

**BEFORE A BOARD OF INQUIRY**

**UNDER** Section 149E of the Resource Management Act 1991

**IN THE MATTER** NOTICES OF REQUIREMENT AND APPLICATIONS  
FOR RESOURCE CONSENT BY NEW ZEALAND  
TRANSPORT AGENCY IN RESPECT OF THE  
PROPOSED EAST WEST LINK PROJECT

**SUBMITTER** SYL PARK INVESTMENTS LIMITED and 8 SYLVIA  
PARK ROAD BODY CORPORATE (Subs: 126280  
and 126453)

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**CLOSING SUBMISSIONS ON BEHALF OF SYL PARK INVESTMENTS  
LIMITED AND 8 SYLVIA PARK ROAD BODY CORPORATE**

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## MAY IT PLEASE THE BOARD

### *Introduction*

1. These closing submissions are in support of the submission lodged by Syl Park Investments Limited and 8 Sylvia Park Road Body Corporate with respect to the notices of requirement and applications for resource consent by the New Zealand Transport Agency (“NZTA”) for the construction and operation of the “East West Link” arterial road connection between Onehunga and Mt Wellington, and associated works (“EWL”).
2. The EWL project will involve significant works in the immediate vicinity of 8 Sylvia Park Road (“the Site”), which is owned and occupied by the Submitters. Those works will generate adverse effects on the Site, the most significant of which from the Submitters’ perspective is that right turns into and out of the Site across the Sylvia Park Road frontage will be prevented.
3. The Submitters remain of the view that NZTA should mitigate the adverse effects on the commercial activities at 8 Sylvia Park that will arise as a consequence of that loss of access. They acknowledge that NZTA has instructed Opus to commence negotiations with the owner of 1 Pacific Rise regarding the formalisation of access between the Site and Pacific Rise across that land.
4. NZTA has proposed mitigation through the provision of U-turns along Sylvia Park Road. The Submitters have doubts regarding the practical implementation and permanent retention of such U-turns, however, and for that reason continue to prefer the formalisation of access through 1 Pacific Rise.

### *Legal Framework*

5. The Submitters reiterate the position set out in their opening submissions with respect to the legal framework governing the Board’s determination and in particular those sections addressing matters relevant when assessing a designation and the relationship between the imposition of conditions under the Resource Management Act and

compensation pursuant to the Public Works Act. In summary, the Submitters say:

- (a) The focus of the assessment of the designation under RMA is on the effects generated by the proposal and it is appropriate for you to impose conditions that require NZTA to mitigate effects.
  - (b) In this case, the easiest way to mitigate the effects on the Submitters involves providing access through land (1 Pacific Rise) that is not subject to the designation. That may necessitate another RMA process if NZTA cannot reach a commercial agreement with the owner of 1 Pacific Rise.
  - (c) The Submitters consider an easement to be a legitimate form of mitigation for the effects generated by the proposal and hence capable of being progressed by NZTA through designation and/or the compulsory acquisition of an interest in land.
  - (d) The PWA compensation process is consequential upon the RMA assessment but neither informs nor determines it. It is not a matter that justifies NZTA disregarding or failing to mitigate adverse effects on properties that will be generated by its proposal.
6. These Submitters ask that, in the absence of a condition requiring mitigation of the effects on the Site, that the Board taken account those unmitigated adverse effects when deciding whether to uphold the designation.

***Potential Adverse Effects***

7. As a consequence of the removal of right turns into and out of the Site across the Sylvia Park Road, vehicles accessing the Site by travelling west along Sylvia Park Road and leaving the site to travel west along Sylvia Park Road will, in the absence of any mitigation measures, need to undertake extensive and potentially time-consuming detours. That

will make access difficult for employees of and visitors to businesses on the Site and will have potentially significant adverse effects on the businesses operating at the Site.

8. One factor that may inform the Board's decision and that has changed since the commencement of the hearing is the number and nature of activities located on Sylvia Park Road between the Pacific Rise and Great South Road intersections. When the hearing commenced there were, effectively, three properties (containing a much larger number of businesses) that would lose right-hand ingress and egress – the Site; the Stratex site (19 Sylvia Park Road); and the remaining businesses at 20 Sylvia Park Road. NZTA is now purchasing and designating the Stratex site so there are only two blocks of land that now need to be managed. Accordingly, if safe and efficient self-contained access arrangements could be provided to both 8 and 20 Sylvia Park Road, the need for U-turns (and the complications that they bring for the road network) would be avoided. In any event, formalising access to the Site across 1 Pacific Rise would reduce significantly the number of vehicles using any U-turns that are provided.

### ***Means of Mitigation***

#### *Proposed Mitigation via U-turns on Sylvia Park Road*

9. NZTA has proposed mitigating these adverse effects by enabling U-turns on Sylvia Park Road at the Pacific Rise intersection and at a location to the west. NZTA has refined its proposal for a western U-turn facility and now proposes that manoeuvre occur at the Great South Road intersection.
10. The Submitters accept that the provision of U-turns at both the Sylvia Park Road intersections with Pacific Rise and Great South Road would mitigate the adverse effects on access to the Site to some extent, provided those U-turn facilities are safe and are retained permanently. The Submitters' traffic consultant, Wes Edwards, has, however, raised concerns regarding the safety of the U-turn operations at both Pacific Rise and Great South Road.

11. Mr Edwards' supplementary statement delivered on 22 September 2017 recorded his concerns with the plans that had been provided by NZTA at that stage including in particular the new plan showing a U-turn arrangement at the Great South Road intersection. NZTA has provided an amended plan of that U-turn with its memorandum dated 11 September 2017. Mr Edwards' response to that plan is contained in the **Attachment**, being an email to NZTA's solicitors. In summary, while the revised plan addresses the most obvious concern that Mr Edwards had with respect to the NZTA proposal, it did not address his other concerns.
12. The Submitters remain concerned that, even if U-turns are initially provided for, they may subsequently be removed for safety reasons. They consider that issues and risks sometimes become apparent only once a proposal is implemented and operating.

*Mitigation via access across 1 Pacific Rise*

13. The Submitters remain of the view that these issues will most appropriately and permanently be mitigated through formalisation of the existing informal vehicular access between the Site and Pacific Rise across 1 Pacific Rise.
14. Such access could be provided through an easement or a service lane. The Submitters consider that an easement would be the least intrusive and most appropriate course of action to adopt. It will enable access for employees of and visitors to businesses at 8 Sylvia Park Road without requiring any (significant) physical works, any acquisition of fee simple interests, or the provision of a right for the public generally to drive on the access. The property at 1 Pacific Rise will retain its current form and appearance, subject only to the provision of appropriate signage and any lane markings. The Submitters' expectation is that heavy goods vehicles will continue to enter the Site from Sylvia Park Road and exit via Pacific Rise (as currently occurs) while light vehicles would be able to travel in both directions.
15. Ideally, NZTA will be able to formalise the access through contractual means (e.g.: an easement). If not, the Submitters ask that NZTA (potentially in conjunction with Auckland Transport as the authority with

responsibly for local roads including Pacific Rise) use designation and / or compulsory acquisition powers to provide access. Regardless of the mechanism used, the Submitters say that such access is required to ensure that the adverse effects of the EWL proposal are appropriately avoided, remedied or mitigated.

***Observations on relevant NZTA Evidence***

16. NZTA's engineer, Noel Nancekivell, confirmed (Transcript, page 1028, lines 16 to 39) that it would be preferable from an engineering perspective to formalise access across 1 Pacific Rise rather than to engineer U-turns along Sylvia Park Road. The Submitters acknowledge that formalising access to the Site across 1 Pacific Rise would not resolve the issue for landowners on 20 Sylvia Park Road but it would reduce the quantum of traffic using any U-turns that are provided, which should improve the overall safety of the road network.
17. NZTA's traffic engineer, Andrew Murray, advised the Board that he would be comfortable with a condition being imposed on the designation requiring a U-turn to be provided at Pacific Rise, provided safety audits confirm that to be safe (Transcript, page 1209, lines 8 to 15). He was not as comfortable with a corresponding condition regarding a U-turn at the western end of Sylvia Park Road (Transcript, page 1209, lines 17 to 25). Following additional design work, NZTA has now proposed additions to condition DC.11 that address this issue (discussed below).
18. Mr Murray appeared to conclude that vehicular access to the site had not been materially reduced by the proposal (Transcript page 1211, lines 18 and 19). That is not a contention that the Submitters accept. They consider that ease of access for employees and visitors is an essential quality for a suitable site for the businesses to locate. The EWL will severely constrain that access, particularly if U-turns cannot be maintained permanently. Mr Murray acknowledged, however, that he was not qualified to discuss how reduced vehicular accessibility of businesses or sites might influence attractiveness (Transcript page 1211, lines 21 to 27). The Submitters ask that you accept their evidence in that regard.

19. NZTA's property consultant, Don Harrington, advised the Board in his supplementary statement (24 July 2017) that Opus International had been requested on behalf of NZTA to commence negotiations with the owners of 1 Pacific Rise regarding the acquisition of a right of way easement is serving 8 Sylvia Park Road. The Submitters are not part of that discussion but understand that, following some interruption, negotiations are continuing. They appreciate that such negotiations typically require some time to complete but are concerned that the discussions might tail off following approval of the project. For that reason, they seek imposition of a condition regarding formalisation of this access (discussed below).
20. NZTA's planner, Leslie Hopkins, accepted that a stand-alone condition could be developed regarding formalisation of access through 1 Pacific Rise (Transcript page 2339, lines 31 to 41). Ms Hopkins subsequently indicated that she could look at wording for such a condition that would be acceptable to her and NZTA (Transcript page 2340, lines 22 to 32) but no such wording has been produced.
21. The evidence was unclear as to the fate of Sylvia Park Road following completion of the works (i.e.: whether it would ultimately be managed by NZTA or Auckland Transport):
  - (a) Mr Winter for Auckland Transport understood that Sylvia Park Road is currently an Auckland Transport asset, will change to an NZTA asset as the works come through, and will then come back to Auckland Transport once the EWL route is in place (Transcript page 2352, lines 26 to 30).
  - (b) Mr Davies for Auckland Transport subsequently stated that the whole of Sylvia Park Road would remain NZTA's responsibility (Transcript page 2597 line 4 to 20).

The Submitters have assumed that any U-turns on Sylvia Park Road at Great South Road and Pacific Rise will be under NZTA control during construction and in the long term.

22. Pacific Rise will remain under Auckland Transport control and Mr Winter advised that, if NZTA is unable to formalise access across 1 Pacific Rise, Auckland Transport could become involved in that matter (Transcript page 2353, lines 15 to 19).

***Possible forms of Relief***

*Conditions re U-turns*

23. Through a memorandum dated 11 September 2017, NZTA has proposed the following additional conditions:

*"DC.11 - As part of the Outline Plan(s) prepared under section 176A of the RMA, the Requiring Authority shall demonstrate how the following outcomes will be achieved for the relevant stage of the Project for which the Outline Plan has been submitted: ...*

- (i) *Provision for a safe u-turning facility for westbound vehicles (including 18m semi-trailers) on Sylvia Park Road in the vicinity of Great South Road;*
- (ii) *Provision for a safe u-turning facility for eastbound vehicles (including 18 m semi-trailers) on Sylvia Park Road in the vicinity of Pacific Rise."*

24. The Submitters welcome the NZTA proposal to insert conditions addressing the U-turns. Those conditions will ensure that the issue of safe U-turn facilities is addressed by NZTA. They do not provide any certainty, however, that such U-turns will be implemented or, if they are implemented, that they will be retained:

- (a) NZTA has not proposed any condition requiring the implementation of the U-turns. Thus, even if NZTA provides plans demonstrating how U-turns could be provided, the Council could recommend, as a change to the outline plan, that the U-turns be omitted (e.g.: for safety or capacity reasons).



- (b) The roading authorities have an ongoing obligation to ensure that roads function safely. Mr Edwards has expressed a number of concerns regarding the manner in which the U-turns will function. In light of those comments, the Submitters remain concerned that, in practice, NZTA may elect to remove the provision for U-turns because of safety issues that become apparent over time. There is no suggestion in the condition that there would be an ongoing obligation to maintain U-turns at these locations.
25. While they would welcome conditions that require the imposition and permanent retention of U-turns at the Pacific Rise and Great South Road intersections with Sylvia Park Road, the Submitters are concerned that the Board does not at this stage have sufficient evidence to satisfy it that such U-turns can be provided safely and permanently. That said, as discussed by Mr Edwards in cross examination, safe U-turns should be able to be provided at the Great South Road intersection through widening the road reserve (which is enabled by the incorporation of the Stratex site into the designation).

*Condition re Formalised Access across 1 Pacific Rise*

26. In their opening submissions, the Submitters suggested a condition along the following lines:

*"NZTA shall use its best endeavours to legally formalise and complete construction of a vehicular access, including for heavy goods vehicles, between 8 Sylvia Park Road and Pacific Rise, prior to the date on which right turns into and out of 8 Sylvia Park Road across the Sylvia Park Road frontage are banned. If NZTA is not willing or able to formalise such access through negotiating an easement with affected landowners and tenants, it shall initiate designation and compulsory acquisition processes. Subject to the agreement of Auckland Transport, NZTA may elect to undertake such designation and compulsory acquisition processes through Auckland Transport as the authority with responsibility of the local road network."*

27. The Submitters accept that formalisation of access to the Site across 1 Pacific Rise is not a core component of the EWL route itself. It is, however, work that is required to mitigate the adverse effect that the EWL will generate on the Site.
28. The Submitters do not consider that any construction works are needed with respect to formalisation of the access, provided it is undertaken by way of an easement. They accept that, if NZTA elects to implement a service lane, then that would need to be constructed to an appropriate standard.
29. From the Submitters' perspective, an easement across 1 Pacific Rise is the most appropriate mechanism. That will enable private access between the Site and Pacific Rise and will not create a lawful access for the public generally.
30. The Submitters understand that NZTA is treating other forms of mitigation for the EWL (e.g.: stormwater and landscaping works) as an integral part of the proposal and hence has designated land for those purposes. They do not consider that there is any basis for concluding that mitigation of, say, stormwater effects is part of the public work subject to the designation but mitigation of adverse effects on access cannot be part of the public work.
31. The draft condition therefore reflects the Submitters' view that NZTA is entitled to initiate designation and/or compulsory acquisition processes with respect to the accessway where those steps are required to mitigate adverse effects generated by the proposal.
32. While formalisation of the access should be an integral part of the public work for which NZTA is currently seeking consent, NZTA has neglected to include it in the notified proposal. Accordingly, the condition was drafted so that NZTA would need to commence designation and consenting processes if it could not acquire the easement by agreement. The condition did not make any assumption as to a successful outcome to that process, however, and nor did it impose a particular form of access (ie: easement or service lane) on NZTA.

33. NZTA may oppose the condition on the basis that it cannot be forced to initiate designation and acquisition processes. In that regard:
- (a) Absent such a condition, the adverse effects generated by the proposal on access to the Site will not be addressed and the Submitters would ask you to decline approval to the proposal.
  - (b) That outcome can be overcome through NZTA offering to accept a condition requiring formalisation of the access across 1 Pacific Rise. An applicant for planning permission who gives an undertaking to a planning authority which is relied upon in granting the permission is estopped from later asserting that there was no power to grant the permission subject to a condition based on the undertaking (*Augier v Secretary of State for the Environment* [1978] 38 P&CR 219 (QBD)). Thus, if such a condition was offered, the adverse effects would be addressed through the decision and would be mitigated through the successful implementation of the vehicular access.

### **Conclusion**

34. The proposal has raised an unusually large number of challenging issues, many of which apparently remain unsolved (e.g.: its failure to connect in an integrated and comprehensive way with the State Highway and arterial road network; the use of incomplete intersections or interchanges throughout the length which minimise its ability to benefit motorists travelling through the city; its impact on the coastal environment; its potential conflict with industry such as the T&G and TR Group sites; and its potential conflict with infrastructure such as the Mercury plant).
35. The Submitters consider that a failure to provide safe and efficient vehicle access for activities with frontage to Sylvia Park Road would, in combination with unmitigated adverse effects on other parties and the natural environment, warrant the decline of approval.

36. Accordingly, the Submitters say that it is essential for the proposal to mitigate its effects on the Site, ideally through a combination of:
- (a) NZTA's proposed conditions regarding U-turns at the Great South Road and Pacific Rise intersections with Sylvia Park Road: and
  - (b) The addition of a condition that requires formalisation of vehicular access to the Site across 1 Pacific Rise.

**DATED** 12 September 2017



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**Douglas Allan / Daniel Sadlier**

Counsel for Syl Park Investments  
Limited and 8 Sylvia Park Road Body  
Corporate



## Douglas Allan

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**From:** Wes Edwards <wes@arrive.nz>  
**Sent:** Tuesday, 12 September 2017 12:09 PM  
**To:** Douglas Allan  
**Subject:** East West Link - NZTA Memorandum

Hello Douglas

Thank you for forwarding the NZTA Memorandum to the Board dated 11 September.

As you will recall I have outlined a number of concerns with the U-turn at Gt South Road:

- a. That a large truck needed to swing wide across the adjacent lane in order to make the turn
- b. That vehicles U-turning needed to travel slowly in order to make the turn (large trucks to walking pace)
- c. That the speed differential between U-turning vehicles and right-turning vehicles increased the risk of rear-end collision
- d. That large slow-moving trucks making the U-turn would reduce the efficiency of the intersection
- e. That the signal phasing changes required to accommodate the U-turn reduced the green time that can be provided to the left turn, reducing the capacity of the left turn to the point where Give Way control was required, increasing risk of collision for vehicles and for pedestrians.

Taken together, these concerns indicated to me that there may be operational issues at the intersection in the future, and in that event the most likely course of action would be to prohibit the U-turn movement.

The revised plan attached to the memorandum has provided a small amount of additional space for the U-turn (compared with the earlier plan I commented on when I gave evidence) by setting back the island and kerb on the northern side of Sylvia Park Road. The revised plan now allows the design semi-trailer to undertake the U-turn without needing to track over the adjacent lane. The truck must still slow to walking pace (around 10km/hr) in order to make the turn.

The revised plan therefore addresses concern (a), but does nothing to address the other concerns. As a result I still have little confidence that the U-turn movement would be allowed in the long term.

A number of possible changes to the intersection layout have been raised with Beca during caucusing, and some of those were also suggested by Mr Bickers when I was questioned by the Board. Those suggestions included the option of providing a separate exclusive lane for the U-turn movement. That would separate the U-turn traffic from the right-turn traffic which would address the speed differential concern. It would also allow a detector in that lane to call a phase that included the U-turn movement, allowing the signals to exclude that movement in "normal" operation. That is likely to be sufficient to allow the left turn to revert to signal control. In my view, this option would make the longevity of the U-turn movement more certain.

Another change that could be adopted, either separately or in conjunction with the exclusive U-turn lane, is to make the central median wider at the intersection. That would increase the radius of the U-turn allowing vehicles to make that turn at higher speed, reducing the speed differential. In my view this change would reduce, but not eliminate, the speed differential issue and do nothing to address the other issues; so I consider the exclusive lane option to be superior and a better use of space at the intersection. I note that the memorandum discusses possible further refinement of the design, but refers to narrowing or reducing the median island. In my view that would not improve the design.

To conclude, I am of the view that the revised layout is an improvement, but that further changes to the intersection layout are required in order to give sufficient certainty that the U-turn movement would be provided for in the long term.

With respect to the plan of the Pacific Rise intersection, I would note that the swept paths of the semi-trailer vehicles are shown tracking across the limit line and opposing lane within the median break. I remain of the view that the break would need to be widened so that incursion did not occur.

Regards

**Wes Edwards**

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