considers it reasonable to include a condition in the NoR relating to consideration of erosive effects of the Greenway discharge on the channel downstream of the lake outlet to Duck Road.
- 7.82 In Mr Seyb's evidence he noted that the risk of channel erosion downstream of the lake outlet is mitigated by the attenuation of water within Lake Rotokauri. He considers that assessment of the risk of increased volumes of water on the channel downstream of Lake Rotokauri is appropriate and that this is a matter which will be considered further through the resource consent application to WRC for diversion.
- 7.83 In his Technical Specialist Supplementary Report – Stormwater, for Section 42A Reporting, Mr Leahy commented that the erosive effects downstream of the Lake Rotokauri is an issue that he would expect to be covered in the subsequent consenting phases as any solutions may extend beyond the designation.
- 7.84 Our finding based on expert evidence summarised above and our understanding of the scope of matters to be addressed within the NoR is that erosion of the drainage channel downstream of Lake Rotokauri is a matter that is properly addressed through a subsequent regional consent process.

6 Effects on Lake Rotokauri Water Levels with respect to land drainage adjacent to the lake

- 7.85 Concerns that the proposed future additional stormwater volumes entering Lake Rotokauri via the Greenway will cause problems with land drainage adjacent to the lake were expressed in submissions by Noel Smith, Central Waikato Drainage Sub-committee and the WRC. The WRC's submission included concern about:

- urban stormwater discharging through rural drainage networks;
 - the actual impacts of the stormwater discharge will be more than what has been modelled and that, by the time it is realised, it will be difficult to rectify; and
 - that they have not yet been convinced that the HCC will contribute its fair share to the drainage district annual funding especially as it is likely that additional capital and maintenance works will be re required as a result of development within HCC.
- 7.86 Mr Wilson, on behalf of ICM provided evidence (based on the opinion of WRC principal technical advisor Ghassan Basheer) that the modelling results indicate that for the maximum post development scenario, at Lake Rotokauri, the volume of run-off and the duration of peak flows will be significantly higher and longer compared to the existing environment, which may adversely affect surrounding landowners. Suggested mitigation includes extending the designation to provide more storage and attenuation between Exelby Road and Lake Rotokauri or providing compensation to landowners. Mr Wilson also suggests an additional designation condition requiring assessment of the predicted effects of the Greenway discharge on Lake Rotokauri and associated land drainage networks.
- 7.87 The evidence of Mr Seyb includes reporting of modelling results including modelling carried out up until 17 February 2020.
- 7.88 The conclusions from Mr Seyb's evidence are:
- Comparison of the latest modelling results with those from the ICMP shows that lake levels smaller than previously set out in the ICMP, which show that the NoR Rotokauri greenway design is consistent with the ICMP.
 - Pastoral land serviced by the WRC drainage scheme is not significantly affected by direct inundation from rises in lake levels for the 10 year ARI 24 hour event. This is because much of the land adjacent to the lake is in reserve or public ownership and land beyond the reserve or public ownership is generally above the 10 year ARI lake water level; lake water level changes will affect the tailwater conditions for the WRC drainage scheme - this has been assessed and found that drainage times are not significantly affected beyond existing performance.
 - A time series model of lake level has identified the response of the lake to actual rainfall from 2008 to 2018. The results show that the peak lake level is elevated by up to 150 mm in response to the maximum probable development (MPD) versus existing development (ED) scenarios. The duration of the lake level rises slightly longer in the MPD compared to the ED scenario.
- 7.89 Ms France provided verbal advice to us at the hearing that modelled increase in lake level would cause low effects on groundwater levels adjacent to the lake.
- 7.90 In his Technical Specialist Supplementary Report – Stormwater - for Section 42A Reporting, Mr Leahy considers (as a summary of his main points), that there are a range of potential solutions to address the volume of water going into Lake Rotokauri; that the effect on Lake Rotokauri operation will be a regional consenting issue; and that the modelling information provided by Mr Seyb demonstrates there will likely be minor impacts on lake ponding levels from the Greenway. He also noted that there are other mechanisms available to mitigate lake water level changes if at the consenting phase further mitigation is required.
- 7.91 Our finding is that based on the expert evidence of Mr Seyb and Mr Leahy, the information provided to date demonstrates that the effects on water levels of Lake

Rotokauri arising from the future operation of the Greenway can be mitigated such that there will be no more than minor effects on land drainage adjacent to the lake.

7.92 We note that all experts agree that further design and hydrological modelling will be required before the final effects of the stormwater from the Greenway system and associated receiving environment effects can be fully understood. We consider that this matter should be addressed in a later consenting stage rather than attempting to address it as part of the NoR application.

7 Effects addressed by further Modelling

7.93 In his Technical Specialist Supplementary Report – Stormwater - for Section 42A Reporting Mr Leahy recommended designation conditions be provided to:

- Require further modelling (including peer review) to ensure the successful achievement of the ICMP Greenway outcomes; and
- Enable verification of the impacts of the land use proposals at certain milestones to confirm that the stormwater mitigation outcomes sought to be achieved by the Greenway are still being achieved.

7.94 Mr Wilson on behalf of WRC and WDC states in his evidence that he agrees that a condition should be placed on the designation requiring further modelling.

7.95 Mr Seyb, in his primary evidence commented that he expects that the design geometry will continue to be progressed as a result of developer plans and agrees that further modelling will be required to confirm hydraulic effects and that the ICMP flooding objectives are achieved.

7.96 Mr Seyb prepared a designation condition requiring further modelling to confirm that flood mitigation outcomes are being achieved.

7.97 The proposed condition has been reviewed by Mr Leahy who, in his Technical Specialist Supplementary Report – Stormwater, considered that the condition should be strengthened to include:

1. Updating of the existing overall catchment model by the RA, not just local modelling by developers.
2. Confirmation that downstream (receiving environment) effects of the discharges will also be managed, noting that the downstream effect will likely be considered primarily at the consenting phase.
3. Independent peer review of any modelling should be carried out prior to reliance being placed on any model for consenting or design purposes.

7.98 The author of the s42A Hearing Report Addendum considers that item 2 above will be covered by proposed condition 56 which requires that prior to construction all resource consents required for operation of the Greenway be obtained from Waikato Regional Council.

7.99 In his closing submission counsel for the RA advised that the RA accepts that modelling should be subject to a peer review process to confirm the model has been prepared and run in accordance with best practice. However, the requirement for HCC to certify this process and modelling to be updated at significant milestones is unnecessary and introduces a regulatory approval process which will be replicated by WRC at the resource consent phase.

7.100 Counsel for the RA also considers the requirement within the proposed peer review condition that the person be independent from the design is inefficient, will lead to unnecessary regulatory and compliance costs and loses the benefit of existing knowledge of the Greenway project and model.

7.101 Counsel for the RA provided “closing “conditions reflecting the RA position regarding the modelling.

7.102 Our finding is that the proposed RA closing condition 42a is appropriate and resolves the significant matters of concern regarding modelling raised by Mr Leahy. These conditions simplify the wording for the modelling outcomes and in our view contain an appropriate and practical definition of an independent person for the peer review. We also concur with the RA position that the requirement for HCC to certify this process and modelling to be updated at significant milestones is unnecessary and introduces a regulatory approval process which will be replicated by WRC at the resource consent phase.

7.103 We also concur with s42a report author that there is no need for a condition on confirmation that downstream (receiving environment) effects of the discharges will also be managed, noting that the downstream effect will likely be considered primarily at the consenting phase.

8 Swale design and interim storage

7.104 The submissions of Hounsell Holdings Ltd, Rotokauri Farming No.1, Rotokauri Farming No.3 and Rotokauri Development Ltd included the following matters:

- Clarification on alternative swale designs and ability to refine the design in partnership with HCC; and
- Request that HCC ensure that developments being completed prior to 2024/25 can utilise the swale location for temporary stormwater/floodwater solutions.

7.105 These matters were addressed, on behalf of the submitters, in the evidence of Mr McNutt and Mr Beaurain. Mr McNutt requested that provision be made for works that achieve the same purpose of the designation but that occur out of sequence for interim flood storage. These works would be for the purpose of flood attenuation from neighbouring urban development. His view is that further clarification of the purpose of the NoR could be made through the alteration of Advice Note¹ and this would not undermine the purpose of the NoR nor prevent or hinder the RA from implementing the final greenway solution.

7.106 In his primary evidence Mr Seyb noted that the flood storage required to provide the design flood levels needs to be considered as a combination of that in the main channel and that above the wetlands adjacent to the main channel. Flood storage provided in the Greenway main channel may be able to be increased subject to detailed design of adjacent development. It is expected that proposed earthworks levels, drainage and wetland layouts will be progressed and integrated into the flood modelling geometry to confirm flood level objectives are achieved and that this process will optimise flood storage within the Greenway.

7.107 Mr Seyb’s evidence also noted that the extent of land required for the Greenway main channel is governed by flood storage volumes (in conjunction with the adjacent wetlands), batter slopes to meet geotechnical slope stability requirements, overall depth limitations to manage groundwater drawdown effects and access.

7.108 With respect to interim flood storage Mr Sharman, in his supplementary evidence, advised that the RA has met with the submitters and that it is understood by the parties that the process of the RA approving works undertaken by other parties pursuant to the process of s176 of the RMA, will allow some works within the corridor ahead of the Greenway construction. The matter that is much less clear is the nature and extent of works that third parties might approach the RA with and whether the RA will provide approval for those works. This uncertainty is intensified during the period until the completion of a detailed design for the Greenway corridor as until that point it is highly uncertain for all parties whether a design element

proposed by developers will be consistent with the Greenway design prior to that design progressing to a detailed design phase.

7.109 In section 3.1 of the Section 42A Hearing Report Addendum the report author's view is that interim storage of stormwater would not conflict with the purpose of the designation. The report author notes that if works for interim storage of stormwater are undertaken on this basis it may constitute designation construction works for which an OPW would be required together with preparation of the required management plans and regional council consents.

7.110 Our finding is that use of the Greenway for interim storage of stormwater would not in principle conflict with the purpose of the Greenway for stormwater detention. We accordingly do not consider it is necessary to include provision for interim storage within the purpose of the Greenway. We note however that this is a matter for negotiation between the developer and the RA in order that any use of the Greenway for interim storage of stormwater does not conflict with the requirements of the Greenway design.

7.111 We also find that clarification of swale design and possible design refinement has been satisfactorily addressed in the evidence of Mr Seyb.

9 Geotechnical Effects

7.112 The key geotechnical issues associated with the proposal as identified through the NoR and supporting documentation, the s42A review and from submissions are:

- Stability of swale batter slopes during static and seismic conditions which may affect nearby structures and infrastructure;
- Lateral spreading of the swale during seismic events affecting the swale itself and consequential effects on adjacent properties and infrastructure;
- Lowering of the groundwater level causing settlement of adjacent areas both within the designation and extending into adjacent areas; and
- Lowering of the groundwater affecting Lake Waiwhakareke water levels.

These effects are discussed in the following sections.

Slope Instability

7.113 Mr McKenzie's evidence stated that the proposed swale slopes were generally assessed to meet reasonable engineering design standard for slope stability, other than in a moderate to large earthquake where liquefaction and potentially lateral spreading might occur as discussed under "Liquefaction" below.

7.114 Proposed swale slopes along a 100 m section of the swale located immediately upstream of Exelby Road may not meet reasonable engineered design standards for slope stability due to boundary constraints.

7.115 Condition 55 addresses this issue by requiring an assessment of the stability of existing slopes for this reach (CH3650 to CH 3750) to inform detailed design. Engineered works will be completed within the Greenway Corridor to maintain the existing stability of these adjacent slopes under static and seismic loads or to meet reasonable engineered slope design standards.

7.116 The Section 42A Hearing report addendum report (Section 3.3.3.) advises that Mr Mott has reviewed this condition and concurs with the condition proposed.

Liquefaction Induced Lateral Spreading

- 7.117 Evidence on the expected increase in seismic induced liquefaction hazard within areas adjacent to the Greenway due to an increased potential for lateral spreading as a result of the excavated swale slopes has been provided by Mr McKenzie on behalf of the RA. The Greenway may cause increased potential for liquefaction induced lateral spreading movements in a ULS (Ultimate Limit State) earthquake. New development will need to be designed to accommodate seismic effects including liquefaction and lateral spreading. Options to mitigate this hazard include strengthened foundations, setting back development from slopes and/or constructing ground improvement. For existing buildings and infrastructure, mitigation options could include installing timber piles within the Greenway corridor and ground improvement measures.
- 7.118 The RA proposes conditions on the designation (conditions 46 – 54) by way of a Geotechnical Effects Management Plan requirement to further assess the effect of the Greenway on the seismic hazard, resulting effects on existing occupiable buildings and Transport Agency infrastructure, and mitigation of any adverse effects.
- 7.119 These conditions include changes requested by Mr Finlan in his tabled evidence on behalf of NZTA.
- 7.120 The evidence of Mr McKenzie has been reviewed as part of the s42A Hearing Report, by Mr Mott, Principal Engineering Geologist at Stantec who concurs with the assessment; however, he recommended minor changes to account for all existing infrastructure rather than just Transport Agency infrastructure. Mr Mott also recommends that a definition of ‘seismic hazard’ be included for clarity. The final conditions include these recommended amendments with the exception of final Conditions 47 and 48 in which Mr Mott recommended deleting “services” from some parts of the conditions but not others. We consider that including “services” within the conditions as proposed by the RA is preferred as it allows for a comprehensive assessment of geotechnical effects.

Ground Settlement Effects

- 7.121 Evidence on the effects of ground settlement caused by groundwater drawdown has been provided on behalf of the RA by Mr McKenzie, which is supported by evidence from Ms France (groundwater/hydrogeology). As outlined in the evidence of Mr McKenzie, predicted ground settlement as a result of groundwater level changes due to the Greenway construction is not expected to cause damage to existing or future dwellings where they are well built in accordance with modern construction practice, however there is a degree of uncertainty due to variation in ground conditions and simplifying calculations.
- 7.122 Mr McKenzie states that new development near the Greenway will need to consider ground settlement. This includes development occurring concurrently or prior to construction of the Greenway. Infrastructure is not expected to be affected other than localised pavement cracking and movement of barriers near bridge abutments. If damaging settlement is predicted to existing buildings and/or infrastructure as a result of further assessment, ground improvements will need to be undertaken and/or repairs
- 7.123 The management of ground settlement effects is addressed in conditions 46 to 54.
- 7.124 The conditions require an assessment of existing occupiable buildings and Transport Agency and other infrastructure that may be affected, monitoring of ground settlement during and after construction, and implementation of actions to rectify any adverse effects.

- 7.125 The RA have included two conditions that deal specifically with NZ Transport Agency infrastructure which are conditions 43 and 51. These conditions are based on evidence provided by the Transport Agency. Evidence provided by Mr Wood confirms that the Transport Agency supports these conditions.
- 7.126 Mr Mott is supportive of the conditions proposed by the RA, subject to minor amendments as discussed under the above discussion on Liquefaction Induced Lateral Spreading.
- 7.127 The s42A Hearing Report Addendum noted that The Geotechnical Effects Management Plan required in the conditions requires assessments of existing occupiable buildings and infrastructure. It added that the mechanism that requires new development to consider ground settlement as advised by Mr McKenzie is unclear, particularly for new development that occurs whilst the ground is still settling (predicted to be up to one-year post Greenway construction). The Hearing Report addendum noted it would be useful if the RA could provide further information to clarify this matter.
- 7.128 A response to this request for further information was addressed in RA counsel's closing as follows:

The mechanism that requires new development to consider ground settlement is explained at paragraph 63 of Mr Sharman's evidence in chief (EIC) and in the memorandum provided by the Planning Guidance Unit (PGU) appended as Annexure 4 to Mr Sharman's EIC. The memorandum confirms that geotechnical assessments are typically required to support subdivision applications in order to provide an adequate assessment against s 106 of the RMA for natural hazards. Further, it explains that geotechnical reviews of subdivision and land use applications occur in accordance with the requirement to recognise and provide for the "management of significant risks from natural hazards" as a matter of national importance in s 6(h) of the RMA.

Subdivision applications are required to address specific geotechnical considerations for the site "which may include (but are not limited to) slope stability, lateral spread and liquefaction". Ground settlement is one of the matters that must be addressed. Ground settlement is a geotechnical consideration still subject to s 106 of the RMA and any new development would need to take into account any settlement arising from the Greenway, this includes any ongoing settlement during construction.

*This assessment of settlement effects is not simply confined to subdivision and development which occurs after the Greenway is established. Subdivision and development which occurs after the designation is confirmed, but before works are commenced, must still take account of potential settlement effects. This is because the effects assessment under s 104 of the RMA requires an assessment of the effects on the environment. As the Court of Appeal has established in *Queenstown Lakes DC v Hawthorn Estate Ltd*, environment means not only the present environment, but the future, non-fanciful environment. As the court stated in *Hawthorn*, the "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity under a district plan. A designation contained within the Hamilton Operative District Plan has a similar effect of establishing permitted land use rights within the designation footprint.*

7.129 Based on the expert evidence provided to us we find that the geotechnical effects of the Greenway have been adequately addressed by the conditions for existing development adjoining and some distance from the Greenway.

7.130 We accept the advice of RA counsel that geotechnical effects from the Greenway for any new development adjacent to the Greenway, before or after it is built are to be addressed through a subdivision consent process separate from the NoR for the Greenway.

10 Lowering of the groundwater affecting Lake Waiwhakareke water levels

7.131 Ms France, in her evidence for the RA explained that a three-dimensional groundwater model has been developed for the area adjoining the proposed Greenway using the results of site investigations and monitoring. The model has been calibrated to the monitored groundwater levels and sensitivity checks were undertaken to check the influence of key parameters on model outcomes. The model has been peer reviewed by an independent consultant.

7.132 This model has been used to simulate the existing conditions on the site and to consider the potential effects of the Greenway during construction and for long term operation. The results of the modelling suggest some small drawdown (up to 0.15m) of groundwater levels will occur in the sandy layers beneath Lake Waiwhakareke. Groundwater and lake level monitoring carried out to date indicates that groundwater and the lake levels are not directly connected. This means that any change/ lowering in groundwater level would be expected to result in a smaller magnitude of change in lake levels. Any changes in lake levels are expected to be less than a few centimetres and would not be likely be detectable against naturally occurring changes.

7.133 Ms France recommends ongoing monitoring of groundwater and lake levels pre-, during and post – construction. These can be used if necessary, to trigger response mitigative measures such as introducing weir control to maintain lake water levels. The details of this monitoring, trigger response plans and mitigation options would be addressed as part of regional consenting and formalised in Groundwater Management Plan to be prepared at the time of consenting.

7.134 We accept the evidence of Ms France that the effects on Lake Waiwhakareke water levels due to lowering of groundwater levels caused by the Greenway are likely to be undetectable against naturally occurring changes.

7.135 We note that there is no provision in the conditions proposed by the RA for the monitoring recommended by Ms France. We consider this is appropriate as the effects of the Greenway on Lake Waiwhakareke water levels will be addressed through future WRC consent process for the Greenway.

11 Ecological Effects

Fish Passage Design

7.136 The evidence provided by Mr Miller on behalf of the RA proposes that the culverts be designed in accordance with the “hydraulic design” option of the National Fish Passage Guidelines rather than the “stream simulation” design as originally proposed in the NoR. This is on the basis that the culverts have an important stormwater attenuation function that might not be compatible with the stream simulation design.

7.137 This change has been reviewed by Mr Cameron, Principal Environmental Scientist at Stantec who agrees that fish passage can be effectively provided by the alternative hydraulic design option of the guidelines.

7.138 We accordingly find that this change is acceptable.

Black Mudfish

- 7.139 Black mudfish have recently been identified as being present within the drains near the Rotokauri drain (but not within the Rotokauri drain itself). Mr Miller states in his evidence that groundwater drawdown as a result of construction of the Greenway may result in the loss of some existing mudfish habitat within these drains.
- 7.140 In order to address this potential effect, the RA proposed a condition on the designation requiring the preparation of a MMP as included in the s42A Hearing Report addendum. The condition includes the mapping of mudfish distribution, which is partially complete, an ecological impact assessment for black mudfish, and identification of options to mitigate, offset and/or compensate for habitat loss.
- 7.141 In his evidence Mr Montgomerie on behalf of Hounsell Holdings Ltd, Rotokauri Farming No.1, Rotokauri Farming No.3 and Rotokauri Development Ltd. states that based on surveys undertaken, most of the drains on land owned by Rotokauri Development Ltd. or Kilroy are unlikely to provide habitat for black mudfish. Mr Montgomerie also stated that he supports the proposed MMP condition. Mr McNutt in his evidence suggests that this condition be amended to include as potential mitigation “holistic offsetting within the Greenway corridor”.
- 7.142 This condition has been reviewed by Mr Cameron who is supportive of this condition. Mr Cameron also notes that the level of information that will be required to be complied will assist with the regional council consenting process (for which black mudfish habitat will also require addressing). The section 42A Hearing Report Addendum does not support the inclusion suggested by Mr McNutt as mitigation measures, including the option he suggests, will remain open and do not require specific inclusion in the conditions.
- 7.143 Comments in counsel for the RA’s closing on this matter are as follows:
- Most of the drains are within private land which will be urbanised in the next 10-20 years. Accordingly, the management response to this issue requires integration across all land development within the localised catchment. The Mudfish Management Plan (MMP) must recognise that the RA cannot be wholly responsible for the management of the effects of urbanisation on the black mudfish habitat across the catchment.*
- The MMP must also recognise and provide for the optimisation of lead in times for the preparation of alternative habitat, where relocation within the catchment is deployed. Additionally, it is premature to identify preferred locations for that alternative habitat, and for that reason the RA does not support the Hounsell Holdings Ltd suggestion that explicit reference be made to locations within the Greenway corridor, to the exclusion of other locations. Other than recognising that relocation within the catchment is preferable, the MMP should remain silent on the issue of habitat location. Accordingly, an amended MMP condition is sought.*
- 7.144 The RA provided an amended MMP condition with their closing which has some changes to the initial version of the condition. These include a change to the objective, an additional requirement to identify other management plans and initiatives relating to black mudfish operating within the catchment and a revised time requirement for submission and certification.
- 7.145 We concur with the RA’s assertion that it cannot be wholly responsible for management of the effects of urbanisation on black mudfish across the catchment. We also agree it is premature to identify preferred locations for alternative habitat.

7.146 We accordingly consider the RA's requested amended condition (condition 39) to be appropriate and consider that it adequately deals with the potential effect of the Greenway construction and operation on black mudfish in the area.

Effects of Water Level Change on Marginal Wetland Habitat at Lake Rotokauri

7.147 This potential effect is noted as concern in the submissions of WDC and WRC. Mr Miller's evidence in chief for the RA provides a preliminary assessment of the potential effects of water level changes in Lake Rotokauri, particularly effects on marginal wetland vegetation. He considers that there is potential for adverse effects to occur if elevated water levels are maintained for longer durations than the existing situation (in particular loss of Raupo which is habitat for the threatened Australasian Bittern). Mr Miller states that understanding these potential effects relies on robust hydrological analysis (water level increase and duration). In his supplementary evidence Mr Miller considers, based on the updated modelling information, that the expected effects on lake margin vegetation would be within vegetation tolerance levels, however he considers that further monitoring of lake water levels and the spatial extent of Raupo should be undertaken and included in the proposed EMP.

7.148 Mr Wilson for ICM agrees in his evidence that further investigation into potential lake level changes is required to develop a more definitive understanding of what the impact may be on lake edge vegetation and the mitigation actions that may be necessary. Mr Wilson also states in his evidence that he is of the view that this matter should be considered as part of consideration of the effects on the environment of the NoR, on the basis that the developed catchment may raise lake levels for a prolonged period of time which is likely to result in ecological changes to the lake. Mr Wilson suggests a condition be placed on the designation requiring the RA to assess and appropriately manage the ecological impacts on the lakeside vegetation of Lake Rotokauri. Mr Wilson provided suggested wording including a requirement for the ecological assessment and detailed mitigation (if required) to be submitted to WDC for certification.

7.149 Mr Sharman has stated that no changes to the EMP condition are proposed on the basis that the further monitoring will inform the detailed design.

7.150 The evidence of Mr Miller and Mr Wilson has been reviewed by Mr Cameron. Mr Cameron recommends that the EMP condition should be amended to require the hydrological and ecological assessments to be refined to provide an ecological impact assessment, inform the detailed design, include a trigger to determine the need for mitigation, and include an outline of effects management options.

7.151 The view of the author of the Section 42A Hearing report addendum is that this matter is best left to the regional council consent process on the basis that the detailed design and additional modelling will provide a more definitive picture of the effects on the Lake Rotokauri margin vegetation, which will inform the mitigation required.

7.152 In summary we note Mr Miller's view that the expected effects on lake margin vegetation would be within vegetation tolerance levels. We also consider that this matter is best dealt with in the later WRC consenting process and thus there do not need to be any requirements to address this issue in NoR conditions.

Ecological Offsetting within the EMP

7.153 On behalf of Hounsell Holdings Ltd, Rotokauri Farming No.1, Rotokauri Farming No.3 and Rotokauri Development Ltd Mr Montgomerie recommended in his evidence that the EMP condition be amended to include a requirement for the EMP to include:

“Provision for future enhancement of the Greenway to provide for ecological offsetting”. Offsetting may be in relation to works completed within the Rotokauri Catchment that have a hydrological relationship with the Rotokauri Greenway”.

7.154 The Section 42A Hearing Report addendum agreed with Mr Cameron’s view that the effects of the Greenway on development land and the need for off-setting have not been sufficiently demonstrated to justify the inclusion of such a requirement.

7.155 In his supplementary evidence, Mr Sharman noted that whilst the Greenway provides an opportunity to undertake ecological restoration, the primary purpose of this from the RA’s perspective is to mitigate effects on the removal of the existing Rotokauri drain, being an effect of the Greenway itself. Mr Sharman added that it does need to be recognised that the Greenway corridor is constrained with limitations of the extent of ecological off setting that can occur within it. The designation conditions seek to manage the adverse effects of the project itself to acceptable levels and cannot also mitigate effects from wider developments within the Rotokauri growth cell.

7.156 We accept the evidence of Mr Cameron and Mr Sharman on this matter. We concur that the primary purpose of the Greenway is to mitigate the effects of removal of the Rotokauri drain it cannot be expected to mitigate effect from wider adjoining development. We accordingly have not included the condition relating to ecological offsetting proposed by Mr Montgomerie.

12 Landscape, visual and urban design effects

7.157 Evidence was provided for the RA by Mr Thomas Abbott (Landscape and Urban Design) and Mr Ben Frost (Landscape and Visual Effects). As part of developing the s42A report Stantec Senior Landscape Architect/Urban Designer Ms Kirstie Thorpe reviewed that evidence and provided a Technical Specialist Report – Landscape Visual and Urban Design Matters.

7.158 There were three submitters who raised concerns. Specifically:

- a. Mr and Mrs S Gower who sought adequate natural screening at the commencement of construction along the boundary of the designation and their property;
- b. WDC wishes to ensure the Greenway corridor access to Lake Rotokauri includes public cycleway and walkway access to the reserve and in particular the access path links into the Lake Rotokauri walkway system that WDC and the community have invested in.
- c. Hounsell Holdings Ltd Rotokauri Farming No1 and Rotokauri Farming No 3 ask whether access roads, dams and culverts are enabling works, and therefore will not be required to gain approval of any Landscape and Urban Design Plans (LUDPs).

7.159 These matters were addressed by:

- a. Mr Frost with respect to Mr and Mrs Gower’s request;
- b. Mr Abbott with respect to the WDC submission via the s42A technical advisors’ recommendations; and
- c. Mr Sharman in his evidence as it relates to the Hounsell, Rotokauri Farming No 1 and No 3 submissions and future requirements for developer consents.

- 7.160 While neither the RA nor the s42A Landscape Architect supported the request made by Mr and Mrs Gower, this request was ultimately withdrawn by the Gowers at the hearing.
- 7.160 In respect to the WDC submission the requested amendment was discussed by Ms Thorpe in her assessment and in the s42A report. Both agreed that the Greenway is *“an opportunity to provide a pathway connection which will also contribute towards addressing the lack of recreational space highlighted as an issue within the WDP.”*⁵⁸ Ms Thorpe recommended that the pathway connection in this section of the Greenway within the Waikato District be provided and a condition inserted for this purpose. Ms O’Dwyer agreed.
- 7.161 Mr Sharman stated in his evidence and at the hearing that it was anticipated that developers such as Hounsell Ltd and Rotokauri Farming No1 Ltd and Rotokauri Farming No3 Farming Ltd would undertake and complete resource consents including any relevant management plans as may be required for their specific development. He did not agree that there should be an intersection between them and the Greenway as proposed by the submitters with respect to the Greenway and private development management plans. Nor acceptance that there would be common activities in the Greenway corridor.
- 7.162 Ms O’Dwyer noted in the s42A report that it was unclear whether the access roads, dams and culverts are referring to the Greenway or private developments. Ms Thorpe noted that the LUDP does not provide for the detail presumed to facilitate the submitters requests. Nor would such works be able to proceed in advance of the LUDP certification were they included. It was therefore not proposed to accept the submitters requested change.
- 7.163 Ultimately the s42A report confirmed that with the changes proposed and based upon Ms Thorpe’s assessment it was considered by Ms O’Dwyer that the landscape, visual and urban design related effects of the Greenway would be acceptable and potentially positive and that once fully developed the Greenway will result in enhanced visual amenity of the area.
- 7.164 Based upon the evidence of the RA experts and the recommendations of the s42A report and technical advisor the Panel concurs. We accept the proposed changes recommended in the s42A report and supported by Mr Abbott and Mr Frost.

13 Heritage and cultural effects

- 7.165 Ms Keith and Mr Sharman presented evidence for the applicant on the archaeological and cultural matters affecting this application. Dr Alexy Simmons of Simmons & Associates Ltd provided an assessment of the Archaeological evidence for the s42A report.
- 7.166 HNZPT sought amendments which were agreed by Ms Keith and Dr Simmons. Ms O’Dwyer agreed as well with suggested drafting changes. Amendments were

⁵⁸ S42A report at 6.2.4

subsequently included in the updated conditions provided by the RA at the hearing which were agreed by the parties.

7.167 THAWK representatives filed a submission in support of the NoR and also presented at the hearing in support, subject to amendments to the conditions allowing for resourcing of tangata whenua to participate in the consultations contemplated and for further matters to be agreed with the RA relating to the outcomes of a CIA. Ms O'Dwyer noted in the s42A report that it was common place for the CIA to be completed prior to lodgement of the NoR to allow for any tangata whenua and cultural effects to be considered prior to confirmation of the designation or otherwise. Notwithstanding this the s42A report acknowledged that the project footprint did not traverse any sites of significance recorded in the HCC and WDP and the consultation that had occurred prior and to date. Given this Ms O'Dwyer supported the cultural conditions as proposed with the requirement that evidence be provided that both THAWK and the RA endorse the CIA when complete.

7.168 Mr Sharman provided a copy of the finalized CIA with his evidence in chief. That CIA and its recommendations was referred to by THAWK during their hearing presentation. Given the completion of the CIA and following questioning it was agreed that the conditions relating to its production would need to be amended. Those amendments were provided by way of the RA's Closing Submission which stated:

Te Haa o te whenua o Kirikiriroa (THaWK) confirmed at the hearing that proposed Condition 5 in the NOR document requiring a Cultural Impact Assessment (CIA) be undertaken is now redundant, as the CIA was completed in November 2019. THaWK agreed that Condition 5 could be deleted. The RA also confirmed that HCC and THaWK will engage regarding the implementation of the recommendations in the CIA, which will be implemented through a variety of processes, including the Greenway designation.⁵⁹

7.169 We are mindful therefore that the applicant has successfully engaged with iwi and hapu and with HNZPT. Mr Muldowney in his closing submission provided further refined conditions for the cultural section which reflected the intent to engage with THAWK on matters of import to iwi.

7.170 Both THAWK and HNZPT have given their written approval to the application. On that basis we can treat this issue as being resolved.

14 Effects on Lizards and Bats

7.171 The RA ecological expert Mr Millar identified that there was the potential for the Greenway to have negative effects on bats and lizards.

7.172 Mr. Millar noted that the long-tailed bat is a nationally critically threatened species that has been detected and identified in the Hamilton area. Further he stated in his report:

Long-tailed bats make use of stream, river corridor, wetland, hedgerow and forest edge habitat for commuting and foraging; in the Waikato landscape, are known to roost in mature indigenous and exotic trees, and show a high fidelity

⁵⁹ Requiring Authority Closing Submission at para 50

for a limited number of day roosts (Dekroutet al, 2009). This is unusual behaviour for this species, suggesting that suitable roost habitat is limited within the landscape.

No bat surveys have yet been undertaken within the Greenway corridor, and it is not known whether long-tailed bats are present. However suitable foraging and commuting habitat exists in the immediate area, and potential roost habitat including mature exotic conifers and poplars also exists along the Rotokauri drain. Given the relatively close proximity of the drain to known bat populations, we recommended that acoustic bat surveys are undertaken prior to construction of the Greenway project.⁶⁰

7.173 Contrarily, Mr. Millar noted that the highly modified landscape within which the Greenway will be constructed has little remaining high-quality lizard habitat left. On this basis Mr. Millar surmised that it is likely that indigenous lizard species in the area will be limited to copper skink (*Oligosoma aeneum*) where suitable habitat exists, and that the exotic plague skink (*Lampropholis delicata*) may also be present.⁶¹

7.174 In that instance Mr. Millar notes:

*Prior to start of construction, targeted surveys should be undertaken to search appropriate habitat such as log piles, farm rubbish piles, corrugated iron stacks, and around farm buildings to identify species which are present within the corridor.*⁶²

7.175 Referencing this approach, the s42A report writer Ms. O'Dwyer noted that mitigation proposed by the RA for potential effects on bats and lizards, were identified as part of the formulation of the EMP. Strategies included targeted surveys of bats and lizards. If surveys confirmed the presence of bats and/or lizards, then an overview of management plan requirements would be included in the EMP. This is reiterated in the Technical Review undertaken by Stantec Ecological Expert Mr. David Cameron.

7.176 In that technical review Mr. Cameron noted by way of conclusion that:

The construction of the Greenway will involve significant deepening, widening and realignment of the existing Rotokauri drain and associated loss and modification of existing habitats. The EA and AEE have identified most of the existing ecological values, and the potential effects of the Project on those values. The main exceptions are that the value of potential habitats for native bats and lizards has not yet been determined.

*A series of mitigation measures have been proposed, most of which would be included in management plans once the project design is sufficiently progressed, pursuant to proposed conditions 14, 15, 16 and 17 in Section 6 of the AEE. This includes conditions for surveys and management plans (if necessary) relating to native bats and lizards.*⁶³

7.177 No further changes were proposed to the RA's conditions with respect to the long-tailed bats and indigenous lizard species in the Technical Review and s42A report.

⁶⁰ Millar Ecological Report on behalf of the Requiring Authority at 5.1.4

⁶¹ Millar Ecological Report on behalf of the Requiring Authority at 5.1.5

⁶² Millar Ecological Report on behalf of the Requiring Authority at 5.1.5

⁶³ Stantec Technical Review Ecology at part 5

1.178 However, in his supplementary report appended to the s42A Addendum presented during hearing Mr. Cameron proposed changes to the lizard and bat conditions. The stated basis for those recommended changes were that they were intended to provide greater detail with respect to the requirements for lizard and bat surveys and management plan objectives. We have set out the proposed additions in full below:

Lizards

d. Implementation of an initial survey of indigenous lizards during the spring-summer period at least 24 months prior to the expected start of construction. The survey shall be designed and implemented by a suitably qualified and experience ecologist and shall be submitted to the Hamilton City Council Chief Executive Officer or nominee for certification.

e. Should indigenous lizards be confirmed to be present, a detailed lizard management plan shall be prepared; the objective being to avoid, remedy or mitigate the loss of individual lizards during earthworks and the localised loss of habitat features, such as log piles and old stumps. The implementation of the management plan shall begin 12 months prior to the expected start of construction and continue for the duration of the construction period.

Bats

f. Implementation of an initial survey of indigenous bats during the spring-summer period at least 24 months prior to the expected start of construction. The survey shall be designed and implemented by a suitably qualified and experience ecologist and shall be submitted to the Hamilton City Council Chief Executive Officer or nominee for certification.

g. Should indigenous bats be confirmed to be present, a detailed bat management plan shall be prepared; the objective being to avoid, remedy or mitigate the risk of injury and/or mortality during tree clearance, the loss of potential roost habitat, and medium term loss of commuting and foraging habitat. The implementation of the management plan shall begin 12 months prior to the expected start of constructed and continue for the duration of the construction period.

7.179 These amendments were supported by the s42A report writer during her hearing presentation.

7.180 In his Closing Submission, legal counsel Mr. Muldowney provided the RA response to the proposed amendments. Specifically, the requiring Authority was of the view that:

“..the timeframes included within the conditions are not providing any positive ecological value. In both situations there is little advantage undertaking survey work two years prior to construction commencing, as the best data to gather for both species is in the summer preceding clearance of habitat where survey information is more likely to reflect species present and habitat occupied at the time of clearance.”⁶⁴

7.181 Nor did Legal Counsel (and therefore the RA) agree with the proposed lead in time for the implementation of the management plan or the inclusion of the phrase “avoid, remedy or mitigate the loss of” within the objective of the management plan. This

⁶⁴ Muldowney Closing Submission at para 46

reflected the likelihood that the removal of habitat and loss of lizards through earthworks, and removal of habitat and loss of bats through tree clearance may be impossible to avoid. The RA sought the specific removal of the word 'avoid' therefore from the objective.

7.182 The Panel acknowledges that the experts have both accepted the potential existence of the identified species of bats and lizards in the vicinity of the Greenway and of the need for survey data to determine the reality of the situation. Albeit with differing perspectives on specific detail.

7.183 The Panel is mindful that while the two likely species of lizards are not threatened species, as identified in Mr. Millar's technical report for the RA, the long-tailed bat is Nationally Critical. This is the highest threat classification before a species is considered extinct. We note too Mr. Millar's comment in his report referred to above with respect to the current drain system, potential habitat and proximity to existing bat populations and the limited suitability of roost habitat potentially in the area. Roost habitat that the RA proposes to remove without specific requirement to consider avoidance and which it seeks to survey shortly before the roost habitat has been removed.

7.184 While the Panel can accept that perhaps survey timeframes as proposed by the RA would be appropriate for the identified lizard species it is of the view that at least with respect to the long-tailed bats a more precautionary approach as identified by the Territorial Authority is warranted. If as stated by the RA expert there is limited roosting habitat for the bats in the area then it would be a reasonable precaution to assess well in advance of removal of further existing trees and other plants, the reality and extent of any bat habitat (including roost and foraging) provided within the proposed corridor.

7.185 If there is a long-tailed bat population within the designation area it is also reasonable in the Panel's view that the full effects hierarchy of considerations are available and considered prior to construction and any habitat removal. This would include the highest of those management options in avoidance. The inclusion of avoidance does not prevent the lesser options of remedy and mitigate ultimately being used. However, the Panel does not consider that the removal of the avoidance option at this early stage reasonable with respect to the removal of habitat or any other effects in the case of the nationally critical long-tailed bat species. Particularly so prior to the collection of survey data determining whether a long-tailed bat population is there and if so to what extent its habitat if any is within the designation area and Greenway corridor.

7.186 The Panel therefore:

- a. Accept the RA's recommended conditions attached to the Legal Counsel's Closing Submission with respect to the assessment of the lizard population and the effects of the Greenway; and
- b. Accept the Territorial Authority's recommended amendments with respect to the long-tailed bats as set out in the conditions and Supplementary Technical Ecology report attached to the s42A Addendum.

15 Positive Effects

7.187 The RA and the s42A reporting team acknowledged that this proposal is a key part of enabling the urbanisation of the Rotokauri growth cell and all future urban development will contribute to as well as benefit from the construction of a stormwater drainage corridor. The Panel affirms that the greenway will serve to integrate public and private (stormwater) infrastructure and development generally as to promote an environmentally sustainable pattern of urban development.

Sections 168A & 171 Statutory Considerations

Relevant provisions of various statutory documents

7.188 There is little if any divergence of opinion regarding the relevant statutory planning documents and their assessment between the RA planner Mr Sharman and the s42A reporting planner Ms O'Dwyer. Section 6.3 of Ms O'Dwyer's report canvasses those documents and this assessment includes:

- Vision and Strategy for the Waikato River;
- National Policy Statement on Urban Development Capacity;
- National Policy Statement for Freshwater Management;
- Waikato Regional Policy Statement;
- Hamilton Operative District Plan;
- Waikato Operative District Plan; and
- Proposed Waikato District Plan.

7.189 Mr Sharman also considered Tai Tumu Pari Tai Ao – Waikato -Tainui Environmental Plan while Ms O'Dwyer considered this Plan under the header "Other Matter" (and section 6.6.2 of her report refers).

7.190 The Assessments are thorough and the Panel finds from these evaluations that the NoR is consistent with these provisions as to satisfy sections 168A(3)(a) and 171(1)(a) of the RMA.

Consideration of alternatives

7.191 Ms O'Dwyer the s42A reporting planner concurs with the RA's assessment that there has been adequate consideration of alternative sites and a route for the works, and that alternative methods for undertaking the work that is reflected in the design and construction process adopted in the evolution of the project.

7.192 Mr Sharman details these considerations in his paragraphs 48 and 49 of his EIC to describe the influence of the Rotokauri Structure Plan and the ICMP as key documents that informed on these "alternative" considerations.

7.193 The Panel accepts that there has been adequate consideration of the alternatives in respect of sections 168a(3)(b) and 171(1)(b) of the RMA.

The 'reasonable necessity' test for the project to achieve the RA's objectives

7.194 The consideration of 'necessity' is in the context of whether the work and the designation are reasonably necessary for achieving the objective of the RA.

7.195 Mr Sharman details the key considerations in paragraph 50 of his EIC under eleven points recorded as a)-k). The Panel records that Ms O'Dwyer accepts (in section 6.5

of her report) that the works and designation are reasonably necessary to construct the stormwater management corridor as this will enable the urban development to proceed as envisaged by the RSP and the zoning provisions of the City Plan.

- 7.196 Based on this assessment, the Panel accepts that the designation and public work are reasonably necessary and therefore satisfy sections 168A(3)(c) and section 171(1)(c) of the RMA.

Any relevant 'Other Matters'

- 7.197 The ICMP and CSDC can both be considered 'other matters', and their relevance to the NoR has been extensively discussed. Their overall 'strategic' guidance is accepted by the Panel, and has been affirmed in the previous sections to this Report.

8 RMA PART 2 ASSESSMENT

- 8.1 Section 168A RMA requires consideration against all matters set out in Part 2 of the RMA.
- 8.2 These matters are considered in paragraph 102 of Mr Sharman's EIC and section 3.3 of the NoR and section 6.7 of the s42A report.

Section 5 – Purpose of the RMA

- 8.3 The purpose of the RMA is to promote the sustainable management of natural and physical resources. Sustainable management is defined in section 5 of the RMA as:

'managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while —
a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.'

- 8.4 The Panel concurs with Ms O'Dwyer that the greenway will serve to manage stormwater from the urban area associated with the development of Rotokauri in a sustainable manner and also serve to safeguard the life supporting capacity of the modified ecosystems by mitigating adverse environmental effects described above. The designation therefore will provide a strategic piece of urban infrastructure so overall, the RMA's purpose is therefore promoted.

Section 6 – Matters of National Importance

- 8.5 Section 6 identifies matters of national importance that all persons exercising functions and powers under the RMA must recognise and provide for.
- 8.6 Section 6 states:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) *the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- (f) *the protection of historic heritage from inappropriate subdivision, use, and development:*
- (g) *the protection of protected customary rights;*
- (h) *the management of significant risk from natural hazards*

8.7 With respect to this NoR, the section 6 matters of relevance are subsections (a), (c), (d), (e) and (h).

8.8 The Panel has read and considered the extensive technical assessments and peer reviews, and the suite of Designation Conditions proposed and with our amendments, to conclude that overall, the NoR to be consistent with the section 6 matters of national importance of the RMA.

Section 7 – Other Matters

8.9 Section 7 of the RMA sets out a number of “other matters” to which persons exercising functions and powers under the RMA shall have particular regard to.

8.10 Section 7 states:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

a) kaitiakitanga:

(aa) the ethic of stewardship:

(b) the efficient use and development of natural and physical resources:

(ba) the efficiency of the end use of energy:

(c) the maintenance and enhancement of amenity values:

(d) intrinsic values of ecosystems:

(f) maintenance and enhancement of the quality of the environment:

(g) any finite characteristics of natural and physical resources:

(h) the protection of the habitat of trout and salmon:

(i) the effects of climate change:

(j) the benefits to be derived from the use and development of renewable energy.

8.11 The section 7 matters directly relevant to this application are: (a), (aa), (b), (c), (d) (f) (g) and (i). The Panel finds that the proposal does provide for the general enhancement of the overall quality of this environment as it transitions from rural/pastoral activities to urban activities.

Section 8 – Treaty of Waitangi

8.12 HCC as RA has undertaken consultation with iwi in good faith and in a manner that reflects the scale and significance of the proposal. Iwi representatives have not identified any significant issues with the proposal with respect to their relationship with ancestral lands, waahi tapu and the exercise of kaitiakitanga. Conditions to the

designation have been agreed with THAWK that reassures the Panel that the NoR and proposed works will be consistent with the intent of section 8 of the RMA.

- 8.13 The Panel therefore affirms that the NoR to be consistent with Part 2 of the RMA. Further, the purpose of the RMA is better served by the NoR being confirmed subject to the Conditions set out in our Schedule 1.

9 OVERALL EVALUATION UNDER SECTIONS 168 AND 171 RMA

- 9.1 The evidence presented together with the Panel's enquiry as to their merits has confirmed that there can be a recommendation made to confirm the respective NoRs sought by the RA.
- 9.2 On the basis that the conditions as attached are accepted, with the amended conditions as set out below, then the designations within the respective territorial authority jurisdictions can be confirmed given that:
- The purpose of the RMA can be achieved and that is to promote sustainable management;
 - The environmental effects of the proposal are acceptable and are able to be avoided, remedied or mitigated;
 - The proposal is consistent with the range of statutory planning documents;
 - Adequate consideration has been demonstrated of alternative sites, routes or methods for undertaking the public works; and
 - The Proposal is reasonably necessary to achieve the objectives of the RA.

Conditions to the Designations

- 9.3 An extensive set of conditions were finally settled on by the RA and provided as part of the Right-of-Reply. We have already made reference to many proposed conditions in our assessments. The suite of Conditions is framed under the subheadings of:
- CIA;
 - Discovery of Archaeological Finds or Culturally Significant Finds;
 - Management Plans General;
 - Construction Environmental Management Plan;
 - Construction Air Quality Management Plan;
 - Construction Noise and Vibration Management Plan;
 - Erosion and Sediment Control Plan;
 - EMP;
 - Landscape and Urban Design;
 - Detailed Design Matters;
 - Geotechnical Effects Management Plan;
 - Slope Stability; and
 - Waikato Regional Consents.
- 9.4 All Management Plans are required to be certified by the Councils, with one exception, and that is the Erosion and Sediment Control Plan where the conditions (35, 39) require its provision to the Council for information only.

As discussed within this decision there are amendments the Panel has recommended be made to the conditions (as proposed by the RA). They are:

- a. The inclusion of revised conditions for the management of bats; and
- b. The inclusion of a requirement for weed management.

Those changes are set out in the final set of conditions attached to this decision.

Designation Purpose and Lapse Period

- 9.5 The Panel affirms the ten-year lapse period sought is both appropriate and suitable in the context of the urbanisation of the Rotokauri growth cell by the RA aligned as it is with the most recent confirmed funding programme outlined in the Hamilton City Council 2018-2028 LTP.

10 RECOMMENDATION 1 TO HAMILTON CITY COUNCIL AS TERRITORIAL AUTHORITY

- 10.1 Having regard to all the foregoing matters, the Panel concludes that the NoR is consistent with the purpose and principles of the Resource Management Act 1991.
- 10.2 Acting under delegated authority from the **Hamilton City Council** and pursuant to Section 168A of the Resource Management Act 1991, the Panel **recommends** to the Hamilton City Council **as Territorial Authority** that the Notice of Requirement for a new designation for the Rotokauri Greenway be confirmed, SUBJECT to the Designation Conditions applying as set out in **Schedule 1** to this Recommendation Report.

11 RECOMMENDATION 2 TO HAMILTON CITY COUNCIL AS REQUIRING AUTHORITY

- 11.1 Having regard to all the foregoing matters, the Panel concludes that the NoR is consistent with the purpose and principles of the Resource Management Act 1991.
- 11.2 Acting under delegated authority from the **Waikato District Council** and pursuant to Sections 168 and 171 of the Resource Management Act 1991, the Panel **recommends** to the **Hamilton City Council as Requiring Authority** that the Notice of Requirement for a new designation for the Rotokauri Greenway be confirmed SUBJECT to the Designation Conditions applying as set out in **Schedule 1** to this Decision and Recommendation Report.

Reasons

- 11.3 In both cases, the **Reasons** in support of our Recommendations in Sections 10 and 11 are detailed in Section 7 (Resource Management Considerations), Section 8 (Part 2 RMA Matters), and Section 9 (Overall Evaluation under Sections 168 and 171 RMA).



Murray Kivell.

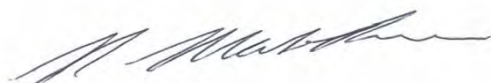
Hearings Commissioner (Chair)

Date: 27 March 2020



Loretta Lovell

Commissioner



Nigel Mark-Brown

Commissioner

Schedule 1 - Conditions to the Designations

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