Report and Recommendation of Mr Les Simmons, Hearings Commissioner. The Notice of Requirement by New Zealand Transport Agency for an Alteration to an Existing Designation was heard in the Council Chamber on Friday 25 November 2010

The Hearings Commissioner (‘the Commissioner’) heard the Notice of Requirement for an Alteration to an Existing Designation lodged by New Zealand Transport Agency (NZTA) relating to ‘DTNZ 1’: State Highway 1, to provide four lanes from Selwyn Avenue to Wilson Avenue, Whangarei, including the related Outline Plan of Works. The Notice, made in accordance with the Resource Management Act 1991 (‘the Act’) was lodged with Whangarei District Council and referenced as RQ1000002 (P109352).

Present

Hearings Commissioner
Les Simmons

Applicant
New Zealand Transport Agency
Ross Holland – Planner, AECOM
Rachel Foster – Acoustic Engineer, AECOM
Geoffrey Stevens Gibson – Traffic Engineer, Northern Civil Consulting Engineers
Simon Cocker – Landscape Architect, Simon Cocker Landscape Architect
Howard Marshall – Whangarei Corridor Manager, NZTA
Gerald Lanning – Counsel for Applicant, Simpson Grierson
Sebastian Reed – NZTA

Consent Authority
Whangarei District Council
Dylan Pope – Consultant Planner, O’Connor Planning Consultants
Wes Edwards – Traffic Engineer, Wes Edwards Traffic Engineers
Nevil Hegley – Acoustic Engineer, Hegley Acoustic Consultants
David Snowden – Group Manager, Infrastructure and Services
James McLean – Landscape Architect, Parks
John Smith – Consultant Engineer
Alister Hartstone – Manager, Resource Consents,

Submitters
Aaron Edwards
Vincent Cocurullo

In attendance
Edwina Dugmore, Hearings Administrator

1 Description of the proposal activity

An application for a Notice of Requirement under s181 of the RMA was received by the Whangarei District Council ("WDC") to alter an existing designation (DTNZ1) for the purposes of widening State Highway 1 for the use as a road from 140m north of Selwyn Ave to 20 metres south of Wilson Ave, Whangarei.

This proposed alteration to the designation will have a total length of 670 metres. The legal description and property addresses which are subject to the alteration are set out in Appendix A of the Application Report prepared by AECOM.
The NZTA has also sought as part of the application to include an Outline Plan of Works under S176A of the RMA.

The application forms part of a wider programme of road widening and improvement works along the SH1 corridor through Whangarei. These include the Kamo Bypass - Kamo Road to Kensington Ave which has been completed, with Kamo Bypass Stage 2 approved and with work now underway. The SH1 / SH14 Intersection Improvements south of the subject designation are currently proceeding through an alteration to designation process with a hearing yet to be held in relation to this part of the wider project.

The proposed alteration to the designation will provide a four lane road with separate walking and cycling facilities. It is estimated that the total land area required for the altered designation is 21,796m².

The proposed alteration to the designation will affect 56 separate titles of land. In summary the application includes the following works:

- Widening SH1 to four lanes (two in each direction),
- Providing footpaths,
- Re-establishment of private property access including the provision of new alternative access arrangements for some properties where required.
- Establishing right turn bays and left turn slip lanes.
- The provision of new road pavement with an additional impervious area of 3000m².
- Replacement of existing chip seal with an asphaltic concrete surface.
- Establishing a central painted flush median.
- Enhanced cyclist provisions by widening shoulders up to 1.5m.
- Provision of footpaths and upgraded crossings at intersections. This includes a new footpath along the Mander Park frontage of highway. Pedestrian facilities will cater for the accessibility needs of people with disabilities.
- Earthworks over an area of approximately 6000m² with a volume of 2000m³ consisting of 500m³ cut to fill and 1500m³ cut to waste.
- New kerb and channel stormwater drainage, catchpits and stormwater pipes. This section of SH1 discharges into 6 existing piped and open channel stormwater catchments, with the majority discharging into the Waiaohia Stream via 3 existing stormwater catchments.
- New headwalls to accommodate the widening on both sides of the unnamed tributary of Waiaorohia Stream at the northern end of the works and the Wharowharo Stream located at the southern extent of the works.
- Removal of 11 mature trees within Mander Park and works within the drip line of 1 other tree within Mander Park. New mitigation planting within Mander Park.
- New landscaping and planting within the designation on land purchased by NZTA.
- Removal of fencing and vegetation within private land to be incorporated in the designation and the reinstatement of driveways, fencing and new planting on private properties.
- Service relocation including undergrounding of power lines.
- Upgrading traffic signals.
- 240m of retaining walls ranging in height from 0.2m – 0.7m along property frontages.
- Site offices for onsite contract administration facilities on Lot 12 DP 27129 (8 Selwyn Ave), which has been purchased by NZTA. The site offices will consist of two porta-cabins (each 6m x 3m) and two car parking spaces.

The NZTA sought a lapse period of 10 years under section 184(1)(c). The primary reason for this is to ensure there is sufficient time available to allow for potential delays in the funding programme which could delay the construction start time.

It is noted that the NZTA has obtained a number of land use consents, discharge and water permits from the Northland Regional Council, which relate to all of the regional consents required to undertake the project.

2 Statutory Considerations and Procedures

The NZTA is a requiring authority in terms of section 167 of the Resource Management Act (RMA).

In terms of section 181 of the RMA a requiring authority (in this instance the NZTA) may give notice to a territorial authority of its requirement to alter a designation. Section 181 is set out below:

_S181 Alteration of Designation_

(1) A requiring authority that is responsible for a designation may at any time give notice to the territorial authority of its requirement to alter the designation.

(2) Subject to subsection (3), sections 168 to 179 shall, with all necessary modifications, apply to a requirement referred to in subsection (1) as if it were a requirement for a new designation.

Subsection 3 of Section 181 does not apply because the written notice of the proposed designation has not been given by every owner or occupier of the land directly affected; and it has been considered that this involves a more than minor change to the boundaries of the designation.

Accordingly, the notice of requirement is required to be assessed under S181(2) of the RMA, and sections 168-179 shall apply.

Section 171 of the RMA (Recommendation by a territorial authority) specifically details matters to be taken into account where the NOR is being made by a requiring authority (in this instance the NZTA). Section 171 states:

(1A) when considering a requirement and any submission received, a territorial authority must not have regard to trade competition or the effects of trade competition.

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

(a) Any relevant provisions of

(i) A national policy statement;

(ii) A New Zealand coastal policy statement;

(iii) regional policy statement or proposed regional policy statement:

(iv) a plan or proposed plan; and
(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
   (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
   (ii) it is likely that the work will have a significant adverse effect on the environment; and

(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and

(d) any other matter the territorial authority considers reasonably necessary in order to make a decision on the requirement.

(2) The territorial authority may decide to—
   (a) confirm the requirement:
   (b) modify the requirement:
   (c) impose conditions:
   (d) withdraw the requirement

(3) The territorial authority must give reasons for its recommendation under subsection (2).

In addition, the applicant has sought to include an Outline Plan of Works and that it is their intention not to submit an Outline Plan of Works prior to the construction of the proposed works. Therefore the application is required to be assessed in accordance with Section 176A (3) of the RMA.

Section 176A(2)(b) states:

An outline plan need not be submitted to the territorial authority if –

(b) the details of the propose public work, project, or work, as referred to in subsection (3), are incorporated into the designation;

Section 176A(3) states:

An outline plan must show –

(a) The height, shape, and bulk of the public work, project or work; and
(b) The location of the site of the public work, project or work; and
(c) The likely finished contour of the site; and
(d) The vehicular access, circulation, and the provision for parking; and
(e) The landscaping proposed; and
(f) Any other matters to avoid, remedy, or mitigate any adverse effects on the environment.

Section 171(1) requires the NZTA to establish that the work meets the purpose of the Act under Part 2, particularly in terms of section 5 that outlines the purpose of the Act as to “promote the sustainable management of natural and physical resources”. Sustainable management means “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 avoiding, remedying, or mitigating any adverse effects of activities on the environment”.

Sections 172 and 173 of the Act specify the processes that apply following NZTA’s receipt of the Council’s recommendation. NZTA has 30 working days to advise the Council whether it accepts or rejects the recommendation in whole or in part, and give reasons for its decision if it rejects the recommendation in whole or in part. The Council is then required to serve on all submitters a copy of the decision and publicly notify it within 15 working days. The NZTA decision is then open to appeal under section 174 of the Act from the Council and all submitters.

A designation (including an alteration to) lapses on the expiry of five years after the date on which it is included in the district plan unless the designation is given effect to before the end of the period, the Council fixes a longer period in accordance with section 184(1)(b) of the Act, or the designation specified a different period when incorporated within the plan. The applicant has requested a 10 year lapse period in this instance.

In terms of Section 176(1) (Effect of designation) of the Act, a designation has three main purposes, as summarised in Quay Property Management Ltd v Transit NZ W28/2000:

1. It removes any requirement to obtain resource consents under the district plan;
2. It gives the requiring authority consent to do anything in accordance with the designation;
3. It prevents any use of the land subject to the designation that would prevent or hinder the work without written permission of the requiring authority. (Quay Property Management Ltd v Transit NZ W28/2000.)

The requiring authority is therefore able to undertake activities on land it has designated, giving primacy to the designation over the district plan and not requiring it to obtain resource consents for works within the scope of a designation. In addition, ‘protection’ is given to the designated land, in favour of the requiring authority, with any person wishing to do anything on designated land that might prevent or hinder the work needing to first obtain written consent from the requiring authority.

Section 176(2) states: ‘The provisions of a [district] plan [or proposed district plan] shall apply in relation to any land that is subject to a designation only to the extent that the land is used for a purpose other than the designated purpose’.

3 Notification and submissions received

The application was publicly notified in the ‘Northern Advocate’ on 14 August 2010, with the period for receiving submissions closing on 10 September 2010. Approximately 307 persons or bodies were individually notified, including owners/occupiers of properties bordering the route / highway corridor.

A total of 8 submissions were received, 5 of which were within the statutory timeframe. The remaining 3 submissions were late submissions which were accepted with the agreement of the NZTA. The submission by Mira Norris was withdrawn, as was the Vector Energy submissions leaving 6 submissions.

Melva and Allan Forest (Avenue Heights Motel) – Neutral

- Concerned about:
  - The removal of trees on Mander Park, a cycle lane on SH1, dust and noise.
  - Potential detours of traffic resulting in a disruption to their business.
  - Construction work in the evening (8pm-7am).
The requirement for access to their motel at all times.

- Sought the following recommendations:
  - Retain trees on Mander Park.
  - Do not locate cycle ways on the highway.
  - Have traffic flow in both directions at all times.
  - Ensure works are carried out between 7am-8pm only.

David and Heather Cox (Lodge Bordeaux, 361 Western Hills Drive) – Neutral

- Concerned about:
  - Dust and dirt, noise – particularly at night, removal of trees in Mander Park and impact of traffic diversions and roadworks.
  - Noise and dirt would impact their guests.
- Removal of trees is unjustified and unnecessary.
- Traffic holdups cased by machinery may cause disruptions.
- Sought the following recommendations:
  - Require contractors to refrain from using beepers on machinery.
  - Contractors to carry out work in a timely fashion to minimise disturbance.
  - Working should be carried out until midnight only and not before 6am.

Aaron Edwards (21 Paratai Crescent) – Oppose

- Opposes the removal of 11 trees within Mander Park and the reduction in the size of Mander Park.
- Considers the project will be costly and will have adverse effects on residents.
- Considers that the proposed capacity increase is based on incorrect traffic growth projections.

New Zealand Historic Places Trust (NZHPT) – Neutral

- NZHPT do not consider that historic heritage is at significant risk from the project.
- NZHPT has recommended that all earthworks proceed under an accident discovery protocol.

BKs Pohutukawa Lodge (362 Western Hills Drive) – Support

- Concerns about hours of construction, loss of business and being without power and water.
- Consider business will be affected by the construction of the road, access and utilities during construction.
- Sought the following recommendations / additional clarification:
  - Gradient of drive at construction
Finished height of road
Layout of road
How much land is required?
Signage.

Vincent PD Cocurullo (40 Otaika Road) – Opposes

- Mander Park was gifted to Whangarei City for recreation land and should not be used for traffic and should be protected.
- Sought that the highway be moved / realigned so the Mander Park and trees within the park are retained.

4 Procedural matters

The hearing commenced at 9.00am. An addendum to the Reporting Planners Hearing Report relating to acoustic conditions was tabled at commencement of the hearing. Mr Dylan Pope also noted that the submission of Mira Norris had been formally withdrawn.

The late submissions from Melva and Allan Forest, David and Heather Cox and BKs Pohutukawa Lodge were accepted with the agreement of the NZTA.

Following the presentation of Ms Rachel Foster’s evidence, it was requested that Ms Rachel Foster and Mr Nevil Hegley undertake a review of the draft conditions to establish points of agreement with regard to conditions and report back to the Commissioner after the lunch adjournment.

The Commissioner determined that the NZTA would provide a list of revised conditions by 4 pm Monday 29 November 2010. These conditions were to be reviewed by Council Officers prior to being forwarded to the Commissioner on Thursday 2 December 2010.

The hearing was adjourned at 2.45 pm on Friday 25 November and formally closed on Friday 3 December 2010.

5 Evidence heard

The commissioner heard evidence from the requiring authority, expert witnesses and submitters. A response was then provided by Council’s reporting officers and independent experts. The following is a summary of the evidence heard at the hearing.

5.1 Applicant’s evidence

Mr Gerald Lanning tabled legal submissions including the following:
- Introduction
- The project
- Evidence
- Statutory considerations
- Whether the designation is reasonably necessary
- Whether adequate consideration has been given to alternative sites, routes or methods
- Relevant planning documents
- Effects on the environment
- Positive effects
- ‘Property’ effects
Mr Howard Marshall, Applicant

Mr Howard Marshall tabled evidence as follows:

- Introduction
- Summary of evidence
- The NZTA’s objectives (Introduction to the NZTA)
- Overview of the Selwyn-Wilson upgrade project
- Relevant statutory and non-statutory documents
- New Zealand Transport strategy 2008
- Government policy statement on land transport funding
- Strategic significance of the state highway network
- Northland regional land transport strategy
- Issues raised by submitters
- Officer’s reports
- Conclusion

During right of reply Mr Marshall advised that whilst it is intended for works to commence early in 2011 there is no guarantee for funding of the project and this is the primary reason why a 10 year lapse date has been requested.

Mr Steve Gibson, Traffic Engineer

Mr Steve Gibson (Geoffrey Gibson) tabled evidence presenting the following matters:

- Introduction
- Summary of evidence
- Overview/description of the project
- Project development
- Project benefits
- Managing the effects of the works (Mander Park, property entrance improvements, earthworks, dust, noise)
- Issues raised by submitters (Mander Park & traffic growth)
- Officers’ reports
- Conclusion

Seven plans showing proposed intersection improvements and a graph showing traffic trend information from 1994 to 2010 were provided.

During his right of reply Mr Gibson clarified that the left hand slip lane was required due to the need for 2 right turn lanes (not because of the numbers turning left). He also pointed out that NZTA do not want to encourage cyclists on a main highway and therefore do not want to include specifically demarcated cycle lanes on state highway one. Mr Gibson noted that there were other cycleways in Whangarei for cyclists to use or where cycling should be encouraged.
Mr Simon Cocker, Landscape Architect

Mr Simon Cocker provided evidence:

- Introduction
- Scope of evidence
- The existing environment (the road corridor, Mander Park, the proposal)
- Assessment of effects
- Dwelling adjacent to the State Highway 1 corridor
- Dwellings in the vicinity of the State Highway 1 corridor
- Users of Mander Park
- Pedestrians
- Users of the road
- Submissions
- Council planner’s report
- Conclusion

Photographs (8), draft landscaping plans showing ‘pocket parks’ and mitigation plan for Mander Park were provided. Mr Cocker considered that condition 16 be amended to remove any reference to landscaping outside of Mander Park, as this condition should address landscaping/mitigation within Mander Park only.

Ms Rachel Foster, Acoustic Engineer

Ms Rachel Foster tabled the following evidence:

- Introduction
- Scope of evidence
- Operational traffic noise & operational traffic vibration
- Construction noise & construction vibration
- Overview and assessment of submissions
- Overview and assessment of the council officer’s report
- Conclusion

Ms Rachel Foster recommended construction noise conditions, operational noise conditions, construction management plan, noise & vibration management plan were provided. These conditions were appended to her evidence. The amended conditions had not been circulated to Council Officers and these conditions were different to those referenced in Mr Dylan Pope’s Addendum which was circulated at the commencement of the Hearing.

During right of reply Mr Foster advised that the LAeq night time decibel level is already above 55 decibels. The LAeq noise level used was disputed by Mr. Nevil Hegley, who queried whether this was the most appropriate noise level to use and that the LA95 should be considered.

Mr Ross Holland Planner

Mr Ross Holland gave evidence on the following matters:

- Introduction
- Scope of evidence
- Summary of NZTA’s Notice of Requirement
- Overview of the project development including the assessment of alternatives
5.2 Submitters’ evidence

Mr Aaron Edwards

Mr Aaron Edwards tabled evidence expressing his dissatisfaction with the lack of publicity surrounding the process. It was his opinion that many others missed out on having their say as they were not informed that consultation was in progress. Mr Edwards advised that his opposition is correctly summarised in the agenda item. He opposes the removal of 11 historic trees within Mander Park and also the reduction in the size of Mander Park as the park is an important amenity of the neighbourhood and also for travellers.

The trees are the finest specimens and the park was gifted to the people of Whangarei. Mr Edwards believes the process was not well enough publicised to make the public aware of what would be lost. Mr Edwards believes the benefit/cost ratio is not good and that no real value to the community is being achieved. The proposed capacity increase is based on an unrealistic traffic growth pattern. Mr Edwards referred to reports into oil prices and their effects on traffic growth. Mr Edwards quoted NZTA research report 357 – Managing transport challenges when oil prices rise states: ‘in the average fuel price scenario total VKT is expected to remain below 2007 levels until circa 2016 when economic growth, income growth and population growth are expected to become dominant’.

Mr Edwards pointed out that ‘this conclusion is based on the assumption that economic growth is unaffected by oil prices and therefore likely to overestimate actual travel demands.’ The first part of the executive summary was included with his evidence along with Parliamentary Library Research Paper October 2010. Mr Edwards believes ‘when a supply crunch forces oil prices beyond a certain point, the cost of oil forces consumer and businesses to cut their spending, inducing a recession’.

The recession destroys demand for oil allowing prices to drop. This indicates that the likely scenario is alternating suppression of traffic volumes due to recession. Mr Edwards expects that the pattern of late 1970’s and early 1980’s is likely to be replicated this decade. Mr Edwards requests a designated space for cyclists of 1.5 metres and marked as a cycle lane to give legal protection from motor vehicles encroaching on this space. Mr Edwards made it clear that he does not wish this alteration to designation to proceed. However, if it were to proceed he would prefer ‘the no Central Avenue – SH1 left slip lane’ and either a ‘major shift’ or ‘minor shift’ option be constructed to allow the historic trees and the full endowment of Mander Park to be preserved for the community. Mr Edwards emphasised that the trees should be retained because of their historical value and how they came to be there.

There is never full mitigation for things of historical value. Mr Edwards pointed out that traffic congestion is at peak times. Traffic Counts 2003-2009 graph for Western Hill Drive (south of Selwyn Avenue) were also provided as well as traffic volumes as shown in the notice of requirement.

Mr Vincent Cocurullo

Mr Vincent Cocurullo advised that he has an engineering background and is currently working as a computer technician. Mr Cocurullo was adamant that he would like the alteration to designation to be rejected or at the very least, a proper design undertaken along state highway 1, without touching Mander Park. He advised that he has discussed this issue with many residents who have felt that their concerns will not be given any weight. Mr Cocurullo tabled evidence which included the following:

- Application by NZTA
- History of Mander Park (Francis Mander & Jane Mander) (including photograph showing location)
- Children’s playground
- Traffic flow designs (including examples from Toowoomba, Queensland)
5.3 Council’s reporting officer’s report and evidence

Mr Dylan Pope’s Hearing Report having been circulated earlier was taken as read. He tabled an addendum at the commencement of the hearing to provide information which was not available at the time of writing his report. This was namely to provide an update in respect of noise conditions and confirmation that remaining noise and vibration issues have now been satisfactorily resolved and the Notice of Requirement can now be confirmed, subject to the revised conditions being imposed on the designation. It is noted that this did not include reference to the amended noise conditions appended to Ms Rachel Foster’s Evidence.

Mr Pope agreed with Mr Lanning’s revised wording in condition 19 that: ‘The approval in writing of all the above Management Plans referred to in condition 18 above will be deemed to be a waiver of the requirement for an Outline Plan under section 176A(2)(c) of the RMA.’

Mr Pope and Mr Snowdon also agreed that condition 16 could be amended so that this removed reference to ‘(Sheet 1) NZTA Properties Plant Schedule – Corner Selwyn/Western Hills Drive “Syagrus romanzoffiana” be altered to read “Syagrus romanzoffiana/Sophora tetrapetra or similar”. This was because this condition was intended to relate to landscaping that was within Mander Park only. Mr Snowdon noted that where condition 16 makes reference to ‘(Sheet 4) Mander Park Semi Mature Tree Schedule to include one (1) 6m Quercus robur and to exclude one (1) Liquidambar styraciflua’ that this needs to be included in condition 16.

Mr Hegley provided the Commissioner with clarification in respect of acoustic matters. There were a number of suggested changes to the noise conditions drafted by Ms Foster including the design year to be based on a minimum of 10 years after construction of the works. Nevil Hegley also advised that in his opinion the NZTA should upgrade the residential properties which they own before resale in accordance with their own standards. Mr Hegley agreed that the best approach would be for him to review the draft conditions and provide comments when these are circulated by the applicant.

Mr Edwards’ and Mr Pope’s recommendations remained unchanged having heard the evidence presented.

5.4 Right of Reply

Mr Lanning advised that he would draw up an updated set of conditions which will include noise matters. In response to the issue raised regarding upgrading / provision of ventilation of NZTA properties, Mr Lanning advised that if NZTA chooses not to upgrade the properties that they already own then this would be reflected in the market value of the property. This would be no different than if other property owners choose not to accept an upgrade in accordance with the drafted noise conditions.

In response to matters raised by submitters regarding notification, Mr Lanning advised that the Notice of Requirement was notified in accordance with the Resource Management Act and included many surrounding properties. Public meetings, direct consultation and discussions were also held between the applicant and the community. His experience is that people do not usually think it a waste of time expressing their concerns and some have already been compensated for the loss of land.

Mr Lanning pointed out that Mander Park is not a quiet place, as it is next to a highway and that requesting a ‘better proposal’ is a classic claim from submitters. Mr Lanning advised that Mr Gibson looked at a number of alternative options. The ‘best option’ is a balancing act for NZTA including funding. Mr Lanning noted that the applicant does not necessarily need to select the best option, but rather that adequate consideration has been given to other alternatives.

Mr Lanning submitted with regard to Mander Park that the adverse effects have been appropriately mitigated or are sufficiently outweighed by the positive effects. Mr Lanning considered that Mr Cocurullo’s Engineering Qualifications cannot be taken into account in capacity as expert evidence, as he is making his own submission rather than providing expert engineering evidence.

Mr Lanning advised that NZTA would not oppose something being erected to acknowledge the Mander Parks history, but it is not for the NZTA to suggest without knowing what the iwi/community may want. The suggestion that seeds or cuttings be taken from the heritage trees to be removed, may not realistically fit in
with the timeframe. Mr Lanning agreed to the provision of revised conditions by 4pm on Monday 29 November 2010.

6 Principal issues

The principal issues in contention were:

a  Issue 1 – The effects upon Mander Park and the extent to which alternative proposals could be possible to reduce any impacts on Mander Park.

b  Issue 2 – Whether the designation is reasonably necessary.

c  Issue 3 – Whether adequate consideration has been given to alternative routes or methods.

d  Issue 4 – Whether the designation is consistent with the relevant planning documents.

e  Issue 5 – The extent of effects on the environment.

f  Issue 6 – Whether the designation will promote sustainable management of resources as contemplated by Part 2 of the Act.

g  Issue 7 – The specific wording of the recommended conditions that should be imposed.

7 Main findings of fact

The commissioner considers that the following are the main findings on the principal issues that were in contention relating to this notice of requirement:

Fact 1 – The effects upon Mander Park and the extent to which alternative proposals could be possible to reduce any impacts on Mander Park.

Mander Park is Council owned land located at the intersection of Central Avenue and State Highway 1. The Park has never been classified as a reserve under the Reserves Act 1977. It is zoned Open Space and is, apart from the existing children's playground, an area of passive open space that provides considerable amenity to this part of Whangarei. In addition to its visual and amenity features, the park has both historic and cultural values. The Council as landowner was not a participant at the hearing. The Council had not lodged a submission to the NoR.

Mander Park would be affected by the NoR through the loss of approximately 750m² of land along its Central Avenue and State Highway 1 frontages, together with the removal of a total of eleven trees located along these two road frontages. Mander Park is approximately 1.2 hectares in area and was gifted to the Council by Mr Francis Mander in 1906. It was the evidence of Mr Cocker, on behalf of the NZTA, that "the character of Mander Park is primarily defined by its trees."

The Council had worked with the NZTA to reach agreement on a mitigation package that included replacement planting with mature trees, additional planting particularly along the margins of the stream that runs the length of the eastern boundary of Mander Park, extensions to the playground, additional bollards and lighting and a new pedestrian footpath.

The evidence presented on behalf of the NZTA, particularly the evidence of Mr Cocker, was that while recognising the "high adverse visual effects" associated with the removal of the eleven mature trees on Mander Park, that these adverse effects would be fully mitigated in the long term. With respect to the loss of cultural and heritage effects, Mr Cocker concluded that they cannot be mitigated.

Mr Pope, the reporting planner was of the opinion that the, "Adverse visual amenity and landscaping effects as a result of the loss of heritage trees are considered to be sufficiently outweighed by the wider benefits as a result of the improvements to the road network and on balance the overall effects on the environment are acceptable."

Mr Edwards and Mr Cocurullo both agreed with the expert evidence of the NZTA and the Council that the proposal would result in adverse effects on Mander Park. They both sought that Mander Park be preserved with the no trees removed and no land lost. They effectively opposed the NoR to the extent...
that it took any land from Mander Park. They preferred that if the NoR was to proceed that the Central Avenue widening and intersection improvements with State Highway 1 be deleted and that the State Highway 1 widening take place on the residential zoned western side of the state highway.

The NZTA considered alternative options to the one currently proposed. For the reasons set out below in Fact 3 the relevant provisions of section 171 of the Act do not enable the Commissioner to determine if the preferred option is in fact the "best" option.

It is relevant to note that the submission from the NZ Historic Places Trust (NZHPT) was neutral and did not express any concern with respect to the impact upon Mander Park.

For the reasons discussed elsewhere below and in particular the findings of fact in relation to Part 2 of the Act, the adverse effects on Mander Park are ones that need to balanced against the positive benefits that have been identified with respect to the national and local roading network. All of the expert evidence presented from the engineers, landscape architects and planners was that the adverse effects on Mander Park were either outweighed by the positive benefits of the project, or that the mitigation package provided an appropriate level of mitigation.

Another fact that cannot be ignored is that the Council as the owner of Mander Park agrees with the mitigation package and does not oppose the extent of works that will reduce the size of the park and result in the loss of the mature trees.

While acknowledging the concerns raised by submitters, particularly those presented in evidence by Mr Edwards and Mr Cocurullo at the hearing, the evidence of the suitably qualified experts has been preferred.

The heritage values associated with Mander Park, beginning with the gifting of the land by Mr Mander in 1906, is not well recorded and there is merit in signage and possibly other methods of recognition being incorporated into the park itself. These are however primarily matters for the Council rather than the NZTA to deliver. Regardless of the current proposal it would seem desirable for the Council to pursue a more formal recognition of the heritage values of Mander Park.

As part of this recognition by the Council it may also be appropriate for the Council to investigate the possibility of how the wood of the trees being removed could be used (e.g. development of artwork to be established within the park and how propagation from seed or cutting from the tree (if viable) could be used in any future mitigation planting). No conditions or advice notes have been imposed on these specific matters as they are matters for Council as landowner rather than matters properly included on this NoR.

**Fact 2 – Whether the designation is reasonably necessary.**

This designation is part of a series of projects on State Highway 1 through Whangarei directed at addressing congestion, improving traffic safety and efficiency. The desire to provide a continuous four lane section of the state highway between Selwyn Avenue and Fourth Avenue is consistent with the NZTA's objectives which were stated by Mr Marshall, the NZTA's Whangarei Corridor Manager, to be:

"(a) Provide increased capacity on the State Highway Corridor;

(b) Provide a no surprise environment for the motorists on the highway;

(c) Reduce the current crash rate;

(d) Provide a safe solution for all road users, including pedestrians and cyclists; and

(e) To minimise any adverse effects on the environment, or where this is not achievable, adopt means to mitigate."

The transport aspects of the proposal had been peer reviewed by Mr Wes Edwards on behalf of the Council. He considered that the proposal would have substantial benefits for motor vehicle traffic using the State Highway and the adjacent road network. For cyclists he concluded the effects would be
neutral and for pedestrians the effects to be adverse to a minor degree. Overall he concluded the benefits sufficiently outweighed the adverse effects.

In addition to Mr Wes Edward's support for the project, the planning report from Mr Pope raised no doubts that the project is reasonably necessary for achieving the NZTA's objectives.

The two submitters that were heard, Mr Edwards and Mr Cocurullo, both raised general concerns regarding the need for the proposed works and their preference for the works to avoid Mander Park.

In terms of Section 171(1)(c) of the Act, all the expert evidence has been preferred to the opinions of the two submitters who presented evidence, and the alteration to the designation is reasonably necessary to achieve the NZTA's objectives for this portion of the state highway, as well as in relation to the overall objectives of the NZTA for the state highway corridor through Whangarei.

**Fact 3 – Whether adequate consideration has been given to alternative routes or methods.**

The test in terms of section 171(1)(b) of the Act is whether the NZTA has given adequate consideration of alternative routes or methods. Case law is clear that the test is not to determine if the "best" option has been chosen.

In this case there have been a number of alternatives considered and these were set out in the evidence of Mr Gibson and Mr Holland on behalf of the NZTA. In addition the NZTA, after determining a preferred option, have considered four further alternative options so as to examine specific alignment options to either avoid or reduce the impact upon Mander Park.

While the submitters may not be in agreement with the preferred option, there is no doubt that a range of options have been considered by the NZTA. This consideration has covered a wide range of options which have adequately considered alternatives, consistent with the requirements of section 171(1)(c) of the Act.

**Fact 4 – Whether the designation is consistent with the relevant planning documents.**

The planning evidence from both Mr Holland and Mr Pope with respect to the relevant regional and district planning documents was that the project was consistent with all of the relevant objectives and policies. The relevant district plan provisions identified related to Chapter 5, Amenity Values, Chapter 14, Heritage Trees, Chapter 15, Open Space and Chapter 22, Road Transport.

With respect to the regional planning provisions, the required regional consents have already been granted by the Northland Regional Council. Both Mr Holland and Mr Pope agreed that the NoR was also consistent with the relevant regional transport objectives and policies.

The expert evidence presented on the plan provisions was not contested by submitters and no contrary planning evidence was presented. The evidence of Mr Holland and Mr Pope has therefore been accepted.

With respect to section 171(1)(a) of the Act particular regard has been given to the relevant planning provisions and the NoR is consistent with these provisions.

With respect to section 171(1)(d) of the Act particular regard has also been given to the Northland Regional Council Community Plan 2009-2019 and the Whangarei District Growth Model. These non-statutory provisions identify significant population growth for Whangarei and the surrounding district and the need for transport infrastructure to be designed and built to meet future demand.

**Fact 5 – The extent of effects on the environment.**

The submitters in opposition focussed primarily on the impact upon Mander Park and this aspect has been specifically addressed in the findings on Fact 1 above.

The noise effects of the project were another area of contention, with expert evidence being present by Ms Foster on behalf of the NZTA and Mr Hegley on behalf of the Whangarei District Council. While there was agreement on many matters between these two experts, there was a difference in opinion on the specific wording of some of the recommended conditions. Attempts to reach an agreement on the
wording of conditions extended beyond the actual hearing itself, with a further round of discussions taking place after the right of reply. A revised set of conditions was prepared and forwarded to the Commissioner.

The primary remaining difference in opinion would appear to relate two matters. With respect to the proposed night time work, condition 8 provides for the NZTA to offer to relocate residents from properties where construction noise levels exceed NZS6803. The only point of disagreement relates to whether the noise should be measured in terms of 55 dB $L_{Aeq(15 \text{ min})}$ or 55 dB $L_{Aeq(1 \text{ hour})}$. Mr Hegley recommended the 55 dB $L_{Aeq(15 \text{ min})}$ and Ms Foster the 55 dB $L_{Aeq(1 \text{ hour})}$.

The reasons for the difference in opinion were not made clear however the 55 dB $L_{Aeq(15 \text{ min})}$ approach has been imposed consistent with Mr Hegley's recommendation. Given the fact this condition relates to night time construction activities and the sensitivity of the surrounding residential environment, the more conservative approach of Mr Hegley has been accepted.

The other point of difference relates to condition 11 and the recommendation that the NZTA be required to upgrade any residential building it owns and intends to resell. The intent of the condition is that residential buildings should be upgraded to meet the NZTA's own guidelines as per condition 9. NZTA opposed this condition for the following reasons.

(i) That there was no reasonable basis to distinguish between NZTA properties and properties in other ownership.

(ii) When properties are on sold the value of the property will reflect whether or not upgrades had taken place.

(iii) There was no resource management difference to distinguish between NZTA property and other properties.

(iv) That the NZTA was not offering such a condition.

Mr Hegley advised that he understood that it was NZTA policy to complete such upgrades and not on sell properties until the guideline criteria were met. He also considered that there was a moral obligation for the NZTA to meet its own guidelines.

It is relevant to note that agreement had been reached with respect to properties not owned by the NZTA. Condition 12 sets out the process whereby landowners will be offered an appropriate upgrade and the NZTA will complete such an upgrade if required to by landowners.

The intent of the NZTA guidelines and the agreed condition 12, is to enable residential dwellings to be assessed to determine the appropriate ventilation system to enable habitable rooms (bedrooms, living rooms and dining rooms) with windows facing the Project carriageway to be ventilated to meet the requirements of clause G4 of the NZ Building Code with the windows closed (Ventilation Mitigation). The purpose of the Ventilation Mitigation is to ensure that such habitable rooms have appropriate ventilation given that the windows of such rooms would need to be closed in order to reduce the effects of road traffic noise.

While it is possible for private landowners to refuse such an upgrade, it would seem highly likely that most people would accept such an offer in the circumstances where the guidelines are not met.

The requirement for the NZTA to carry out such upgrades on its own properties before these properties are on sold is an entirely reasonable one in the circumstances where the NZTA is the current landowner and is responsible for the NoR. Condition 11 is recommended despite the NZTA's opposition and the fact that it has not offered to ensure that its own guidelines are meet before the properties are on sold.

In terms of the noise effects on the properties along this section of State Highway 1, condition 11 is an appropriate method of mitigation and will promote the sustainable management of these residential resources consistent with the intentions of Part 2 of the Act.

Overall the effects on the environment of allowing the requirement have been comprehensively addressed in the expert evidence presented on behalf of the NZTA and reporting team of the Council.
Subject to the conditions that are recommended to be imposed, all adverse effects, apart from those effects in relation to Mander Park, can be appropriately avoided, mitigated or remedied consistent with the intent of section 5 of the Act.

With respect to the adverse effects on Mander Park, the effects will be significant. In addition any mitigation by way of the replacement planting will take many years (10 to 20 years) to be effective. Nevertheless, for the reasons set out in the findings on Facts 1 and 6, the overall benefits of the NoR in traffic terms for users of the state highway and the surrounding road network, outweigh the adverse visual amenity and landscaping effects and the loss of trees from Mander Park.

**Fact 6 – Whether the designation will promote sustainable management of resources as contemplated by Part 2 of the Act.**

Part 2 of the Act is where a broad overall judgement needs to be made on whether this project will promote the sustainable management of the natural and physical resources of this part of the district.

The transportation merits of the proposed widening and intersection improvements for the roading network are compelling. There will be benefits for both the state highway and the local roading network. There will be benefits for local road users, particularly at peak times, as well as benefits for traffic using the state highway system to travel beyond the immediate Whangarei City area. This project is also part of a wider series of improvements along the state highway, some of which are already under way.

The most contentious part of the project related to the impact on Mander Park. There was consensus in the evidence presented that the adverse effects, particularly the loss of the mature trees along a portion of the Central Avenue frontage and along the state highway frontage, would be significant. There was also consensus that even with the replacement specimen planting being of a minimum height of 6 metres, appropriate mitigation will be a long term rather than an immediate outcome. The cultural and heritage effects associated with the loss of a portion of the park cannot be avoided or effectively mitigated.

In this urban environment where the state highway passes through a well established residential area, that includes a significant area of open space, the expert evidence presented concluded that the positive benefits of the project outweighed the adverse effects upon Mander Park. Additionally the expert evidence generally concluded the overall package of conditions that have been imposed will provided an appropriate degree of mitigation along the length of the proposed works and in particular with respect to Mander Park. With respect to Mander Park particular regard has also been given to the fact that the Council, as the landowner, has agreed to the package of mitigation measures for the park.

Taking into account all of the above, together with the concerns raised by submitters, and also taking into account the alternative options that have been considered by the NZTA to avoid or reduce the impact upon Mander Park, along with the statutory requirements in relation to notices of requirements, the designation will promote the sustainable management of resources as contemplated by Part 2 of the Act.

**Fact 7– The specific wording of the recommended conditions that should be imposed.**

The specific wording of the recommended conditions was subject to detailed discussions between the NZTA and the Council's reporting team, during the hearing, as well during the period allowed before the hearing was formally closed. There was general agreement with respect to the majority of the conditions and they have been imposed consistent with the final version presented to the Commissioner. Apart from the two noise conditions discussed in the finding of fact 5, the remaining points of difference were very minor. The differences essentially boiled down to the NZTA considering that some of the conditions were unnecessary as they were in part repetitive, and elsewhere stated the obvious in that the NZTA would be responsible for the costs associated with implementing the conditions. For the sake of clarity, the Council's wording of these disputed conditions, (8, 10, and 25.1 in particular) has been imposed. It is acknowledged however these matters are not critical ones and relate to clarity rather than fundamental issues of content or merit.
8 Relevant statutory provisions

8.1 Policy statements and plan provisions

In considering this notice of requirement, the commissioner has had regard to the matters outlined in Section 171 of the Act. In particular, the commissioner has had regard to the relevant provisions of the following planning documents:

i. The Northland Regional Policy Statement (RPS)
ii. The Northland Regional Water and Soil Plan
iii. The Whangarei District Plan

8.2 Part II matters

In considering this application, the commissioner has taken into account the relevant principles outlined in Sections 6, 7 and 8 of the Act as well as the overall the purpose of the Act as presented in Section 5.

9 Recommendation

That pursuant to Section 171(1)(d) and Section 181 of the Resource Management Act 1991 the Notice of Requirement by New Zealand Transport Agency to alter an existing designation for the construction and use of a road (State Highway 1) between land located 140m to the north of SH1 intersection with Selwyn Ave to land located 20m to the south of SH1 intersection with Wilson Ave be CONFIRMED, subject to the conditions that have been imposed.

10 Conditions

General Conditions

1. Except as modified by the conditions below, the works shall be undertaken in general accordance with the information provided by the Requiring Authority being the NZTA, the Notice of Requirement and supporting documents, as follows:

   • State Highway 1 Four Lanes from Selwyn to Ave to Wilson Ave, Whangarei: Alteration to Designation’ prepared by AECOM and dated 30 July 2010 and consisting of two volumes with appendices A – V.

Lapse Conditions

2. This consent shall lapse 10 years after the date of commencement unless the consent is given effect to before the expiry of this period or such longer period as may be granted under Section 125 of the Resource Management Act 1991.

Extent of Designation

3. That the extent of the designation shall be that area identified on plans appended at Appendix A of the Application Report, being Plans 1-3, Titled SH1N Minor Intersection Improvements RP 261/3.30-261/4.55 prepared by Northern Civil Engineering Ltd and dated 15/07/2010.

Utilities

4. The consent holder shall consult with and ensure that the requirements of all relevant service and network utility providers including power, telephone, fibre optics, gas, water, sewer and stormwater are incorporated into the contract works.

5. That the NZTA shall ensure that any redundant services are removed to the requirements and satisfaction of the relevant service provider.

Construction Noise Conditions

6. Subject to the following conditions (conditions 7-9 and the approved Construction Management Plan in condition 24), construction noise shall be measured and assessed in accordance with
the requirements of NZS 6803:1999 Acoustics – Construction Noise and shall, as far as practicable, meet the requirements of that Standard.

7. For any construction activities which are not expected to achieve the applicable construction noise targets, the potentially affected receivers shall be advised at least one week in advance of the works. This advice shall include the expected noise levels at each of the relevant receivers and the duration of the work involved.

8. Where it is not practicable to achieve the design requirements of NZS6803 during the night time period and the construction noise levels at any residence are predicted to exceed 55 dB L_{Aeq(15 min)}, the NZTA shall offer to relocate the residents of that property for the duration of those night works at NZTA's cost.

Operation Noise Conditions

9. The road upgrades shall be designed to comply with the requirements of the NZTA Planning Policy Manual Appendix 6 Transit New Zealand’s Guidelines for the Management of Road Traffic Noise – State Highway Improvements. The design year is to be based on 10 years after the completion of the upgrades.

10. In the event further analysis demonstrates there is any additional noise mitigation or management required than that submitted at the hearing then NZTA shall advise Council prior to commencing work.

11. In the case of any dwelling along the route owned by NZTA and to be sold for residential purposes any necessary upgrading required to comply with the requirements of condition 9 shall be implemented prior to its sale.

12. In order to comply with the Single Event Noise Design Criterion outlined in the Guidelines for the Management of Road Traffic Noise – State Highway Improvements, the following conditions shall apply:

12.1. Prior to commencement of construction of the Project in the vicinity of a dwelling at one of the addresses listed below, or determined as a result of any subsequent noise assessment, (Subject Dwelling), the NZTA shall write to the owner of each Subject Dwelling seeking access to such building for the purpose of assessing the appropriate ventilation system to enable habitable rooms (bedrooms, living rooms and dining rooms) with windows facing the Project carriageway to be ventilated to meet the requirements of clause G4 of the NZ Building Code with the windows closed (Ventilation Mitigation). The purpose of the Ventilation Mitigation is to ensure that such habitable rooms have appropriate ventilation given that the windows of such rooms would need to be closed in order to reduce the effects of road traffic noise.

12.2. The Subject Dwellings are located at: Western Hills Drive Nos 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 302, 304, 306, 308, 310, 314B, 320, 323, 325, 326, 328A, 329A, 330, 331A, 332, 333, 335, 336, 338. If the owner(s) of a Subject Dwelling approve the NZTA’s access, but the NZTA could not gain entry for some reason (e.g. entry denied by a tenant), the NZTA shall instruct suitably qualified acoustic and/or building specialist(s) to visit the building to determine an appropriate ventilation system for the Subject Dwelling.

12.3. The NZTA shall be deemed to have complied with Condition 12.2 above in relation to a particular Subject Dwelling where:

(a) The NZTA (through its acoustic and/or building specialist(s)) has visited the building; or

(b) The owner(s) of the Subject Dwelling approved the NZTA’s access, but the NZTA could not gain entry for some reason (e.g. entry denied by a tenant); or
(c) The owner(s) of the Subject Dwelling did not approve the NZTA’s access to the property within the time period set out in Condition 12.2 (including where the owner(s) did not respond to the NZTA’s letter sent pursuant to Condition 12.1 within that period); or

(d) The owner(s) of the Subject Dwelling cannot, after reasonable enquiry, be found prior to completion of construction of the Project.

If any of (b) to (d) above apply to a particular Subject Dwelling, the NZTA shall not be required to implement any Ventilation Mitigation at that Subject Dwelling.

12.4. Subject to Condition 12.3, within one month of the assessment required under Condition 12.2, the NZTA shall give written notice to the owner(s) of each Subject Dwelling:

(a) Advising as to the detail of the Ventilation Mitigation options for the dwelling; and

(b) Advising that the owner(s) have one month within which to decide whether to accept Ventilation Mitigation for the dwelling, and if the NZTA has advised the owner that more than one option for Ventilation Mitigation is available, to advise which of those options the owner(s) prefer.

12.5. If the owner(s) of a Subject Dwelling accept a Ventilation Mitigation option offered by the NZTA under Condition 12.4(b) that Ventilation Mitigation option shall be implemented in a reasonable and practical timeframe agreed between the NZTA and the owner(s); where practicable this shall be prior to the commencement of construction activities.

12.6. Subject to Condition 12.3, NZTA shall be deemed to have complied with Condition 12.5 above in relation to a particular Subject Dwelling where:

(a) The NZTA has installed the Ventilation Mitigation option accepted by the owner(s) in that Subject Dwelling; or

(b) The owner(s) of the Subject Dwelling did not accept the NZTA’s offer to implement Ventilation Mitigation prior to the expiry of the timeframe stated in Condition 12.4(b) above (including where the owner(s) did not respond to the NZTA within that period); or

(c) The owner(s) of the Subject Dwelling cannot, after reasonable enquiry, be found prior to completion of construction of the Project.

**Archaeology**

13. On completion of the Project, the NZTA shall provide the Council’s Compliance Team Leader with written confirmation of those residences for which each of Conditions 12.6(a), 12.6(b) and 12.6 is applicable.

14. Subject to condition 15 if any archaeological sites, including human remains are exposed during site works then the following procedures shall apply:

(a) Immediately after it becomes apparent that an archaeological or traditional site has been exposed, all site works in the immediate vicinity shall cease;

(b) The Requiring Authority shall immediately secure the area so that any artefacts or remains are untouched; and

(c) The Requiring Authority shall notify tangata whenua, the New Zealand Historic Places Trust and the Whangarei District Council (and in the case of human remains, the New Zealand Police) as soon as practicable that an archaeological site has been exposed so that appropriate action can be taken. Works shall not recommence in the immediate vicinity of the archaeological site until any approval required from the NZ Historic Places Trust is obtained.

15. Condition 14 shall not apply where the Requiring Authority holds all relevant approvals under the Historic Places Act 1993, apart from the requirement to contact the New Zealand Police in the event of discovery of human remains.
Mander Park Landscaping

16. Following completion of the road construction works at Mander Park (Central Avenue and State Highway 1) and adjacent sites, landscape planting and construction works shall be undertaken in general accordance with that identified within the following documents, including any works required by a landscape maintenance plan and to the satisfaction of Parks and Recreation Manager:


   c) Landscape drawings titled “SH1N Region 1 RS.261 SH1N Minor Intersection Improvements RP261/3.30-261/4.55 Proposed Landscaping – Overview Plan [sheets 1-4]” with the following exception:

      • (Sheet 4) Mander Park Semi Mature Tree Schedule to include one (1) 6m Quercus robur and to exclude one (1) Liquidambar styraciflua.

17. Following completion of the road construction works, the landscape construction works identified within the approved Landscape Plan in condition 16 shall be undertaken, including any works required by a landscape maintenance plan. Such works shall be implemented as soon as practicable and works shall be completed no later than 12 months after the completion date of the Project.

Outline Plan and Management Plans

18. Prior to the commencement of works, the Requiring Authority shall submit to the Whangarei District Council and have approved in writing, the relevant Management Plans required under Conditions 21, 22, 23 (Urban Design and Landscape Mitigation), 24, 25, 26 (Construction), 27 (Construction Traffic), 28 (Noise and Vibration), and the Engineering Plans (condition 29 and 30).

19. The approval in writing of all of the Management Plans referred to in condition 18 will be deemed to be a waiver of the requirement for an outline plan under section 176A(2)(c) of the RMA.

20. The works shall be undertaken in accordance with the approved Management Plan or accepted Outline Plan of Works (as the case may be).

Urban Design and Landscape Mitigation Plan

21. Prior to the commencement of works on the application, the Requiring Authority shall submit to Council and have approved in writing by Councils Team Leader Compliance an ‘Urban Design and Landscape Mitigation Plan’ (UDLMP). This Plan shall be prepared by a suitably qualified expert(s). The UDLMP shall be prepared in general accordance with the “Selwyn Avenue to Wilson Avenue Urban Design Report” including Appendix “Landscape Visual and Urban Design Report” prepared by Simon Cocker Landscape Architecture and Boffa Miskell, referenced AO9164, dated 19/03/10 and Landscape drawings titled “SH1N Region1 RS.261 SH1N Minor Intersection Improvements RP261/3.30-261/4.55 Proposed Landscaping – Overview Plan [sheets 1-4]” with the following exception:
(Sheet 1) NZTA Properties Plant Schedule – Corner Selwyn/Western Hills Drive “Syagrus romanzoffiana” be altered to read “Syagrus romanzoffiana/Sophora tetraperta or similar.

The UDLMP shall include within its scope, urban design and landscape mitigation works within the designation and within the “pocket parks” owned by NZTA. The UDLMP shall include the following:

- The integration of the permanent works into the surrounding landscape;
- Mitigation of effects on properties in the vicinity of the alignment;
- An Urban Design Framework that depicts the overall urban design concept, the design intent, layout and mitigation proposals;
- Landscape and Urban Design Details - these shall include:
  - Identification of vegetation to be retained and removed;
  - Proposed planting, including plant species, mixes, spacing/densities, sizes (large specimen trees shall be used - 4 metres in height at time of planting) and layout; and
  - Planting programme – the staging of planting in relation to the construction programme. A maintenance programme providing specific measures as to how the planting will be maintained following its establishment and on an ongoing basis.

22. The works as set out in the UDLMP approved by Whangarei District Council shall be implemented as soon as practicable and works shall be completed no later than 12 months after the completion date of the Project.

23. The UDLMP for those sites at Lot 12 DP 27129, Lot 1 DP 19410 and Lot 16 DP 39182) shall be prepared in consultation with, and to the approval of the Parks and Recreation Manager. This detailed landscape plan shall include:

- Hard landscaping features, Plant sizes and number, Plant species, Planting locations and Maintenance plan.

Following completion of the road construction works, the landscape works identified within the approved Plan shall be undertaken, including any works required by a landscape maintenance plan. Such works shall be completed prior to hand-over of the above site to WDC for the purposes of on-going maintenance.

**Construction Management Plan**

24. A Construction Management Plan shall be prepared and submitted to the Council’s Compliance Team Leader. The CMP shall include, but not be limited to:

- Construction machinery, techniques and equipment to be utilised
- Construction sequence
- The management of storage areas and the control of dust from earthworks and construction activities;
- Roles and responsibilities of personnel on site;
- Procedures for liaising with and notifying potentially affected receivers of proposed construction activities;
- Methods for receiving and responding to complaints about construction activities, including provision for an on-site contact
- Procedures to ensure that the work does not encroach on adjoining land without the prior written approval of the owners of that land; and
- The coordination of the requirements of all other management plans and statutory requirements.
25. The CMP shall include a Construction Noise and Vibration Management Plan (CNVMP) describing the measures adopted to as far as practicable meet the requirements of the NZS6803:1999 Acoustics - Construction Noise. The CNVMP shall refer to noise management measures set out in Annex E of NZS6803:1999, and as a minimum shall address the following:
   b) Construction noise and vibration criteria
   c) Hours of operation, including times and days when noisy construction work would occur.
   d) Construction sequence, with respect to noise emissions;
   e) Machinery, equipment and processes to be utilised, with respect to noise and vibration;
   f) The design of noise mitigation measures such as temporary barriers or enclosures, including alternative strategies where full compliance with the relevant noise and/or vibration criteria cannot be achieved and incorporating the provisions outlined in Conditions 7 and 8;
   g) Methods for monitoring and reporting on construction noise and vibration.
   h) Roles and responsibilities of personnel on site with respect to noise management;
   i) Procedures for liaising with and notifying potentially affected receivers of proposed construction activities; and
   j) Methods for receiving and handling complaints about construction noise and vibration, including provision for an on-site contact.

26. The NZTA shall implement and maintain the Construction Management Plan throughout the entire construction period of the Project.

Construction Traffic Management Plan

27. A Construction Traffic Management Plan prepared by a person with a current STMS certificate, submitted for approval by the Team Leader Compliance that shall include but not be limited to:
   a) The safe management and maintenance of traffic flows, including pedestrians and cyclists, on existing roads;
   b) The locations of access carriageways and their connections to public roads;
   c) The size and location of parking areas for plant, construction vehicles and the vehicles of workers and visitors;
   d) The methodology for ensuring the continued access to all properties affected by the construction process for both vehicles and pedestrians (access shall be maintained at all times unless the prior written approval of the landowner has been obtained);
   e) Construction dates and hours of operation including any specific non working hours for traffic congestion and noise;
   f) Truck route diagrams both internal to construction sites and external to the local road network;
   g) Temporary traffic management signage/details for both pedestrians and vehicles to appropriately manage the interaction of these road users and heavy construction traffic;
   h) Details of site access/egress over the entire construction period;
   i) Identification of affected roads;
   j) Proposed access for public road users;
   k) Access to property owners having specific regard to the access of business such as motels;
   l) How equipment (eg trucks) will access the construction site;
   m) Peak times that traffic may be affected;
   n) How material will be disposed of offsite (eg. Number of vehicle movements); and
   o) Provision of pedestrian access/egress to properties adjacent to the works at all times.
Noise and Vibration Management Plan

28. A noise and vibration management plan, prepared by a suitably qualified acoustic specialist, shall be submitted to the Council's Compliance Team Leader. The noise and vibration management plan shall as a minimum address the following:
   a) Management and mitigation measures to ensure compliance with the Transit New Zealand Guidelines for the Management of Road Traffic Noise – State Highway Improvements, as outlined in Condition 12; and
   b) Management and mitigation measures to ensure compliance with the Whangarei District Plan vibration rules.

Engineering Drawings

29. The NZTA shall submit to Council a set of engineering plans prepared in accordance with the Councils Environmental Engineering Standards 2007, showing details of the proposed stormwater reticulation including any necessary treatment and have the plans approved by Council.

30. That immediately following completion of the works the NZTA shall submit certified and dated as-built plans of the completed works and services, prepared in accordance with Council's Environmental Engineering Standards 2007 and have such plans accepted by Council.

Other conditions

31. That the alteration to the designation set out in the Notice of Requirement Application shall be for the purpose of the operation and maintenance of a State Highway known as State Highway 1.

Advice Notes

1. Within 30 working days of the day on which the requiring authority received the Council's recommendation under section 171, the requiring authority shall advise the Council whether they accept or refuse the recommendation either in whole or part.

2. The consent holder/applicant shall pay all charges set by the Council under section 36 of the Resource Management Act 1991. The applicant will be advised of the charges as they fall.

3. Compliance with Council's specific practices is to be obtained prior to the commencement of any work to Council's roads and/or infrastructure.

4. The requiring authority needs to obtain all other necessary consents and permits and comply with all relevant Council bylaws. This may include building consents approvals for any retaining walls.

5. That the NZTA shall be responsible for all necessary land purchases, compensation costs, legalisation, construction and reinstatement works and similar, for completion of the project unless otherwise agreed with the affected parties.

6. The requiring authority is advised of the conditions specified in the NRC Consents and the need for compliance with these conditions.
11 Reasons for the recommendation

(a) In this urban environment where the state highway passes through a well established residential area, that includes a significant area of open space, the expert evidence presented concluded that the positive benefits of the project outweighed the adverse effects upon Mander Park. Additionally the expert evidence generally concluded the overall package of conditions that have been imposed will provide an appropriate degree of mitigation along the length of the proposed works and in particular with respect to Mander Park. With respect to Mander Park particular regard has also been given to the fact that the Council, as the landowner, has agreed to the package of mitigation measures for the park.

Taking into account all of the above, together with the concerns raised by submitters, and also taking into account the alternative options that have been considered by the NZTA to avoid or reduce the impact upon Mander Park, along with the statutory requirements in relation to notices of requirements, the designation will promote the sustainable management of resources as contemplated by Part 2 of the Act.

(b) The adverse effects on Mander Park are ones that need to balanced against the positive benefits that have been identified with respect to the national and local roading network. All of the expert evidence presented from the engineers, landscape architects and planners was that the adverse effects on Mander Park were either outweighed by the positive benefits of the project, or that the mitigation package provided an appropriate level of mitigation.

(c) The transportation merits of the proposed widening and intersection improvements for the roading network are compelling. There will be benefits for both the state highway and the local roading network. There will be benefits for local road users, particularly at peak times, as well as benefits for traffic using the state highway system to travel beyond the immediate Whangarei City area. This project is also part of a wider series of improvements along the state highway, some of which are already under way.

(d) Subject to the conditions that have been recommended to be imposed the adverse effects on the environment can be appropriately avoided, remedied or mitigated.

(e) Particular regard has been given to the relevant regional and district planning documents and the notice of requirement is consistent with these documents in terms of section 171(1)(a) of the Act.

(f) Adequate consideration of alternatives has been undertaken in terms of section 171(1)(b) of the Act.

(g) The notice of requirement is reasonably necessary for achieving the objectives of the NZTA in terms of section 171(1)(c) of the Act.

Issued this 22nd day of December 2010

Les Simmons
Hearings Commissioner