

Resource Management Act 1991

Rotorua District Council

Commissioner Alan Withy

Requirement by the Rotorua District Council

To Designate Lake Road for Four-Laning

RDC File No: 62-06-016

Commissioner's Report and Recommendations

June 2009

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1. The Requirement

- 1.1 The Notice of Requirement (NoR) is dated January 2006 and was publicly notified on 26 March 2006.
- 1.2 The NoR proposal has two main parts:
 - 1.2.1 To designate land for the purpose of improving the efficiency and safety of the roading network; and
 - 1.2.2 Designation of the area that is subject to the NoR for the purposes of 'Road' in accordance with the definition of "Road" in Section 2 of the Resource Management Act 1991.
- 1.3 The NoR sought a designation period of ten years.

2. Appointment of Commissioner

- 2.1 The Rotorua District Council (Council) appointed Alan Withy as an Independent Commissioner to hear and recommend to the Council, as the Requiring Authority, regarding the requirement set out in the NoR. This appointment was by way of the Council's resolution on 24 March 2003, and as confirmed by Internal Memorandum dated 5 June 2007.

3. Abbreviations in this Report

"Act" means the Resource Management Act 1991.

"Applicant" means the Council as Requiring Authority.

"Council" means the Rotorua District Council.

"HGCL" means Harrison Grierson Consultants Limited, planning consultants.

"NoR" means the application and report titled '*Notice of Requirement for Designation, Lake Road and Associated Widening Works*' prepared by Opus International Consultants, dated January 2006, and subsequently notified on 26 March 2006.

"MWH" means MWH Engineers

"Opus" means Opus International Consultants Limited, engineering consultants.

"Reporting Officers" means Mr Jeff Hextall of HGCL and Mr Shaun Hubbard of Maunsell AECOM (of MWH in 2007), appointed as independent advisors to the Commissioner.

"RTDS" means the Rotorua Transport Demand Strategy, 2007.

"RTS" means the Rotorua Transport Study, 2006.

"RUTS" means the Rotorua Urban Transport Study, 2003.

4. Proposal

4.1 The objectives of the designation were described in the NoR as being to:

- *“Permit physical works that will widen Lake Road as well as allowing the ongoing maintenance of the road asset.*
- *Provide sufficient land to enable Lake Road to be widened so that its function and character as a major arterial road is maintained.*
- *Protect land on Lake Road between Old Taupo Road and Ranolf Street from other uses that may compromise the roading network.”¹*

4.2 The Reporting Officers described the location of the proposed works as follows:

“The site to which the requirement applies is located between the Lake Road and Fairy Springs Road/Old Taupo Road intersection and the Lake Road / Ranolf Street intersection. ... Seventy five properties are directly affected including industrial, commercial, residential and reserve land. ... The area is within an established urban environment.”²

4.3 The Reporting Officers described the reasons for the proposed works as follows:

“... the main reason is to provide an increased level of service and to provide capacity to mitigate increased future vehicle movements. Lake Road is identified in Appendix M of the Rotorua District Plan as a major arterial route (urban) which serves an important strategic function for commuters travelling in and out of central Rotorua. The Rotorua Roding Network Development Strategy (Gabites Porter 2003) has predicted that traffic on Lake Road will increase from 20,100 to 23,000 vehicle movements per day by 2021 and accordingly the level of service will decline if capacity is not improved.”³

5. Hearing

5.1 The hearing in respect of the NoR was opened on 2 August 2007. It was adjourned on that day to allow further time for the applicant to try and resolve outstanding issues with a number of submitters.

5.2 The hearing was reconvened on 17 October 2007, and further information was presented at that time. The hearing was substantively completed on that day, although the Commissioner allowed further time for a revised draft set of conditions to be developed and forwarded to all interested parties, and for the applicant to continue to negotiate a settlement with the parties opposing the NoR.

5.3 The Commissioner directed that the hearing be reconvened on 11 February 2008 to hear from the Reporting Officers on the draft conditions and the outcome of the negotiations.

5.4 Copies of the revised draft conditions and the Commissioner's report dated 18 October 2007 in respect of the reconvened hearing were provided to all submitters and parties to the hearing in a letter from the applicant dated 15 November 2007. No formal responses were received to this letter.

¹ NoR, page 1.

² Reporting Officers Report 24 July 2007, page 2.

³ Reporting Officers Report 24 July 2007, page 1.

- 5.5 The applicant subsequently advised the Commissioner that more time was needed to consult with affected property owners and submitters. Consequently, the Commissioner adjourned the hearing until further notice to allow this to occur.
- 5.6 This process took significantly longer than expected. On 20 February 2009 the draft conditions were re-issued to all parties and submitters, given the length of time which had passed and the lack of feedback on the first mail out. The parties were given a further opportunity to comment on the draft conditions.
- 5.7 Twelve responses were subsequently received from submitters and parties to the hearing on the revised draft conditions. These ranged from acceptance of the proposed conditions, acceptance with some modification, to opposition to the proposed conditions.
- 5.8 An assessment of the twelve responses was provided in the second report from the Reporting Officers dated 20 April 2009. This report reviewed the consultation with submitters and recommended confirmation of the NoR subject to nine revised conditions. The report was received at the hearing on 12 May 2009. Before closing the hearing the Commissioner heard from the Reporting Officers, the applicant, and those submitters that provided comment on the draft conditions and wished to address him.

6. Submissions and evidence

- 6.1 The NoR was publicly notified on 25 March 2006, with submissions closing on 28 April 2006. The NoR was served on directly affected persons. Fourteen submissions were received and the below summary was provided in Section 6.0 of the Reporting Officers' Report dated 24 July 2007.

Submitter	Address for Service	Oppose/Support	To Be Heard	Key Issues
Kaituna Catchment Control Scheme (1)	The Chief Executive Environment Bay of Plenty PO Box 364 WHAKATANE 3080 Attention: Clive Tozer	Neither supports or opposes	No	- Utuhina Stream and a stop bank within the Kaituna Catchment Control Scheme (KCCS) run through part of the area of land to be designated. - Inadequate consultation with KCCS. - Stop bank system is managed by Environment Bay of Plenty, with certain requirements of the relevant Bylaw.
Lindsay Gemmell (2)	Bike Force 177 Lake Road ROTORUA	Oppose	Yes	- Centre median strip will restrict access to business. Loss of business.
ML & MJ Pearce (3)	79 Mokoia Road RD2 NGONGOTAHA	Oppose	No	- Centre median will restrict access to business. Detrimental to tenants business.
Laurie & Daniel Morrison, Heather Leary, Marice & Heather vander Leedan (4)	3 Ariariterangi Street ROTORUA	Oppose	Yes	- Alternative routes. - Vibration effects. - Sound barriers. - Loss of residential amenity. - Access/egress associated with Ohinemutu village, Lake Road, Ariariterangi and Rangipahere Streets. - Property value. - Affects on geothermal bore.

				- Taking whenua/giving whanau land. - Disagree with definition of 'historical and archaeological impacts'. - Safety issues.
Rusty McKnight (5)	McStripes and Signs Ltd 175 Lake Road ROTORUA	Oppose	No	- Centre median strip will restrict access to business. Detrimental to business, cause loss of custom. A painted median suggested. - Roundabout more acceptable than lights. - Submitter considers proposed bypass from Ngongotaha direct to freeway will reduce congestion on Lake Road.
R W Rika (6)	MTEC Consultants Ltd PO Box 878 ROTORUA Attention: Luke Martin	Oppose	Yes	- Access/egress issues. - Land acquisition. - Loss of economic viability of site. - Inadequate consultation and consideration of alternatives.
DT & DL Atkinson (7)	Mourea Postal Centre ROTORUA	Support		- Access/egress issues. - Visual amenity.
Ontrack (New Zealand Railways Corporation) (8)	PO Box 593 WELLINGTON	Support	No	- Request consultation prior to acquisition of land to north and south of Lake Road Bridge. - Further consultation re how widened road will cross railway track and safety issues at level crossings. - Access/egress to Dinsdale Street.
PJ & DP Sumner, and IB Henderson - Sumner Trust (9)	MTEC Consultants Ltd PO Box 878 ROTORUA Attention: Luke Martin	Oppose	Yes	- Access/egress to site and median effects. - Existing on site building has foundations which extend forward of the building facade into land for designation. - Consultation. - Consideration of alternatives.
Peter Bjarnesen (10)	173 Lake Road Rotorua	Oppose	Yes	- Access associated with central median strip. Loss of business. - Off-street parking. - Vibration/noise effects.
Rewi & Judith Tapsell (11)	66 Townpoint Road RD9 TE PUKE	Support	No	- Traffic/noise/vibration effects. - Loss of geothermal pool (resource consent obtained), primary reason for purchasing property. - Residential amenity Papakainga (home village). - Compensation.
James Lucky & Wera Manley	61 Lake Road ROTORUA	Oppose	Yes	- History of taking of ancestral land. - Safety/pollution issues. - Pedestrian access.

(12)				- Sound barriers. - Ancestor buried on Kuirau Reserve (corner of Lake Road and Ranolf Street).
Lynette Parekahurangi Newport (13)	79C Lake Road ROTORUA	Support	No	- Requests that quiet seal be laid.
The Chief Executive (14)	Environment Bay of Plenty PO Box 364 WHAKATANE 3080 Attention: Paul Dell	Neither supports or opposes	No	- Lake Road Bridge over Uthina Stream be raised when road widening occurs so flood flows are not as restricted. - Consideration of effect of designation on existing geothermal bores on properties along Lake Road.

6.2 The second part of the NoR⁴ attracted no submissions. It was described in the Reporting Officers' report dated the 24 July 2007 as *"procedural in nature to ensure consistency with modifications to the District Plan."* The Reporting Officers said:

"The District Plan has recently been amended to include all "urban roads" as "designated roads", except those roads controlled by Transit New Zealand and those going through separate designation processes, which includes the subject "site". The overriding purpose of the proposal is to designate land for the purpose of improving the efficiency and safety of the roading network. The subject site will be designated for the purposes of 'Road' in accordance with the definition in Section 2 of the RMA and Section 43 of the Transit New Zealand Act 1989.⁵

6.3 Evidence called on behalf of the applicant indicated about 6,920 m² of land is directly affected by the designation, involving seventy-five owners. Some land has already been purchased by Council and officers have consulted and negotiated with other landowners since 2006. At the 2007 hearings, the following submitters attended:

- (a) Mr. Bjarnesen, 173 Lake Road.
- (b) Mr. Pearce, landowner, 175 Lake Road
- (c) Mr. McKnight, McStripes & Signs, tenant, 175 Lake Road.
- (d) Mr. Gemmell, Bike Force, 177 Lake Road.
- (e) Mrs. Morrison, 3 Ariariterangi Street.
- (f) Mr. Martin, representing the Rika family of 139 Lake Road and the Sumner Trust of 163-167 Lake Road.

6.4 At the 2009 hearing, the following submitters attended and addressed the Commissioner:

- (a) Mr. Bjarnesen, 173 Lake Road.
- (b) Mr. Pearce, owner of 175 Lake Road,
- (c) Mr. McKnight, of McStripes & Signs, tenant of 175 Lake Road.
- (d) Mr. Gemmell, Bike Force, 177 Lake Road.
- (e) Mr. Farquhar, representing the Sumner Trust, 163-167 Lake Road.

⁴ Set out in paragraph 1 above

⁵ Section 2 of the Act and Section 43 of the Transit New Zealand Act 1989

6.5 At all the hearings, Council as applicant was represented by:

- (a) Mr. O'Dwyer, planner from Opus.
- (b) Ms. Rae, traffic engineer from Opus.
- (c) Mr. Dine, Works Manager from Council.

6.6 Mr. Hextall attended all hearings as reporting planner, and was accompanied at the 2007 hearings by Mr. Hubbard, MWH traffic engineer. Together, they constitute the Reporting Officers, and advised the Commissioner throughout the hearing.

6.7 Mr Liam Dagg was also in attendance at both 2007 hearings, representing Council as Consent Authority. Mr Dagg was assisted by Senior Policy Planner Mr Chandran KV at the 2007 hearings and by Mr James Witham at the 2009 hearing.

6.8 Submissions from those who did not attend the hearing were tabled and read by the Commissioner.

6.9 By the end of the hearing, it was apparent from the evidence given by the submitters that the submitters who own property or operate businesses primarily on the north side of Lake Road between Railway Road and Fairy Springs Road, except the Sumner Trust, were very unhappy with the level of consultation experienced.

6.10 Their principal concern was that a raised median in front of their sites would have a substantial and unacceptable impact upon their land, or would affect the access to their businesses. They indicated they could not understand why an exception could be made for the Sumner Trust, but not themselves.

6.11 Evidence for the applicant submitted at the 2007 hearings did not support any break in the median along the widened Lake Road⁶. However, after discussions with the Sumner Trust, evidence tabled at the 2009 hearing⁷ indicated that a break in the median opposite the Sumner Trust land was sufficiently removed from the Old Taupo Road intersection to be appropriate. However, that evidence indicated a break in the median opposite the other submitters' properties would not comply with accepted traffic safety requirements.

6.12 During the hearing Mr. Farquhar verbally indicated that the Sumner Trust would accept the conditions recommended by the Reporting Officers, subject to the words "access lot" in Condition 6 being replaced by the words "right-turn-bay and break in the median barrier on Lake Road".

7. Statutory Considerations

7.1 The NoR and all submissions must be considered by reference to Section 168A of the Act, subsections (3) and (4) of which read:

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

(a) any relevant provisions of ... a national policy statement,... regional policy statement or proposed regional policy statement,... a plan or proposed plan; and

(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if ... the requiring authority does not have an interest in the land sufficient for undertaking the

⁶ Addendum to Statement of Evidence by Caroline Rae # 2.

⁷ Addendum to Statement of Evidence by Caroline Rae # 3.

work; or ... 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.

(4) The territorial authority may decide to-

- (a) confirm the requirement:
- (b) modify the requirement:
- (c) impose conditions:
- (d) withdraw the requirement."

8. Analysis of the Issues in Contention

8.0 The Reporting Officers identified the following issues in respect of the NoR in their report of 24 July 2007:

- 8.1 Effects on the environment
- 8.2 Does the proposal achieve the objectives of the NoR?
- 8.3 Consistency with relevant policy documents
- 8.4 Consideration of alternatives
- 8.5 Social and economic impact
- 8.6 Whether the works are necessary in terms of section 168A(3)(c) of the Act.

8.1 Effects on the Environment

Summary of Evidence

8.1.1. The Commissioner was assisted by various lay and expert witnesses in understanding the effects of the proposal. The Reporting Officers identified the following:

- (a) Construction effects
- (b) Construction noise
- (c) Access
- (d) Visual effects
- (e) Vibration
- (f) Archaeological and cultural
- (g) Property values / compensation
- (h) Geothermal

Findings of Fact

8.1.2. The proposal will have some adverse effects, with the effects on site access to those sites fronting Lake Road being the only effect that may be more than minor. All of the effects are capable of effective mitigation.

Analysis

- 8.1.3 Part 2 of the Act sets out the overriding purpose and principles of the Act. The proposal is considered generally consistent with the purpose and principles of the Act as set out in section 5(2), in that the arterial road would facilitate safe and efficient traffic movements and proper road management, and in doing so, enable people and communities to provide for their social, economic and cultural wellbeing, health and safety. However, the NoR proposal must also promote sustainable management of natural and physical resources. This issue is pertinent to the arguments advanced against the NoR at the hearing.
- 8.1.4 The evidence established that the NoR proposal may cause minor environmental effects in the locality and upon some properties in particular, the matter of most significance being access. Witnesses for the applicant did not dispute these effects but argued that they could be either mitigated or compensated.

Decision

- 8.1.6 It is accepted that some effects of the NoR proposal will be more than minor. However, it is the applicant's duty to mitigate those and the Commissioner is satisfied that conditions can be imposed to ensure that the effects of the proposal are adequately mitigated or in some cases compensated.

8.2 Does the proposal achieve the objectives of the NoR?

Summary of evidence:

- 8.2.1 Both the applicant and the Reporting Officers agreed that the NoR proposal achieved the objectives set down in the NoR. There was no evidence submitted to the contrary.

Findings of fact:

- 8.2.2 Having considered the evidence, the Commissioner concludes that the proposal is a valid method of achieving the objectives of the Council as expressed in the NoR.

Analysis:

- 8.2.3 The objectives of the NoR are to:

- *“Permit physical works that will widen Lake Road as well allowing the ongoing maintenance of the road asset.*
- *Provide sufficient land to enable Lake Road to be widened so that its function and character as a major arterial road is maintained.*
- *Protect land on Lake Road between Old Taupo Road and Ranolf Street from other uses that may compromise the roading network”⁸*

- 8.2.4 Having reviewed the evidence put forward during the course of the hearing, the Commissioner considers that the above objectives are met by the NoR as proposed.

Decision:

- 8.2.5 The Commissioner finds that the NoR proposal achieves the objectives of the Council as expressed in the NoR.

8.3 Consistency with relevant policy documents

Summary of Evidence

- 8.3.1 The Reporting Officers and the applicant were of the opinion that the NoR neither conflicted with or was inconsistent with any relevant policy documents. No other evidence was put forward in this regard.

Findings of Fact:

- 8.3.2 Section 168A(3)(a) of the Act requires the Commissioner to have "particular regard" to any relevant provisions of policies and plans. The witnesses for the applicant indicated that the NoR proposal was not inconsistent with the New Zealand Transport Strategy, the Regional Land Transport Strategy and the Bay of Plenty Regional Policy Statement. The evidence established to the Commissioner's satisfaction that the proposal is consistent with the objectives and policies of the relevant Regional Policy Statement, Regional Land Plan, and Regional Land Transport Strategy.

Analysis

National and Regional Policy Statements

- 8.3.3 The Commissioner's attention was drawn to various policy statements as identified in Section 5.2 of the Reporting Officers' report dated 24 July 2007, and witnesses for the applicant asserted that the NoR proposal is consistent with all of those. No evidence to the contrary was submitted.
- 8.3.4 The Commissioner has had regard to the policy documents to which he was referred, and has concluded that the proposal is generally consistent with those policy documents.

District Plan and Policy Documents

- 8.3.5 The RUTS, RTS, and RTDS were all cited by the applicant and the Reporting Officer as relevant to the NoR proposal.
- 8.3.6 Having considered the various local transport policy documents, and the changes to them, the Commissioner concludes that the NoR proposal is not inconsistent with the wider Council policies framework.

Decision:

- 8.3.7 Having regard to the relevant policy documents referred to above, the Commissioner considers that the proposal is generally in accord with the relevant policies and plans, and that it is a desirable community outcome and serves to meet a strategic traffic need.

8.4 Consideration of alternatives

Summary of evidence:

- 8.4.1 There were two submissions that questioned the relevant alternatives chosen by the applicant. The applicant provided evidence at the hearing demonstrating the suite of alternatives considered in preparing the NoR.

Findings of fact:

- 8.4.2 The Commissioner considers adequate consideration has been given to alternative options. Those options were identified by both the applicant and Reporting Officers at the hearings.

Analysis:

- 8.4.3 While most of the affected land has already been purchased, the applicant does not have an interest in all the land required. Therefore section 168A(3)(b)(i) of the Act requires the Commissioner to have:

"particular regard to... whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work..."⁹

- 8.4.4 Other methods to achieve the same outcome were explored. The Reporting Officers were of the opinion that the objectives of the NoR, while narrowly framed, restricted alternatives. However, the assessment of the other options that has been carried out is appropriate. No expert evidence was provided which contradicted that of the applicant.
- 8.4.5 Having given careful consideration to all the evidence provided, the Commissioner concludes that adequate consideration of alternative routes and methods has been demonstrated.

Decision:

- 8.4.6 The Commissioner is satisfied that the applicant had demonstrated that the proposal meets the requirements of Section 168A(3)(b)(i) of the Act, in that adequate consideration had been given to alternative sites or methods of undertaking the work.

8.5 Social and economic impact

Summary of evidence:

- 8.5.1 The evidence indicated various adverse social and economic effects on the residents and businesses within the area affected by the NoR. This was accepted by the applicant. The applicant argued that these effects are a necessary consequence of the proposal, and that they would be mitigated and compensated for as far as possible.
- 8.5.2 Particular concern related to the commercial viability of businesses located towards the western intersection of Lake Road and Fairy Springs/Old Taupo Road on its northern side. Submitters Mr Bjarnesen, Mr McKnight, Mr Pearce, Mr Gemmell, and Mr Farquhar (on behalf of the Sumner Family Trust) presented evidence regarding the effects of the

⁹ Section 168A(3)(b).

NoR on access to their property and/or businesses. That evidence largely focused on the ability to use a flush median to enable right turning from Lake Road for vehicles travelling from the CBD towards Fairy Springs Road / Old Taupo Road.

Findings of fact:

- 8.5.3 The Commissioner finds that there are social and economic impacts of the proposal, but that these are capable of adequate mitigation and compensation. It is noted that a solid median barrier could be erected presently by the Road Controlling Authority without consultation. The applicant has done all that is required of it under the Act and other relevant legislation.

Analysis:

- 8.5.4 The public good must be weighed together with the impacts on private interests. The impacts fall upon a relatively small group of individuals and businesses, all of whom acknowledge they have been aware of the project for a considerable period of time. The intention to widen Lake Road has been signalled for some time in a number of Council documents including the operative Rotorua District Plan and ongoing discussion over a period of time.
- 8.5.5 Mitigation and compensation was discussed at the hearing. The applicant had entered into negotiation with the Sumner Trust to enable solutions to be undertaken regarding access and egress to the 'Rotoma Timbers' site. Several amended conditions were provided.

Decision:

- 8.5.6 The Commissioner finds that the social and economic effects are an inevitable consequence of the project, but that they can be adequately mitigated, including through compensation provisions under other legislation. Conditions 5 and 6 are to be amended as proposed at the hearing on 12 May 2009.

8.6 Whether the works are necessary in terms of Section 168A(3)(c) of the Act

Summary of evidence:

- 8.6.1 The applicant and Reporting Officers agreed that, as presented, the works were required to meet the objectives of the applicant for which the designation is sought. No evidence was presented to the contrary.

Findings of fact:

- 8.6.2 The evidence established that the works are necessary to meet the objectives of the NoR.

Analysis:

- 8.6.3 The evidence established that numerous Council documents, referred to in Section 5.2 of the Reporting Officers report dated 24 July 2007, had identified the NoR proposal and, in particular, noted the strategic role Lake Road plays in the district roading hierarchy. The NoR proposal is necessary to achieve the objectives of the applicant for which the designation is sought.

Decision:

- 8.6.4 The Commissioner finds in terms of Section 168A(3)(c) of the Act that the NoR is reasonably necessary for achieving the objectives of the applicant for which the designation is sought.

9. Other matters - Section 168A(3)(d)

- 9.1 Section 168A(3)(d) requires the Commissioner to consider any other matter reasonably necessary in order to determine a recommendation on the NoR. The Commissioner considers all relevant matters have been taken into account in reaching this decision.

10. Conclusion

- 10.1 Overall, the Commissioner considers the NoR proposal satisfies the requirements of the Act in terms of Section 168A(3). After considerable evaluation of all the evidence it is concluded that the NoR proposal reasonably addresses the objectives of the applicant for which the designation is sought. The Commissioner concludes that the appropriate recommendation, in terms of Section 168A(4) of the Act, is that the NoR should be confirmed, subject to conditions.
- 10.2 The conditions imposed by the Commissioner are those proposed by the Reporting Officers in their report dated 20 April 2009, and further amended in accordance with consideration of the submissions and evidence at the hearing. The Commissioner has made further amendments, including the deletion of Advice Notes (c.) through to (f.), as the wording of Conditions 5 and 6 have now been agreed through consultation. Condition 4 has also been amended to resolve ambiguities in the draft wording.

11. Recommendations

- 11.1 I, Alan Withy, acting on behalf of the Council, under authority delegated to me pursuant to a resolution of the Council dated 24 March 2003, recommend that Council makes the following decision pursuant to Section 168A(4) of the Act:

"Recommendation 1:

That, pursuant to Section 168A of the Resource Management Act 1991, the Notice of Requirement is confirmed for the Designation of Lake Road from the intersection with Old Taupo Road to the intersection with Ranolf Street, Rotorua, on land legally described in Schedule One, subject to the following conditions:

- 1. That the road construction be undertaken generally in accordance with the report by Opus Consultants Limited (Report Reference 267881.00 dated January 2006) and plans by Opus Consultants Limited titled: "Lake Rd 4 Laning Land Acquisition – Land Designation Plan", Code 5204, Sheet 1, Revision R02; Sheet 2, Revision R02; Sheet 3, Revision R02 and Sheet 4, Revision R02, except where modified by any of the following conditions:*
- 2. That a Construction Environmental Management Plan (CEMP) shall be submitted to the Director of Environmental Services and approved prior to construction commencing. The CEMP shall detail:*

- (a) *All reasonable steps that will be taken to prevent any nuisance and damage to properties that are adjacent to the works during construction.*
 - (b) *Noise Management strategies that shall have regard to: (i) the noise standards contained in the Rotorua District Plan; (ii) the noise limits recommended in Tables 2 and 3 of NZS 6803:1999 (Acoustic Construction Noise); (iii) the measurement and assessment criteria in NZS6801:1999 (The Measurement of Environmental Sound); and (iv) the consultants report 'Proposed Widening of Lake Road, Rotorua, Assessment of Noise Effects' prepared by Hegley Acoustic Consultants and dated November 2005.*
 - (c) *Dust Management to minimise the potential for dust nuisance during construction.*
 - (d) *Sediment and Erosion Control to avoid, remedy or mitigate potentially significant and adverse effects associated with any sedimentation from the proposal.*
 - (e) *Vibration Management to limit the duration of vibration effects during construction as detailed in the Central Laboratories Report 07-3-37535.1 Task 7CL, dated May 2007.*
 - (f) *The measures to mitigate any potential adverse effects on private geothermal resources.*
 - (g) *The protocols to be followed in the event that any archaeological sites, remains, artefacts, Taonga or koiwi are unearthed, dislodged, uncovered or otherwise found or discovered during earthworks.*
3. *The Requiring Authority shall ensure that any property damaged during construction shall be reinstated or the owner compensated.*
 4. *Within 6 months of the commencement of the designation, the Requiring Authority shall advise the owners of those properties located on the route ("Owners") for which noise mitigation in the form of a noise barrier ("the Noise Works") is proposed in terms of Condition 2(b), of the intention to construct the Noise Works. If any of the Owners advise the Requiring Authority, within one month of receiving that advice, that they do not want the Noise Works constructed in respect of their property, the Requiring Authority shall not be required to comply with Condition 2 (b) insofar as it relates to that Owners' property.*
 5. *That the Requiring Authority shall provide suitable turning facilities in close vicinity to the Railway/Dinsdale/Lake Roads intersection to allow for all vehicles, including large vehicles and trailers, to change their direction from heading southeast along Lake Road to northwest towards Fairy Springs Road.*
 6. *That a right-turn-bay and break in the median barrier on Lake Road shall be provided to allow for Lake Road right-turning-traffic to access 159 Lake Road (legally described as Te Koutu 3G1A).*
 7. *That an Outline Plan is required to be obtained prior to construction works commencing. An outline plan shall be submitted in terms of Section 176A of the Resource Management Act 1991 and will detail the engineering design and confirm necessary mitigation and/or provision for:*
 - (a) *The safe, efficient and viable access to every property fronting Lake Road between Fairy Springs Road and Ranolf Street.*
 - (b) *The construction design of the Utuhina Stream bridge.*
 - (c) *The construction design of the Rotorua Branch railway crossing.*

- (d) Cycle infrastructure
- (e) Pedestrian infrastructure
- (f) Structural engineering assessment of the potential effects of the road construction on the building at 163-167 Lake Road, Rotorua.
- (g) Stormwater disposal.

Prior to the finalisation of the Outline Plan the Requiring Authority shall investigate and consider the potential to have a break in the proposed raised median strip or having a flush median to provide the ability to increase access opportunities for properties located between 169 and 177 Lake Road. The outcomes of this further analysis shall be reflected in the Outline Plan submitted for approval.

8. *The Requiring Authority shall establish a Project Liaison Officer, whose duty will be to liaise with all parties over concerns that may arise from the carrying out and completion of the proposed works. The name and contact details of this project liaison officer shall be communicated to all directly affected parties and the Chief Executive Officer of the Council (or his respective nominee) within four weeks of the designation being included in the District Plan, and shall also form part of the CEMP described above in Condition 2.*
9. *That the designation shall lapse after 10 years from the date of this decision unless an application is made pursuant to Section 184 of the Resource Management Act 1991 to extend the period for the designation.*

Advice Notes:

- a. *Large-scale earthworks and road construction are controlled by the Bay of Plenty Regional Council. No construction works should commence until any necessary consents required for such works are obtained from Environment Bay of Plenty.*
- b. *Archaeological sites may be present beneath the surface of the ground or beneath the proposed alignment. Council has no records of an archaeological site on this road alignment. This may be due to one of two factors. Either, there are no sites present or there has not been an archaeological survey undertaken. Please be advised that both known and unknown archaeological sites are protected under the Historic Places Act 1993. If during the exercising of this consent any archaeological site is uncovered work must stop and permission be obtained from the Historic Places Trust under the provisions of either Section 11 or 12 of the Historic Places Act 1993.*

Recommendation 2

That pursuant to Section 168A of the Resource Management Act 1991, the Notice of Requirement is confirmed for Designation of Lake Road from the intersection with Old Taupo Road to the intersection with Ranolf Street, Rotorua, on land legally described in Schedule One, subject to the following conditions:

1. *That the designation be included in the District Plan to the following effect:*

Requiring Authority	Description of Designation	Purpose and Underlining Zoning
<i>Rotorua District Council</i>	<i>Lake Road Designation Area as identified in the Notice of Requirement.</i>	<i>For the purposes of 'Road', in accordance with the definition in Section 2 of the Resource Management Act 1991 and includes 'roads' within the meaning of Section 43 of the Transit New Zealand Act 1989. Works are restricted general powers and various roading and associated activities as outlined in Part 21 of the Local Government Act 1974.</i> <i>The underlining zone shall be 'Road zone'.</i>

NOTE: *The designation schedule in the District Plan refers to "all legal urban roads..." Accordingly once land is taken for the current project and vested as road the existing designation description will include the subject area.*

2. *That the designation shall lapse after 10 years from the date of this decision unless an application is made pursuant to Section 184 of the Resource Management Act 1991 to extend the period for the designation."*

REASONS FOR THE DECISION

- A. The Commissioner accepts that the works and the requirement set out in the NoR are reasonably necessary for achieving the objectives of the Requiring Authority for which the requirement is sought, being to permit physical works that will widen Lake Road, so that the function and safe operation of Lake Road as a major arterial road is maintained.
- B. Section 168A(3)(b) of the Act is applicable as the Requiring Authority does not have an interest in all of the land needed for undertaking the works in the NoR. In terms of section 168A(3)(b) of the Act, the evidence presented to support the NoR application and at the hearing demonstrated a sufficient consideration of alternatives when assessed against the objectives of the NoR. The Commissioner is satisfied from the evidence given that the Requiring Authority has given adequate consideration to alternative sites and methods of undertaking the works.
- C. The Commissioner considers that the requirement is consistent with the relevant provisions of the New Zealand Transport Strategy, the Regional Land Transport Strategy, the Bay of Plenty Regional Policy Statement and Part 12 of the Operative

Rotorua District Plan, which identifies objectives and policies for the Rotorua transportation network.

- D. Evidence was presented as to the potential effects on the environment of allowing the requirement. The Commissioner accepts that there will be effects on the environment, including on related property owners and businesses, and that in some cases these effects will be more than minor. Having had regard to the ability of the applicant, as Road Controlling Authority, to erect a fixed median strip at any time it wishes in the future, the long standing nature of the proposal in Council documents, that the Council owns the majority of the land affected and the Council's proposals to mitigate effects, the Commissioner considers that these effects can be appropriately mitigated or compensated for.
- E. Having regard to Part 2 of the Act and the above matters, including the likely effects on the environment of confirming the requirement and the potential mitigation of those effects, the Commissioner considers that the NoR promotes the sustainable management of natural and physical resources by managing the development of those resources in a way which allows the people of Rotorua to provide, for their social and economic wellbeing and health and safety, while sustaining the potential of the resources of the city to meet the reasonably foreseeable needs of future generations and avoiding, remedying and mitigating the potential adverse effects of the NoR on the environment.
- F. The Commissioner is mindful of the time it has taken in concluding the hearing process, and considers that extensive consultation with some parties has resulted in greater appreciation of the environmental effects by the Requiring Authority, and development of better means to mitigate these effects. This has resulted in a robust set of conditions that the Commissioner is satisfied will effectively manage the construction and operation of the Works in a safe and sustainable manner.

Signed by:



Alan Withy
Independent Commissioner

DATED the thirtieth day of June 2009

Schedule One – Properties affected by the Notice of Requirement

Pt Lot 2 DPS 18416, Pt Lot 123, DP 18416
Lot 1 DPS 27562
Koutu 3K2B3 No 6
Koutu 3K2B1
Lot 1 DP 26784
Lot 2 DP 26784
Lot 1 DP 320868 2106 L52205, Lot 1 DP 320868, Lot 1 DPS 61172, Pt Lot 11 L1908
Pt Tuporo 1B2, Tuporo 1B1A1, Tuporo 1B1A2
Lot 2 DPS 73066
Pt Te Koutu 3F2
Lot 2 DPS 5029, Lots 1 & 2 DPS 5029
Lots 3 & 4 DPS 5029, Lot 2 DP 354106
Lot 2 DP 27738
Te Koutu 3G 1A & 1B
Te Koutu 3D3
Te Koutu 3D2
Te Koutu 3D1, Lot 3 DPS 84286
Te Koutu 3D4
Pt Te Koutu 3E
Te Koutu 3A1B1
DPS 24607 on Lot 2 DPS 23364 - Having int in 1136 sq.
DPS 24607 on Lot 2 DPS 23365 - Having int in 1136 sq.
Lot 1 DPS 23364
Flat 2 DPS 56647 on Te Koutu 3A1A - Having ½ int in 1012
None 3 Ohinewairua None Te Miringa 2C Ohinewaiuru Nos 1A1 1A2 1B 2 & 3 – Lakewood Manor
Flat 1 DPS 51748 on Lot 1 DPS 11423 - Having 1/3 int in 911
Flat 2 DPS 51748 on Lot 1 DPS 1143 – Having 1/3 int in 911
Lot 1 DP 320868, Lot 1 DPS 61172, Pt Lot 11 L1908
Lot 4 DP 27908
Lot 3 DP 27908
Lot 2 DP 27908
Lot 1 DPS 6774
Flat 3 DPS 17642 on Lots 1 3 4 DPS 6774 – Having 1/12 int
Flat 4 DPS 17642 on Lots 1 3 4 DPS 6774 – Having 1/12 int
Flat 5 DPS 17642 on Lots 1 3 4 DPS 6774 – Having 1/12 int
Flat 6 DPS 17642 on Lots 1 3 4 DPS 6774 – Having 1/12 int
Flat 7 DPS 17642 on Lots 1 3 4 DPS 6774 – Having 1/12 int
Flat 8 DPS 17642 on Lots 1 3 4 DPS 6774 – Having 1/12 int
Flat 9 DPS 17642 on Lots 1 3 4 DPS 6774 – Having 1/12 int
Flat 10 DPS 17642 on Lots 1 3 4 DPS 6774 – Having 1/12 int
Flat 11 DPS 17642 on Lots 1 3 4 DPS 6774 – Having 1/12 int
Flat 12 DPS 17642 on Lots 1 3 4 DPS 6774 – Having 1/12 int
Sec 3 Blk LIV Rotorua Tn
Lot 2 DPS 11423
Ohinewaiura 5A
Flat 1 DPS 62058 on Ohinewaiura 5B – Having 1/3 int
Flat 2 Grge 2 DPS 62058 on Ohinewaiura No 5B – Having 1/3 int in 1406
Flat 3 DPS 62058 on Ohinewaiura 5B – Having 1/3 int in 1406
Lot 1 DPS 23020
Pt Ohinewairua 8, Sec 87 Blk I Tarawera SD - Tannoch Brae Motel
Lots 1 and 2 DPS 36885, Turanga-O-Hikanui No 4 - Utuhina Lodge

Sec 1 Blk LIV Rotorua Tn Secs 1 2 Blk LIV Rotorua Town
Lot 2 DPS 42220
Sec 2 Blk LIII Rotorua Tn
Sec 3 Blk LIII Rotorua Tn
Harakekeroa C3A
Tapuae A1
Flat 1 DPS 19446 on Harakekeroa B No 2C Blk Ohinemutu Vill
Flat 2 DPS 19446 on Harakekeroa B No 2C Blk Ohinemutu Vill
Flat 3 DPS 19446 on Harakekeroa B No 2C Blk Ohinemutu Vill
Pt Lot 2 DP 13576
Flat 1 DPS 25015 on Harakekeroa A2A A2B – Having 1/3 int in
Flat 2 DPS 25015 on Harakekeroa A2A A2B – Having 1/3 int in
Flat 3 DPS 25015 on Harakekeroa A2A A2B – Having 1/3 int in
Pt Lot 2 DP 12254, All DP 12254 Tiki Motor Lodge
Flat 1 Grge 1 Bath 1 DPS 21525 on Lot 1 DPS 21525
Flat 2 Grge 2 Bath 2 DPS 21525 on Lot 1 DPS 21525
Flat 3 Grge 3 Bath 3 DPS 21525 on Lot 1 DPS 21525
Pt Lot 2 DP 15120, Lot 1 & Pt Lot 2 DP 15120
Kairau 2
Kuirau 1A
Kuirau 1C
One 2A Te Korokoro None Te Korokoro No 2A Block
Te Korokoro 3