

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a Board of Inquiry appointed under s149J of the Resource Management Act 1991 to consider Notice of Requirements and applications for Resource Consent made by the New Zealand Transport Agency in relation to the East West Link roading proposal in Auckland.

**SUMMARY OF EVIDENCE OF MATTHEW DENNIS GOUGE ON BEHALF OF
AUCKLAND COUNCIL
PLANNING**

Corrections to Evidence

1.

- (a) In paragraph 5.1 of my evidence in chief, Bullet Point 11 should reference the evidence of Andres Roa as well as Trent Sunich for stormwater effects.
- (b) In paragraph 10.1(g) of my evidence in chief, I mention assessing the resource consents under section 105 of the RMA. This assessment was undertaken in the evidence in chief of Ms. Coombes¹.
- (c) I provide an updated statement on the extent to which designation related objectives and policies can be considered in performing an assessment under section 104D of the RMA (refer to sections 8 to 10 of this summary statement).

Overview of Key Conclusions of Evidence

- 2. I have undertaken a planning assessment of the Proposal predominantly with respect to the land based activities covered by the designation and resource consents. I defer to the evidence of Ms. Coombes with respect to those aspects of the Proposal within the Coastal Marine Area whilst noting that my rebuttal evidence also provides some commentary on objectives and policies of the regional coastal plan.
- 3. The approach taken when assessing this Proposal was to take a project-wide view, prior to narrowing down to the key matters of concern for the Council experts and where there is disagreement with the NZTA's planning assessment². The absence of specific mention of provisions or geographical locations does not mean that these areas and matters were not considered.
- 4. The key conclusions of my evidence are:
 - (a) At a strategic level, there is a high degree of alignment between an East West Link (**EWL**) connection and the Auckland Plan, although an exact alignment is not specified at the strategic level.

¹ Evidence in Chief of K Coombes, section 20.

² Evidence in Chief of M Gouge, para 10.2.

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- (b) The areas of concern to the Council experts from an effects and policy perspective are the 'Neilson Street Interchange', Mangere Inlet and Anns Creek areas. These areas have been the focus of the Council planning assessment undertaken by both Ms. Coombes and myself.
- (c) From an effects perspective, the Proposal generates a wide range of both positive and adverse effects. The most significant positive effects relate to transport, economic benefits, and water quality benefits. The most significantly adverse effects are identified as being with respect to terrestrial ecology, avifauna, severance effects and social effects arising from works on Waikaraka Park South and adjoining the cemetery.
- (d) From a policy perspective, the Proposal is subject to stringent tests for reclamation and dredging within the coastal marine area, and for effects on biodiversity within the Significant Ecological Area Overlay (both in Anns Creek and in the reclamation area). This is where the Proposal is tested most strongly under section 104D of the RMA.
- (e) The Proposal does not pass section 104D(1)(a) of the RMA as the adverse effects on the environment are more than minor. Despite this, the Proposal should be amended to address the potential adverse effects identified by the Council experts and bring it more into alignment with the planning policy framework.
- (f) The Proposal passes the section 104D(1)(b) 'gateway' test³. This is because the Proposal is **consistent** with, or in some cases **inconsistent** with, a majority of the relevant provisions of the plans or proposed plans, not all of which are explicitly identified in my evidence⁴. The Proposal is **contrary** to specific objectives and policies including those addressing reclamation and biodiversity however even these provisions acknowledge the possible need for infrastructure in these sensitive environments. Accordingly, the Proposal cannot be said to be contrary to the overall direction of the plan.
- (g) Overall, the Proposal is consistent with the purpose and principles of the RMA.

³ Recognising that Ms. Coombes assesses this to be a 'finely balanced matter' insofar as the Coastal Marine Area.

⁴ Some examples of policies that the Proposal is consistent with but which are not explicitly discussed in my evidence include: Land Disturbance (Regional Plan), Contaminated Land (Regional Plan), Air Quality (Regional Coastal Plan and Regional Plan), Cleanfills, Managed Fills and Landfills (Regional Plan).

Summary of Issues Resolved and Unresolved

5. During the course of the expert conferencing and hearing, both Ms. Coombes and I have had ongoing discussions with the NZTA experts, and in particular Ms. Hopkins, regarding conditions necessary to address the adverse effects of the Project. These discussions have extended to engaging with other submitters when appropriate. As a result of this, a number of key matters have been resolved or are close to being resolved. These are:

- (a) Traffic and transport matters pertaining to optimising the configuration of the 'Galway Street Link', ensuring that a future connection at Alfred Street is not precluded, and improved connections between Taumanu Reserve and the Port of Onehunga and across the EWL (subject to detailed design).
- (b) The effects on the Aotea Sea Scout Building as a scheduled built heritage feature, where agreed condition wording places a greater onus on the consent holder to undertake agreed building works in accordance with the conservation plan.
- (c) Likely noise effects on Waikaraka Cemetery will be mitigated in accordance with the best practicable option through the installation of noise barriers (or similar) along the southern boundary of the cemetery.
- (d) The NZTA has agreed to undertake restoration works on the intertidal tuff area of Te Hopua Outstanding Natural Feature to address effects on Outstanding Natural Features within the project area.

6. Key matters which are currently unresolved are identified by both Ms. Coombes⁵ and me as being:

- (a) The length of the proposed land bridge between Onehunga Harbour Road, the Port of Onehunga and Old Mangere Bridge (from 90m up to maximum of 170m).

⁵ Summary of Evidence of K Coombes, para 4.2

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- (b) The extent of ecological mitigation to address effects on terrestrial ecology and avifauna, particularly with respect to works in Anns Creek East.
 - (c) Mitigation of the social effects associated with delays in the development of Waikaraka Park South as a sports ground (discussions are progressing).
 - (d) The shape and size of areas of reclamation within the Mangere Inlet. The extent to which the reclamation could be reduced without compromising the landscape and recreational values of the Proposal.
 - (e) An agreed works methodology for inter-tidal dredging of the Mangere Inlet to minimise the adverse effects of sediment discharge on significant ecological areas. The need to avoid sub-tidal dredging within the Mangere Inlet and the extent to which the draft conditions address the effects of dredging.
 - (f) Effects associated with sediment disturbance and increased sediment deposition within the Mangere Inlet as a result of the landforms affecting tidal flows.
 - (g) Potential effects on historic heritage (a late concern raised by Council, discussions are being progressed with both the NZTA and Heritage New Zealand Pouhere Taonga).
 - (h) The undergrounding of transmission lines to alleviate severance between urban areas and the foreshore, and to address adverse amenity and landscape effects.
 - (i) Conditions to control construction and operational noise on people and businesses (the NZTA are currently considering Council proposed conditions).

Matters Raised by the Board

The Relevance of the Auckland Plan

7. As noted in the summary statement of Ms. Rickard, there have been comments and questions on the relevance of the Auckland Plan to the regional planning

framework⁶. This matter is discussed in paragraph 8.4 of my evidence in chief where it states that the Auckland Plan was prepared under section 79 of the Local Government (Auckland Council) Act 2009 and was adopted by the Council in 2012. It sets the strategic direction for the region over a 30 year period, and includes significant amounts of qualitative and quantitative data on the Auckland region. It is an important strategic document used to guide the development of a number of plans and strategies illustrated in Figure 1 of the attachment to this statement. The Auckland Plan is a 'living document' insofar as it is progressively updated to reflect the most current growth data and to improve content and integration. Currently, an Auckland Plan 'refresh' process is underway five years after its adoption.

Section 104D Assessment

8. On 25 July, Mr. Parsonson questioned Ms. Rickard, as to the validity of considering district level objectives and policies relating to the land use (designation) when performing a test under section 104D of the RMA (which applies to the assessment of resource consents).
9. A majority of the land use activities are to be authorised by the designation (rather than resource consents). On reflection, while I note that some of the resource consents sought by the NZTA are for district plan level activities, I accept that section 2.15 of my rebuttal evidence overstates the extent to which district plan matters can be considered under the section 104D assessment for this Proposal.
10. I note that this possibility was considered in section 2.38 of my rebuttal evidence where I concluded that even without the consideration of district plan objectives and policies, my overall conclusion under section 104D(1)(b) would be unchanged.

The Necessity of Designating Anns Creek East as Part of the Project

11. During the course of the hearing, the Board has raised with a number of witnesses the necessity of designating land (for the Proposal) within Anns Creek East which is currently owned by the TR Group. Most recently, questions were posed by the Board to Dr Bishop who provided evidence of terrestrial ecology on behalf of Council.

⁶ Summary of Evidence of A Rickard, para 13.

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12. In my view, sections 171(1)(b) and (c) of the RMA are relevant tests to apply to this matter. These provisions state that when considering a requirement, the Board must consider:
- (a) *whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work... (s171(1)(b));*
 - (b) *whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought... (s171(1)(c)).*
13. Section 176 of the RMA sets out the effect of designating land and this section is repeated in Figure 2 of the Appendix to this statement. In practical terms, the designation of land achieves the following:
- (a) Avoids the need to obtain resource consent when not complying with district level activity rules and standards;
 - (b) Facilitates access to, and potentially acquisition of, the land;
 - (c) Controls the use of the land by other parties. Section 176 (1)(b) states: *no person may, without the prior written consent of that requiring authority, do anything in relation to the land that is subject to the designation that would prevent or **hinder a public work or project or work to which the designation relates.*** (emphasis added);
 - (d) Promotes public awareness of the designated works on the land (through the Auckland Unitary Plan maps).
14. The physical works to be authorised by the designation generate ecological effects that need to be appropriately addressed. The mitigation works require regional resource consents and detailed works may also require district consents should a designation not be confirmed over the land⁷.
15. With respect to Anns Creek East, a suite of ecological mitigation and offset measures are proposed within an Ecological Management Plan framework. Council and NZTA ecology experts agree that an “integrated ecosystem approach

⁷Such as under E27 Transport for the formation of access

to effects, mitigation and offset” is necessary to address the ecological effects of the Project⁸. The NZTA and Council ecology experts are in agreement that all of the proposed mitigation and offset measures need to be successfully implemented⁹.

16. With respect to terrestrial biodiversity, Dr Bishop explained that the ecological mitigation and offset package proposed by the NZTA needed to be undertaken in an integrated manner across the wider Mangere Inlet. In his view, an important component to the success of such an undertaking is that the entity performing the works is well resourced, committed over the long term, and is able to adaptively manage the wider area¹⁰.
17. I accept that the TR consents require ecological mitigation in relation to the Stage 1 and 2 TR works. The ecological restoration and enhancement components of the TR consents will effectively be ‘adopted’ by the NZTA, including the Stage 2 works which are yet to be undertaken. However, this relates to only part of the overall mitigation works required for the EWL. The successful implementation of the ecological mitigation in an integrated and comprehensive manner is in my view critical to the granting of the relevant regional consent (Resource Consent Three), which in turn forms an intrinsic part of the Proposal.
18. It is generally agreed by the NZTA and Council ecologists and planners that the ecological mitigation must be enduring. One method to achieve an enduring outcome is to offer both interim and ongoing protection of the land. As the ecological mitigation is part of the ‘public work or project or work to which the designation relates’¹¹, the application of a designation over this area provides interim and future certainty over the management of land uses within the site.
19. In summary, the evidence of both the NZTA and Council experts is clear that Anns Creek East is a unique location and a range of methods and routes for undertaking both the construction and mitigation works have been considered. This in my view meets the section 171(1)(b) test. As is stated in my evidence in chief, in my view the Proposal is reasonably necessary to achieve the objectives of the requiring authority, thereby meeting the test in section 171(1)(c)¹².

⁸ Joint Witness Statement Ecology, section 11; and recognising the concerns Dr Bishop has with respect to no net loss of indigenous biodiversity

⁹ Ecology Joint Witness Statement, para 11(b)

¹⁰ Summary of Evidence of C Bishop, para 3 (j)-(l).

¹¹ Section 176(1)(b)

¹² M. Gouge, EIC, section 16

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20. In seeking a designation over the site the NZTA has protected the area in the interim and, should the designation be confirmed, will be in a stronger position to ensure the enduring protection and enhancement of the area. The flexibility provided by the designation process is likely to facilitate an adaptive management approach to addressing the effects on Anns Creek East in conjunction with the wider area by a single well-resourced public entity. This, in my view, provides greater certainty of the future sustainable management of the natural and physical resources of Anns Creek East than not designating the area.

The National Policy Statement on Electricity Transmission 2008

21. On 28 July 2017, Dr Priestley requested Mr. Lanning to provide an explanation as to how Policy 11 of the National Policy Statement on Electricity Transmission was being provided for in the Unitary Plan. This matter was referred to in paragraph 7.5 of my evidence in chief and is an appeal matter that has been running concurrently with the East West Link hearing process. I have sought an update from the relevant Council officer and can confirm that the recent update (memorandum of counsel and evidence update/summary of 8 August) from Transpower accurately records the status of the Unitary Plan matters and the relationship with Policy 11 of the NPS. In particular, Mr Horne says at paragraph 8 of his update/summary:

“In my opinion, the amendments now directed by the High Court provide an appropriate framework by which Policies 10 and 11 are to be given effect to, particularly in relation to areas where there are existing transmission lines that have not been compromised by existing urban development and ‘under build’.”

Attachments

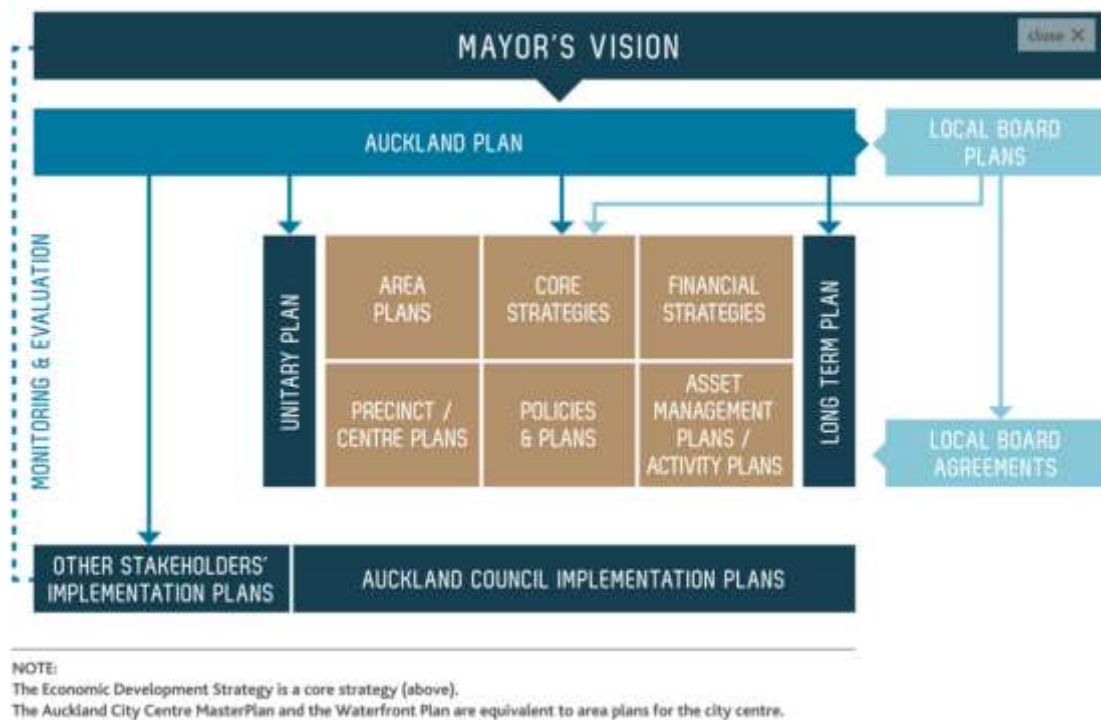


Figure 1: Auckland Council's Strategic Framework (Auckland Plan p. 16)

176 Effect of designation

- (1) If a designation is included in a district plan, then—
 - (a) [section 9\(3\)](#) does not apply to a public work or project or work undertaken by a requiring authority under the designation; and
 - (b) no person may, without the prior written consent of that requiring authority, do anything in relation to the land that is subject to the designation that would prevent or hinder a public work or project or work to which the designation relates, including—
 - (i) undertaking any use of the land; and
 - (ii) subdividing the land; and
 - (iii) changing the character, intensity, or scale of the use of the land.
- (2) 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) This section is subject to [section 177](#).

Section 176(1): replaced, on 1 August 2003, by [section 65](#) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 176(1)(a): amended, on 1 October 2009, by [section 107\(1\)](#) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 176(1)(b)(i): amended, on 1 October 2009, by [section 107\(2\)](#) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 176(2): amended, on 17 December 1997, by [section 37\(2\)](#) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 176(2): amended, on 7 July 1993, by [section 90\(2\)](#) of the Resource Management Amendment Act 1993 (1993 No 65).

Figure 2: Section 176 of the RMA