

EXHIBIT NUMBER " 55"  
Environment Court

Produced by Mr Condon  
via Ms Batters in RXN

COURT REF:

REGISTRAR:

DATE: 2/3/11

# Project Agreement in respect of Waterview Connection

New Zealand Transport Agency  
(NZTA)

Unitec Institute of Technology (Unitec)



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## PROJECT AGREEMENT IN RESPECT OF WATERVIEW CONNECTION

Date:

### PARTIES

**New Zealand Transport Agency** a Crown Entity established under section 93 of the Land Transport Management Act 2003, and its successors at law (*NZTA*).

**Unitec Institute of Technology** a Crown Entity established under Part 14 of the Education Act 1989, and its successors at law (*Unitec*).

### BACKGROUND

- A The NZTA is seeking approvals for the Waterview Connection Project. The Project is a key component of the Western Ring Route, which is a road of national significance. When completed, the Western Ring Route will provide a strategic 48km route through Auckland, reducing dependency on the Auckland Harbour Bridge and State Highway 1.
- B The Project Designation is immediately adjacent to land owned and occupied by Unitec, which is used for educational purposes.
- C Unitec wishes to ensure that the effects of the Project on it, as identified in its submission dated 15 October 2010, are appropriately avoided, remedied or mitigated.
- D The parties have established that their respective objectives can best be met through the mitigation measures detailed in this Agreement.

**THE PARTIES AGREE** as follows:

### 1 DEFINITIONS AND CONSTRUCTION

#### 1.1 Defined terms

In this agreement, unless the context requires otherwise:

*Buildings 73, 76-80, 310-313* - The buildings located on the Unitec Campus and identified as such in the Unitec Campus map attached as **Annexure A** to this Agreement;

*Building Modification Mitigation Measures* - Mitigation Measures for operational (traffic) noise mitigation in accordance with NZS6806:2010;

*Education Liaison Group* - The group proposed to be set up under SO.1 of the proposed conditions for the Project;

*Project* - The Waterview Connection Project, which will complete the Western Ring Route by connecting State Highway 20 at Maoro Street in Mt Roskill to State Highway 16 at the Great North Road Interchange in Waterview, and by providing



increased capacity and improved resilience on State Highway 16 as depicted in **Annexure B** to this Agreement;

*Project Conditions* - The conditions attaching to the Project Designation and/or to relevant consents for the Project.

*Project Designation* - The future designations for the Project as has been applied for by the NZTA;

*RMA* - the Resource Management Act 1991;

*Unitec Building 1* - The old Oakley Hospital Building in the north of the Unitec site, registered as a Category 1 building by the New Zealand Historic Places Trust, as depicted in Appendix A;

*Unitec Residential Village* - Unitec Student accommodation located at 1510 Great North Road, Mt Albert, as depicted in Annexure A.

## 1.2 Construction

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) *Including* and similar words do not imply any limitation;
- (b) References to any form of law is to New Zealand law, including as amended or re-enacted;
- (c) References to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- (d) Except as provided in this Agreement every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at anytime;
- (e) Singular includes plural and vice versa;
- (f) New Zealand time and dates apply;
- (g) Any word or expression related to or derived from a definition in this Agreement has a meaning corresponding or construed to the definition;
- (h) References to sections, clauses, schedules, annexes or other identifiers are to those in this Agreement;
- (i) References to a document or agreement (other than a plan or other document created as part of a statutory process) includes it as varied, novated or replaced; and
- (j) Each Annexure is part of this Agreement.





## 2 PRINCIPLES

- 2.1 Both parties recognise that they have obligations :
- (a) Arising from their respective statutory roles and responsibilities; and
  - (b) To their respective Ministers.
- 2.2 Each party commits to consider, investigate and endeavour to resolve any conflicts as they arise in a manner that maintains the integrity, professionalism and statutory accountabilities of each party and recognises each party's objectives.
- 2.3 The parties acknowledge the importance of keeping each other informed before making any statement or releasing any information in relation to the subject matter of this Agreement, which may affect the interests of the other party.
- 2.4 Each party will maintain "sovereignty" over their respective areas of accountability and responsibility and will endeavour to keep the other advised of issues that may affect one party as a result of the activities of the other.
- 2.5 This Agreement applies on the assumption that the required RMA approvals for the Project will be granted and that the Project proceeds. This Agreement will cease to have effect if the NZTA decides not to proceed with the Project or if the required approvals are not obtained. (For the avoidance of doubt, the Agreement will not cease to have effect if the NZTA proceeds with an altered form of the Project).
- 2.6 The parties recognise that the Board of Inquiry formed to hear the Project, will make the final decision on the substance and wording of conditions attaching to the Project Designation (and to related consents). Therefore, the wording proposed for conditions in this Agreement may alter. Where a condition agreed in this Agreement is not adopted or is altered in a material manner, the parties will consider how the relevant issue can be addressed.

## 3 PARTIES' OBJECTIVES

- 3.1 The NZTA's objectives as they relate to the Project and this Agreement are to:
- (a) Cooperate with Unitec where the Project affects Unitec's interests.
  - (b) Secure the necessary approvals (including designations, resource consents and other statutory permits and authorisations) for the Project.
  - (c) Construct, operate and maintain the Project.
- 3.2 Unitec's objectives as they relate to the Project and this Agreement are to:
- (a) Cooperate with the NZTA in the NZTA's delivery of the Project.
  - (b) Ensure that any effects on Unitec, and in particular on its teaching activities, are appropriately avoided, remedied or mitigated.



3.3 For the avoidance of doubt, this Agreement does not address any issues relating to property acquisition which may arise in relation to the Project.

**4 PEDESTRIAN ACCESS**

4.1 The NZTA agrees that the following condition be included in the Project Conditions to ensure that the existing accessway between the Unitec Residential Village and Unitec will be maintained during construction of the Project:

OS.12	<p><u>During construction, the NZTA shall maintain pedestrian accessways to all open space available for public use during construction and education facilities where access is affected by the works, including any public access that crosses private land. Such access shall be safe, clearly identifiable, provide appropriate surfacing and seek to minimise significant detours. The access shall be of a same or similar standard as that disrupted and will be provided and maintained by the NZTA.</u></p> <p><i>Advice note: This specifically includes the existing pedestrian access that provides a connection to the crossing over Oakley Creek between 1510 Great North Road and Unitec Mt Albert Campus.</i></p>
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**5 CONSTRUCTION NOISE – STUDENT HOURS**

5.1 In order to address Unitec concerns about Project Condition CNV.2(d) not addressing Unitec teaching hours, the NZTA agrees to amend that condition as follows:

CNV.2	<p>Note: CNV.2(T) means a duration between 15 minutes and 60 minutes, in accordance with NZS6803:1999.</p> <p>d. <u>Project Construction Noise Criteria: Internal noise for Licensed Educational Facilities</u></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;"><u>Time period</u></th> <th colspan="2" style="text-align: center;"><u>Project Construction Noise Criteria</u> <u>Inside</u></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><u>0900—1500 Teaching hours</u></td> <td style="text-align: center;"><u>45 dB L<sub>Aeq(6hr)</sub>(T) or existing, whichever is the higher</u></td> <td style="text-align: center;"><u>Classrooms, library, offices, teaching laboratories, manual arts, workshops</u></td> </tr> <tr> <td style="text-align: center;"><u>0900—1500 Teaching hours</u></td> <td style="text-align: center;"><u>40 dB L<sub>Aeq(6hr)</sub>(T) or existing, whichever is the higher</u></td> <td style="text-align: center;"><u>School hall, lecture theatres</u></td> </tr> </tbody> </table> <p>Note: in CNV2(d) "Teaching hours" means:            Primary schools: 9am to 3pm            Unitec: 8am to 9pm</p>	<u>Time period</u>	<u>Project Construction Noise Criteria</u> <u>Inside</u>		<u>0900—1500 Teaching hours</u>	<u>45 dB L<sub>Aeq(6hr)</sub>(T) or existing, whichever is the higher</u>	<u>Classrooms, library, offices, teaching laboratories, manual arts, workshops</u>	<u>0900—1500 Teaching hours</u>	<u>40 dB L<sub>Aeq(6hr)</sub>(T) or existing, whichever is the higher</u>	<u>School hall, lecture theatres</u>
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<u>0900—1500 Teaching hours</u>	<u>40 dB L<sub>Aeq(6hr)</sub>(T) or existing, whichever is the higher</u>	<u>School hall, lecture theatres</u>								



5.2 Unitec agrees that the internal noise criteria contained in CNV.2(d) does not apply to structures where the existing internal noise levels already exceed the proposed criteria. Where existing noise levels within the educational facility are greater than the prescribed limit in CNV.2(d), the existing noise levels effectively become the upper noise limit with which NZTA must comply.

5.3 Unitec agrees to allow the NZTA's consultants access to its buildings/site to determine existing internal noise levels, and the NZTA agrees to undertake testing to determine existing noise levels, prior to construction commencing.

**6 ACOUSTIC TREATMENT – OPERATIONAL NOISE**

6.1 The NZTA agrees to install Building Modification Mitigation Measures as soon as practicable during or before the construction period. Unitec agrees to provide the NZTA access and approval to carry out the works.

6.2 The parties agree that the specific measures and timing will be determined by the NZTA's noise expert, in consultation with Unitec.

6.3 The NZTA also agrees to amend Condition CNV.1 as follows:

CNV.1	The CNVMP shall, at a minimum, address the following: ...
	xiv. <u>Investigation of the practicability of implementing Building Modification Mitigation, as required in accordance with conditions ON.6 to ON.11, prior to commencement of construction within 100m of the relevant PPF.</u>

6.4 The parties agree that the NZTA will take responsibility for liaising directly with the New Zealand Historic Places Trust to arrange approval for the acoustic treatment to Unitec Building 1, and will keep Unitec informed.

6.5 The parties agree to the following amendment of Condition ON.10 to reflect this:

ON.10	Once an agreement on Building Modification Mitigation is reached between the NZTA and the owner of an affected building, the mitigation shall be implemented ( <b><u>including the NZTA undertaking any required third party authorisation</u></b> ) in a reasonable and practical timeframe agreed between the NZTA and the owner.
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**7 RELOCATION DURING CONSTRUCTION**

7.1 The NZTA agrees to give four months notice to Unitec of tunnelling under the Unitec Residential Village, if that activity will require the relocation of Unitec students from the Unitec Residential Village.





- 7.2 The NZTA agrees not to require relocation of students from the Unitec Residential Village during Unitec exam periods, the two weeks preceding exams, or the Rugby World Cup 2011.
- 7.3 If relocation of students is necessary, it will be at the NZTA's cost and the NZTA will provide students with transport between Unitec and that temporary accommodation.

**8 NOISY ACTIVITIES IN EXAM TIME**

- 8.1 The NZTA confirms that Unitec will be a member of the Education Liaison Group.
- 8.2 The Parties agree to the following amendments to Condition SO.1 to address Unitec concerns about noise in exam periods<sup>1</sup>:

SO.1	<p>In addition to the Community Liaison Group established pursuant to Condition PI.5, the NZTA shall establish an Education Liaison Group <b><u>(including representatives from local schools, kindergartens, childcare facilities, Unitec Institute of Technology, the Ministry of Education and Housing New Zealand Corporation)</u></b>, to provide a forum through which:</p> <ul style="list-style-type: none"> <li>(a) Relevant monitoring data can be provided (e.g. air quality monitoring);</li> <li>(b) Notice can be provided of when particularly noisy activities will occur in close proximity <b><u>to schools and education facilities, to enable the opportunity to identify any potential conflict with particular sensitive periods and the need for specific mitigation strategies (e.g. rescheduling of construction activities where practicable)</u></b>;</li> <li>(c) Particular concerns can be raised by educational facilities or parents, discussed and potentially addressed.</li> </ul> <p>The Education Liaison Group shall be established at least 2 months prior to construction commencing and shall have regular meetings <b><u>(at least three monthly)</u></b> throughout the construction period. The Education Liaison Group shall continue to meet for at least 12 months following the completion of the Project (or less if the members of the Education Liaison Group agree), so that ongoing monitoring information can continue to be disseminated.</p>
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**9 FUTURE CROSS SITE LINK**

- 9.1 The NZTA confirms that the current Project as lodged does not preclude the construction of a local road bridge between Great North Road at Herdman Street and Unitec, should Unitec wish to construct one in the future. The parties acknowledge that the NZTA has not been given any specific plans to review in this regard.

<sup>1</sup> Some of the amendments noted address the concerns of other organisations.





9.2 The NZTA agrees to consult Unitec if anything arises during the construction of the Project that may limit or preclude such an access being provided in the future.

**10 SETTLEMENT**

10.1 The NZTA agrees to monitor settlement effects for Buildings 73, 76-80, 310-313 through Ground Settlement Condition S.7. In particular, condition S.7(b) will require the monitoring of Buildings 73 and 77-80 because total ground settlement is estimated to be greater than 50mm, and Condition S.7(d) specifically lists Buildings 76 and 310-313. The relevant sections of Condition S.7 to read as follows:

S.7	<p>The NZTA shall review and update the schedule of buildings and structures considered to be at risk in accordance with the criteria of the SEMP and maintain this for review by the Auckland Council. This shall include, but not be limited to, the following properties identified in the Technical Report G.13 <i>Assessment of Ground Settlement Effects</i> provided in support of this application:</p> <p>(b) Buildings where total estimated settlement is greater than 50mm (defined in Figure E.14)</p> <p>(d) Unitec Buildings 76, 310-313</p>
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**11 DISPUTE RESOLUTION**

11.1 If a dispute arises between Unitec and the NZTA, the Parties agree that the following amendment to Condition PI.4 will apply:

PI.4	<p>The NZTA shall manage, investigate and resolve (as appropriate) all complaints for the duration of the construction works in accordance with the environmental complaints section of the CEMP. The implementation strategy for complaints includes:</p> <p>(e) <u>Where issues and complaints about effects cannot be resolved through the CEMP complaints management process, a meeting shall be held between the NZTA, the complainant and the Auckland Council representative(s) to discuss the complaint and ways in which the issue may be resolved. If parties cannot agree on a resolution, an independent qualified mediator will be appointed, agreeable to all parties, and at the shared cost of all parties, to undertake mediation of the dispute or concerns.</u></p>
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**12 CONTACTS**

12.1 The parties have each appointed a contact person(s) (as noted in clause 12.3 below) who is the first point of contact for the other party.



12.2 Each party agrees that nominated contact persons will keep themselves well informed of the Project, and have a sufficient level of authority to represent their party's view to the other contact person.

12.3 The parties' Project contacts are:

For NZTA		For Unitec	
Name	Sumi Eratne	Name	Paul Conder
Title	Project Director, Western Ring Route	Title	Executive Director, Finance and Infrastructure
Physical Address	Level 13, Qantas House 191 Queen St	Physical Address	Carrington Road, Mt Albert
Postal Address	Private Bag 106602 Auckland 1143	Postal Address	Private Bag 92025, Auckland
Telephone	(09) 9699800	Telephone	(09)8154321 x7707
Facsimile	(09) 9699813	Facsimile	(09) 8152901
Email	sumi.eratne@nzta.govt.nz	Email	pconder@unitec.ac.nz

12.4 The parties agree to keep each other informed of any change in contact person(s) or their contact details.

**13 WRITTEN RECORD OF SUBSTANTIVE DISCUSSIONS**

13.1 Whenever substantive proposals are being discussed between them, the parties will make and circulate a single written record of those discussions.

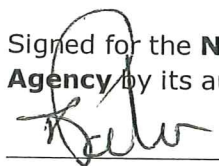
13.2 No amendment to this Agreement will be effective unless it is in writing and signed by both parties.



14 **SIGNED**


This Agreement may be executed in any number of counterparts. Once a party has executed a counterpart, and the other party has received a copy of the signed counterpart, that counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

Signed for the **New Zealand Transport Agency** by its authorised signatory:

  
\_\_\_\_\_

THOMAS PARKER

in the presence of:

  
\_\_\_\_\_

Name: Louise Cooney

Occupation: Solicitor

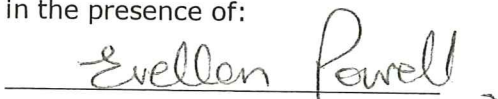
Address: 10 Ardmore Rd  
Ponsonby

Signed for **Unitec Institute of Technology** by its authorised signatory:

  
\_\_\_\_\_

PAUL CONDER

in the presence of:

  
\_\_\_\_\_

Name: Evellen Powell

Occupation: Personal Assistant

Address: 17c Denver Ave  
Sunnyvale  
Auckland



**ANNEXURE A: UNITEC CAMPUS MAP**











**ANNEXURE B: WATERVIEW CONNECTION PROJECT**

*[Handwritten signature]* *[Handwritten mark]*



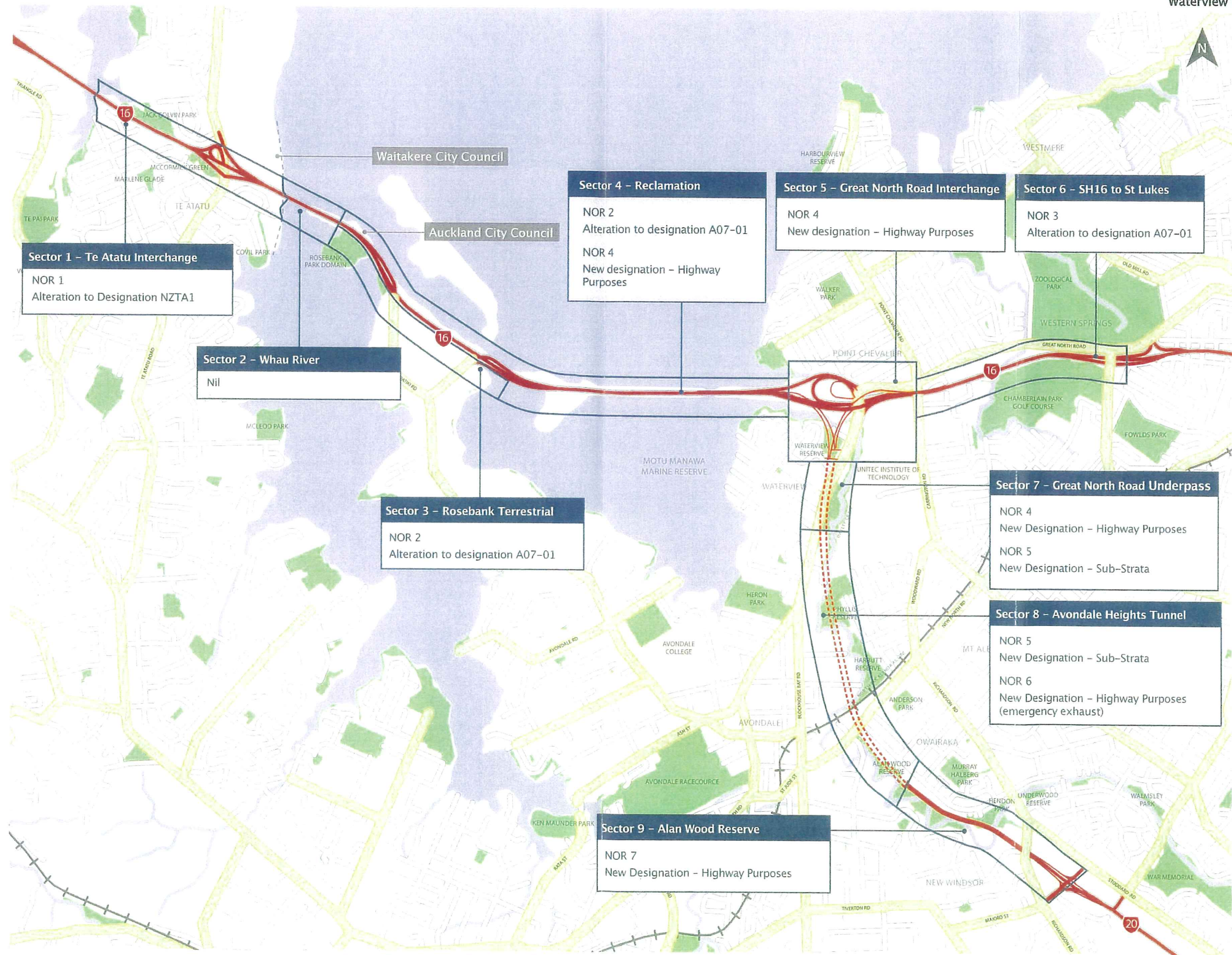


Figure 5: Summary of Notices of Requirement in Relation to Geographic Sectors of the Project

