

**BEFORE A BOARD OF INQUIRY  
NORTHERN CORRIDOR PROPOSAL**

**UNDER** of the Resource Management Act 1991 (**RMA**)

**AND**

**IN THE MATTER** of notices of requirement for designation and resource consent applications by the New Zealand Transport Agency for the Northern Corridor Proposal (the **Proposal**)

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**OPENING STATEMENT OF AUCKLAND COUNCIL**

**18 July 2017**

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## MAY IT PLEASE THE BOARD

### 1. OVERVIEW

1.1 Auckland Council (**Council**) supports the Northern Corridor Improvements Project (**Proposal**).<sup>1</sup>

1.2 The Council considers that:

- (a) The Proposal will result in significant (net) transport benefits, and will achieve the Project objectives set by the New Zealand Transport Agency (**NZTA**).<sup>2</sup>
- (b) The Proposal is consistent with key planning and strategic documents including the Auckland Plan and the Auckland Unitary Plan Operative in Part (**AUPOiP**).<sup>3</sup>
- (c) The benefits arising from the proposed extension of the Northern Busway from Constellation Station to Albany Station (in terms of increased patronage and efficiency) are comprehensively addressed in evidence on behalf of Auckland Transport. The Council agrees that these benefits are significant.<sup>4</sup>

1.3 While the Council is supportive of the Proposal (and acknowledges its benefits) it has sought amendments to the Proposal to address various matters. In the Council's submission, these amendments are necessary to:

- (a) ensure that the adverse effects of the Proposal on the environment are appropriately avoided, remedied, or mitigated; and
- (b) address adverse effects on various Council assets (storm water, landfill and open space/reserves).

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1 Submission by Auckland Council on the Northern Corridor Improvements Project, page 5, paragraph 2.2.1 and 2.2.6.

2 Evidence of Duncan Tindall, paragraphs 3.2 and 3.3.

3 Evidence of Ms Hart, paragraphs 3.3(a) and 7.3.

4 Evidence of Mr Tindall, paragraph 7.16.

**1.4** As a result of discussions and conferencing between expert witnesses, the following issues raised in the Council's submission have been resolved:

- (a) Effects on Reserves/Public Open Space;
- (b) Landscape/Urban Design Matters;
- (c) Noise and Vibration Effects;
- (d) Stormwater Effects; and
- (e) Effects on Closed Landfills.

**1.5** In relation to the proposed Shared Use Path (**SUP**), the Council supports the provision of the SUP by NZTA.<sup>5</sup> However, there are three issues arising from the evidence:

- (a) Ms Barrett proposed various additional connections be provided to the SUP to improve its connectivity to local roads and reserves;
- (b) in relation to the portion of the SUP proposed to be located on the northern side of State Highway 18 (between Paul Matthews Drive and the interchange with Albany Highway), Mr Brown and Ms Barrett consider there would be greater benefit if this was relocated to the southern side of State Highway 18, adjoining the residential areas of Unsworth Heights; and
- (c) lastly, the Council considers there is a need to upgrade the existing underpass running under State Highway 18 between Rook Reserve and the Alexandra Stream (**underpass**), as part of this Proposal.

**1.6** As a result of discussions and expert conferencing with NZTA and Auckland Transport, NZTA has agreed to amend the SUP to:

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<sup>5</sup> Evidence of Ms Barrett, page 4.

- (a) provide additional connections; and
  - (b) extend it to, in places, connect with existing cycle facilities.
- 1.7** The Council strongly supports these amendments to the SUP, and considers it will enhance the SUP's benefits.
- 1.8** In relation to the portion of the SUP on State Highway 18 (between Paul Matthews Drive and the interchange with Albany Highway) as noted above, Ms Barrett and Mr Brown consider there would be greater benefit if this was relocated to the southern side of State Highway 18, adjoining the residential areas at Unsworth Heights. While the Council acknowledges the opinions of those witnesses, relocating the SUP is outside the scope of the current publicly notified proposal, and would impact on (and require land from) other properties.<sup>6</sup>
- 1.9** Furthermore, the witnesses acknowledge that, in the long term, it is desirable to have a SUP on both sides of State Highway 18 and that:
- (a) if the SUP is constructed on the northern side of State Highway 18 now, this does not preclude providing a SUP on the south side of State Highway 18 at some point in the future; however
  - (b) conversely, if the SUP were constructed on the south side now, this will most likely prevent constructing a SUP on the northern side (as this would require re-alignment of the motorway).<sup>7</sup>
- 1.10** Accordingly, the Council is not seeking that the SUP be relocated to the south side of State Highway 18. However, the Council does wish to note the “undesirable amenity” provided by the SUP because of its location between the SH18 and the buildings on the northern side of SH18, while noise will be an issue as well.<sup>8</sup>

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<sup>6</sup> Joint Witness Statement: Landscape, urban design and visual dated 19 June 2017, paragraph 5(a).

<sup>7</sup> Joint Witness Statement: Landscape, urban design and visual dated 19 June 2017, paragraph 5(a).

<sup>8</sup> Joint Witness Statement: Landscape, urban design and visual dated 19 June 2017, paragraph 5(a).

**1.11** This means that the sole area of disagreement between the Council and NZTA, in relation to the SUP, is in respect of the upgrade of the underpass. This issue is addressed in further detail below.

**1.12** Lastly, the Council understands that there is potentially a difference of opinion between it and the NZTA regarding whether consent for reclamation is required for the streams located within the constellation dry dam. NZTA has applied for resource consent to fill in the area within the dam, as part of the Proposal (as this area will be covered by the proposed ramps to State Highway 1). The Council considers that the existing consent to dam (and flood) this area does not extinguish the requirement to obtain consent under section 13 of the RMA and the Auckland Unitary Plan Operative in Part (**AUPOiP**). However, this consent forms part of the existing environment. The Council intends to explore what this difference in approach might mean, in terms of the need to provide off-set mitigation for the effects of the reclamation, through cross examination of NZTA's fresh water ecologist Ms Barnett.

**1.13** These submissions are structured as follows:

- (a) The benefits of the Proposal;
- (b) Changes to the SUP;
- (c) Effects on Reserves/Public Open Space;
- (d) Landscape/urban design matters;
- (e) Noise and vibration effects;
- (f) Stormwater effects;
- (g) Effects on the Rosedale Closed Landfill;
- (h) The scope of the reclamations required for the Proposal;
- (i) Amendments to the Busway and SUP proposed by Kiwi Self Storage;

- (j) Issues raised by the Board;
- (k) Conditions; and
- (l) Conclusion.

## **2. BENEFITS OF THE PROPOSAL**

### **2.1** The Proposal will:

- (a) complete the last section of the highly important Western Ring Route to a motorway standard;
- (b) provide for an additional four lanes (two each way) on State Highway 1 between Constellation Drive and Greville Road;
- (c) allow for motorway to motorway travel from State Highway 18 to State Highway 1 (heading east, and then north), and from State Highway 1 to State Highway 18 (heading south and then west);
- (d) extend the highly successful Northern Busway (from Constellation Station to Albany Station); and
- (e) enhance walking and cycling facilities on the North Shore by providing a SUP from Oteha Valley Road to Constellation Station, and from Constellation Station up to the interchange between State Highway 18 and the Albany Highway.

**2.2** The Council acknowledges that the Proposal will deliver significant (net) transportation benefits, and that it will achieve the Project objectives set by the NZTA.<sup>9</sup>

**2.3** In relation to the proposed extension of the Northern Busway, comprehensive evidence on the benefits of this has been provided by Auckland Transport. The Council agrees that the busway component of

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<sup>9</sup> Evidence of Mr Tindall, paragraphs 3.2 and 3.3.

the Proposal will deliver a significant benefit to the transport network to the north of Auckland.<sup>10</sup>

**2.4** In relation to the proposed SUP that will run from Oteha Valley Road to Constellation Station, and from Constellation Station along State Highway 18 to the Stage Highway 18/Albany Highway Motorway Interchange, the Council supports the provision of the proposed SUP, and acknowledges its benefits.<sup>11</sup> The Council considers that the benefits of the proposed SUP will be further enhanced by the changes to the SUP agreed to by NZTA through conferencing (discussed below).

### **3. CHANGES TO THE SHARED USE PATH (SUP)**

**3.1** As already noted above, in relation to the SUP three issues arise from the evidence. These are:

- (a) The additional connections to the SUP (as set out in the evidence Mr Brown, Ms Barrett and Mr Tindall);
- (b) The location of the SUP along State Highway 18 between Paul Matthews Drive and the interchange with Albany Highway and whether this should be relocated from the northern side of State Highway 18 (as proposed) to the southern side of State Highway 18, adjoining the residential areas at Unsworth Heights; and
- (c) Whether the underpass should be upgraded.

#### ***Agreed amendments to the SUP***

**3.2** As a result of conferencing and discussions, it has been agreed that NZTA will amend the Proposal:

- (a) to not preclude two connections to the SUP off the portion of the SUP running parallel to State Highway 1 being provided in the future – one connecting to the Rosedale Road Closed

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<sup>10</sup> Evidence of Mr Tindall, paragraph 7.16.

<sup>11</sup> Evidence of Ms Barrett, paragraph 7.49.

Landfill (which may become public open space in the future)<sup>12</sup> and a second at Centorian Reserve/ Pond 2.<sup>13</sup> The Council understand this is acceptable to NZTA, and would be addressed through the detailed design of the SUP.

(b) Two further connections, as part of this Proposal, to the portion of the SUP running along the southern side of State Highway 18:

(i) At Cabello Place, to facilitate access by pedestrians to/from Constellation Station;<sup>14</sup> and

(ii) through the “currently closed connection directly opposite Jumento Place”. The Council understand that NZTA considers it is, in principle, desirable to provide a connection, provided this is shown as feasible through detailed design.<sup>15</sup>

**3.3** In addition, following expert conferencing between witnesses for NZTA, Auckland Transport and Auckland Council NZTA has agreed to:

(a) Extend the proposed SUP along Oteha Valley Road to connect with the existing cycle path on the northern side of Oteha Valley Road, and with the existing cycle path west of the motorway interchange;

(b) Provide pedestrian and cyclist refuges at the McClymonts Road and Medallion Drive Intersection and near the intersection of McClymonts Road and Elliot Rose Avenue, and protected cycle facilities along McClymonts Road;

(c) Extend the SUP from where it currently terminates on Albany Highway, to the existing cycle paths located to the north, in the vicinity of Bush Road; and

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<sup>12</sup> Joint Witness Statement: Landscape, urban design and visual: dated 19 June 2017, 5(e).

<sup>13</sup> Joint Witness Statement: Recreation and Reserves dated 22 June 2017, paragraph 5C.

<sup>14</sup> Rebuttal evidence of Mr Moore, paragraph 8.6(b).

<sup>15</sup> Joint Witness Statement: Landscape, urban design and visual dated 19 June 2017, paragraph 5(e).



(d) Upgrade a proposed footpath to a 3.0 metre wide SUP along the eastern side of Caribbean Drive to the boundary of the designation (provided Auckland Council provides the additional land required, and Auckland Transport obtains any necessary approvals).

**3.4** The additions to the SUP (outlined in paragraph 3.3 above) will be covered by a side agreement. The Council is no longer pursuing any relief in relation to these matters as part of this proceeding.

**3.5** Auckland Council strongly supports these amendments to the SUP, and the additional benefits they will provide in terms of enhancing connections between the SUP and local roads, reserves, and other existing cycle way assets.

### ***Relocating the SUP to the southern side of SHW 18***

**3.6** Ms Barrett and Mr Brown consider there would be greater benefit from the SUP if the portion of the SUP that is proposed to be located on the northern side of State Highway 18 (between Paul Matthews Drive and the interchange with Albany Highway), was relocated to the southern side of State Highway 18, adjoining the residential areas at Unsworth Heights. This is because locating the SUP on the southern side of State Highway 18 would offer a higher level of amenity, and greater connectivity to the residential areas at Unsworth Heights.<sup>16</sup>

**3.7** As noted above, the Council has decided not to pursue this matter because, while the Council acknowledges the opinions of those witnesses, relocating the SUP is outside the scope of the current publicly notified proposal, and would impact on (and require land from) other properties. Furthermore, locating the SUP on the southern side of State Highway 18 now would likely preclude providing a SUP along the northern side in the future (due to the need to realign the motorway).<sup>17</sup>

**3.8** Ms Barrett and Mr Brown consider that if the SUP remains on the northern side of State Highway 18 it would be desirable for a further connection to be provided across State Highway 18 between Bluebird

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<sup>16</sup> Evidence of Mr Brown, paragraph 15(b).

<sup>17</sup> Joint Witness Statement: Landscape, urban design and visual dated 19 June 2017, paragraph 5(a).

Reserve and William Pickering Drive as shown in the Greenways Plan. However, the Council acknowledges that such a connection (whether by a bridge or an additional underpass) would be difficult to achieve from a technical perspective.<sup>18</sup> Accordingly, the Council is not pursuing this.

### ***Upgrade of the Underpass***

- 3.9** Accordingly, the sole remaining area of disagreement between the Council and the NZTA, in relation to the SUP, is with respect to the underpass.
- 3.10** The underpass provides one of only two connections between the residential areas at Unsworth Heights, and the Proposed SUP on the northern side of State Highway 18, east of Albany Highway (the other being at Paul Matthews Drive).
- 3.11** Connectivity between the residential areas and open space in Unsworth Heights and the proposed SUP on the northern side of State Highway 18 is generally poor. State Highway 18 reinforces the separation of Unsworth Heights from the commercial and industrial areas on the other side of the Highway, and limits local connectivity and movement.<sup>19</sup> The other approach to the SUP from Unsworth Heights along Albany Highway from Sunset Road to Upper Harbour Drive, lacks safe pedestrian and cycle connections.<sup>20</sup> The further walking and cycling connection between Unsworth Heights and the north harbour industrial area envisaged under the Greenways Plan (a connection between Bluebird Reserve and William Pickering Drive<sup>21</sup>) is unlikely to be feasible.<sup>22</sup>
- 3.12** The underpass runs under State Highway 18, and also serves a stormwater function. It is part of the State Highway and is, therefore an NZTA asset. All of the experts have agreed in conferencing that the current design of the underpass is undesirable, and does not meet various standards including NZTA's UDLF for this Project, NZTA

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18 Joint Witness Statement: Landscape, urban design and visual dated 19 June 2017, paragraph 5(d).

19 Evidence of Mr Brown, paragraph 16, and the evidence of Ms Barrett at paragraph 7.52.

20 Evidence of Ms Barrett, paragraph 7.54.

21 Evidence of Ms Barrett, paragraph 7.52.

22 Joint Witness Statement: Landscape, urban design and visual dated 19 June 2017, paragraph 5(d).

guidelines such as “Bridging the gap”, and general CPTED principles.<sup>23</sup> In particular, the experts have agreed that key deficiencies of the underpass are:

- (a) The (limited) sight distance on the ramp approaches;
- (b) The narrow effective width; and
- (c) The fact it is prone to flooding.<sup>24</sup>

**3.13** Mr Brown is concerned that: *“The current underpass between Rook Reserve and Alexandra stream, that could afford a meaningful connection between Unsworth Heights and the new SUP, ...is not suitable for that role at present.”*<sup>25</sup>

**3.14** Option 3 involves: “...replacement of the existing underpass by a 3m by 3m underpass on a skewed alignment (skewed relative to SH18, but to allow for straight approaches for pedestrians and cyclists).”<sup>26</sup>

**3.15** This upgrade option is supported by the Council. However, experts for the NZTA consider that an upgrade to the underpass is “not require to mitigate effects of the NCI”<sup>27</sup> and it is not proposed by NZTA as part of the Project.

**3.16** The Council considers that the underpass should be upgraded as part of the Proposal because:

- (a) usage of the underpass may increase as a result of the Proposal, as users will be attracted to travel from Unsworth Heights, through the underpass under SH18, to get to the proposed SUP. This will require users to travel through an underpass that is acknowledged by all experts to not comply with CPTED principles, and is therefore potentially unsafe.

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<sup>23</sup> Joint Witness Statement: Landscape, urban design and visual dated 19 June 2017, paragraph 5(b).

<sup>24</sup> Joint Witness Statement: Transport and Traffic – site specific impacts dated 23 June 2017, page 11.

<sup>25</sup> Evidence of Mr Brown, paragraph 4(b).

<sup>26</sup> Joint Witness Statement: Transport and Traffic – site specific impacts dated 23 June 2017, page 11.

<sup>27</sup> See, for instance, Joint Witness Statement: Transport and Traffic – site specific impacts dated 23 June 2017, page 11, statements by Mr Clarke.

- (b) It would be a more efficient use of resources under section 7(b) of the RMA to upgrade the underpass now, as part of this Proposal (rather than later) because:
  - (i) Upgrading the underpass later will be significantly more expensive than undertaking the upgrade now as part of this Proposal. This is due to the need to provide for a separate construction yard, project office, and, in particular, separate traffic management measure for State Highway 18 if the underpass is upgraded later (compared to having these provided now, as part of this Proposal, at negligible extra cost);
  - (ii) With respect to traffic, the upgrade of the underpass would require the partial closure of State Highway 18. The upgrade of the underpass could be undertaken as part of existing traffic management measures associated with this Proposal, resulting in little or no further disruption to traffic. Whereas, if the underpass was upgraded later, it would require partial closure of State Highway 18, for a second time. Traffic flows on State Highway 18 are predicted to increase as a result of this Proposal (meaning there would be potentially even greater disruption to traffic if the underpass was upgraded at a later date);
- (c) If the underpass is not upgraded now, it may never be upgraded, given the underpass is a structural part of State Highway 18, NZTA's agreement would be required. NZTA may not provide this, due to the disruption the upgrade would cause to traffic on State Highway 18.

**3.17** The Council considers that, although the upgrade of the underpass was not included in the Proposal as notified, it is within scope. This is because, in the Council's submission:

- (a) Amending the Proposal to include the upgrade of the underpass will not result in the Proposal being significantly

different in scope or ambit from what was applied for and notified in terms of the scale or intensity of the proposal, or its effects; and

- (b) It not plausible that a member of the public who has not lodged a submission on the Proposal as notified, would have decided to lodge a submission if they knew that the underpass was to be upgraded.<sup>28</sup>

**3.18** In the Council's submission, upgrading the underpass would also better achieve:

- (a) the project objective for the Proposal in relation to walking and cycling, by providing a safe connection from the SUP to the local transport network.
- (b) NZTA's statutory objectives under the LTMA on the basis that upgrading the underpass now, as part of this Proposal:
  - (i) is in the public interest<sup>29</sup> because, if the underpass is not upgraded now, as part of this Proposal, it is unclear when, if ever, it would be upgraded due to constraints in funding, leaving a poor outcome for the community.
  - (ii) provides "value for money"<sup>30</sup>, compared to completing the upgrade later, as completing the upgrade after this Proposal has been completed will be more costly.

#### **4. EFFECTS ON RESERVES / PUBLIC OPEN SPACE**

**4.1** The Proposal result in effects on seven reserves.<sup>31</sup>

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<sup>28</sup> *Atkins v Napier City Council* 15 ELRNZ 84 at paragraphs [20] to [22].

<sup>29</sup> See section 95(1) of the Land Transport Management Act 2003, and the evidence of Mr Glucina, paragraph 5.2.

<sup>30</sup> See section 96(1) of the LTMA and the evidence of Mr Glucina, paragraph 5.4.

<sup>31</sup> Tawa Reserve (to the West of the Greville Road Interchange), Arrenway Reserve (between State Highway 1 and Arrenway Drive), Centorian Reserve (adjacent to Holder Place), Constellation Reserve, Rosedale Park South, Meadowood Reserve (south of State Highway 18), Alexandra Stream Reserve and Omega Reserve, Rook Reserve and Bluebird Reserve. See the evidence of Ms Barrett, at paragraph 7.2 and her map identifying the location of the reserves at Appendix A.

- 4.2** As recorded in the joint witness statement for Recreation and Reserves, there are no outstanding issues in relation to the effects of the Proposal on Reserves and Open Space, apart from in relation to the upgrade of the underpass at Rooks Reserve (which is discussed above).
- 4.3** In relation to the complex situation regarding the relocation of North Harbour Hockey from Constellation Reserve, the witnesses agree that:
- (a) the effects of the Proposal on North Harbour Hockey are fully mitigated by the proposed relocation to Rosedale West Reserve which is currently being pursued; and
  - (b) the conditions proposed by Ms Barrett in relation to North Harbour Hockey (conditions CR1 and CR1, as discussed in paragraphs 7.38 (a) – (c) and 7.39 of her evidence) are not required.<sup>32</sup>
- 4.4** In its memorandum of counsel to the Board on this issue the Council provided the Board with further detail in relation to the requirements and process applying to the proposed relocation of North Harbour Hockey under the Reserves Act.
- 4.5** By way of update, as at the date of today's hearing, counsel understand that there has been public notification under the Reserves Act of the proposed changes to the leases of reserve land required to give effect to the relocation of North Harbour Hockey.
- 4.6** While there is, in principle, a high level of agreement between the stakeholders as to the relocation of North Harbour Hockey (and it has obtained a resource consent for its new facilities), the proposed relocation is still subject to a separate process under the Reserves Act. Therefore, it cannot be said for certain, at this stage, that the proposed relocation of North Harbour Hockey will proceed.

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<sup>32</sup> Paragraph 5E of the conferencing statement.

## **5. LANDSCAPE / URBAN DESIGN MATTERS**

**5.1** In relation to the Proposal's landscape and visual effects and urban design, Mr Brown (on behalf of the Council) initially expressed some criticisms of the Proposal regarding the level of detail provided and the proposed mitigation measures.

**5.2** However, as a result of ongoing discussions and conferencing these have been resolved. In particular, NZTA has:

- (a) Confirmed that all areas of planting shown in Attachment 6 to Mr Bray's statement will be implemented;
- (b) Relocated the Albany Busway overbridge and termination of it at the eastern edge of the Albany Bus Station carpark;
- (c) Made provision for additional cycleways and walkways both sides of the proposed McClymonts bridge;
- (d) Confirmed that a stormwater pond will be located in Rook Reserve, in conjunction with redevelopment of the wider park; and
- (e) Provided new screen fencing near Barbados Drive to address the amenity effects of the Paul Mathews Drive interchange.<sup>33</sup>

## **6. NOISE AND VIBRATION EFFECTS**

**6.1** In relation to the noise and vibration effects of the Proposal, Mr Hegley (on behalf of the Council), has never had any concerns in relation to NZTA's assessment of operational noise and vibration effects.

**6.2** However, Mr Hegley did have concerns in relation to the potential construction noise and vibration effects of the Proposal, and in particular:

- (a) Around the adequacy of the information provided; and

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<sup>33</sup> Evidence of Stephen Brown, paragraph 2.

- (b) The potential for the conditions to allow noise levels during construction that were higher than assessed, due to how the conditions were drafted.

**6.3** There has been extensive and robust expert conferencing on this matter.

**6.4** As a result of this, all of Mr Hegley's concerns have been addressed.

## **7. STORMWATER EFFECTS**

**7.1** In relation to stormwater, the Council sought amendments to the Proposal to address

- (a) effects of the stormwater discharges from the Proposal on water quality and quantity; and
- (b) the effects of the Proposal on key Council stormwater assets.

**7.2** As a result of ongoing discussions, and expert conferencing, all matters of concern to the Council have been satisfactorily resolved.

**7.3** Changes to the conditions have been agreed in expert conferencing. There are no remaining areas of disagreement between the experts.

## **8. EFFECTS ON CLOSED LANDFILLS**

**8.1** The Proposal will affect the Rosedale Closed Landfill, the western boundary of which abuts State Highway 1. The Proposal will require excavation of approximately 250 metres along the length of the closed landfill, affecting landfill infrastructure in these areas.<sup>34</sup>

**8.2** The Council has sought some relatively minor changes to the Proposal and conditions of consent in order to ensure that any adverse effects on the Rosedale Closed Landfill are appropriately avoided, remedied or mitigated.

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<sup>34</sup> Evidence of Ms Eldridge, paragraphs 6.5 to 6.7.



**8.3** As a result of discussions and expert conferencing, all matters of disagreement have been resolved. The experts have agreed on changes to the conditions to satisfactorily manage effects on the Rosedale Closed Landfill.<sup>35</sup>

**9. THE SCOPE OF THE RECLAMATIONS REQUIRED FOR THE PROPOSAL**

**9.1** The Council understands that there is potentially a difference of opinion between it and the NZTA regarding whether consent for reclamation is required for the streams located within the constellation dry dam.<sup>36</sup>

**9.2** NZTA has applied for resource consent to fill in the area within the dam, as part of the Proposal (as this area will be covered by the proposed ramps to State Highway 1). This includes non-complying activity resource consents for reclamation of stream beds under section 13 of the RMA.<sup>37</sup>

**9.3** In particular, the AEE states, in relation to this:

*"A series of watercourses lie to the south of Pont 1 at the RWWTP with their headwaters being near Caribbean Drive on the Unsworth Heights side of SH18. These watercourse are considered to be naturally occurring intermittent or permanent streams, despite being highly modified and predominantly located within a combination of lined channels and grassed areas. The proposed works will see the existing watercourses largely reclaimed and the diversion and piping of watercourses from Caribbean Drive to a new course. The existing watercourse is to be filled (reclaimed) to accommodate the new Paul Matthews Road connection and the proposed wetlands within the Rosedale South Reserve."<sup>38</sup>*

**9.4** The AEE further notes that:

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<sup>35</sup> Appendices 3 and 4 of the conferencing statement.

<sup>36</sup> Joint Witness Statement: Planning dated 30 June/3-6 July 2017, pages 21 and 22.

<sup>37</sup> AEE, pages 92-93, and Evidence of Mr McGahan, paragraph 8.9.

<sup>38</sup> AEE. Table 19, page 93.

"The works will result in approximately 602m of streams and stormwater drains with very poor quality habitat being piped between Unsworth Heights and the Rosedale Waste Water Treatment Plant"<sup>39</sup>

**9.5** Mr McGahan in his evidence in chief records that:

- (a) NZTA has applied for non-complying activity resource consent for these works; however
- (b) "post lodgment" the Council's Healthy Waters Team advised that it did not consider any area of stream within the dam to be a stream; and
- (c) As a result, "only 17.4 metres of "stream" to the north of the Constellation Dry Pond is considered to be affected by the Project".<sup>40</sup>

**9.6** 17.4 metres of stream is the figure that the NZTA's freshwater ecologist Ms Barnett has assessed in her evidence as being "reclaimed", rather than the figure of 602 metres referred to in NZTA's AEE. Ms Barnett concludes that:

- (a) The values present in the 17.4 metres of stream are low;
- (b) The stormwater wetland proposed by NZTA will provide significant ecological benefits above the current situation; and
- (c) No further off-set mitigation is required.<sup>41</sup>

**9.7** The Council considers that the watercourses located within the constellation dry dam are "streams" under the AUPOiP.<sup>42</sup> The existing consent held by the Council to dam (and flood) this area does not extinguish the requirement to obtain consent under section 13 of the

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<sup>39</sup> AEE, 9.15.1.2.

<sup>40</sup> Evidence of Mr McGahan, paragraph 8.9.

<sup>41</sup> Rebuttal evidence of Ms Barnett, paragraph 5.4.

<sup>42</sup> The relevant definitions under the AUPOiP are Intermittent Streams, Permanent River or Stream, and River or Stream.

RMA and the AUPOiP. However, this consent forms part of the existing environment. The Council intends to explore what this difference in approach might mean, in terms of the need to provide off-set mitigation for the effects of the reclamation, through cross examination of NZTA's fresh water ecologist Ms Barnett.

**9.8** Depending on the answers given by Ms Barnett, it may be appropriate for NZTA to provide additional offset mitigation for the 602 metres of stream that is being reclaimed,

## **10. AMENDMENTS TO THE BUSWAY AND SUP BY KIWI SELF STORAGE**

**10.1** Auckland Council adopts the submissions made on this matter by Auckland Transport.

**10.2** In particular, the Council (like Auckland Transport) does not support the changes proposed by Kiwi Self Storage on the basis that the changes:

- (a) are not required to address an adverse effect on the environment;
- (b) there is "no property in a view";
- (c) will permanently reduce the efficiency of the operation of public infrastructure, for a private benefit.
- (d) could set an unhelpful precedent for other infrastructure projects in the future.

## **11. ISSUES RAISED BY THE BOARD**

**11.1** The Board has requested that counsel address the following matters:

- (a) The issue of "bundling" the application. As the Proposal includes a single non-complying activity in the suite of resource consents, counsel are to discuss if it is appropriate in this case to "bundle", or if the matters are sufficiently unrelated to the

non-complying activity that the non-complying activity should be "unbundled";

- (b) The lawfulness of conditions concerning monitoring within the construction area of the Rosedale landfill site that may require the applicant to take over any responsibilities that Auckland Council has under its consents; and
- (c) The appropriateness and/or desirability of side agreements to deal with mitigation measures, as applicable. In particular, with respect to the joint witness statement for transport: construction.

#### *Bundling of non-complying activity status*

**11.2** NZTA has accepted that its applications for resource consent should be bundled, and proceeded with its application on that basis.<sup>43</sup>

**11.3** A recent statement of the law in relation to bundling of consents is provided by the High Court in *Urban Auckland v Auckland Council* [2015] NZHC 1382 where the Court held that:

- (a) For bundling of consents to be appropriate there needs to be an "overlap of effects"; and
- (b) Where the matters of control in relation to a particular consents are more restricted than others that are sought (for example with a restricted discretionary activity), it is less likely that an overlap of effects will occur.<sup>44</sup>

**11.4** The proposal requires a non-complying activity resource consent for reclamation of streams within the Constellation Dry Dam. This is the only activity for which non-complying activity consent is required, with all other activities having a "less strict" activity status. NZTA has also applied for consent for vegetation clearance, earthworks, sediment

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<sup>43</sup> AEE, section 12.3.2, page 259, and the evidence of Mr McGahan, paragraph 8.10.

<sup>44</sup> Paragraphs 44 and 69 of the decision.

control, diverting water, discharges of stormwater, and discharge of contaminants to air<sup>45</sup>.

- 11.5** In the Council's submission, there is an "overlap of effects" between the various regional consents sought. In particular, in relation to filling in the constellation dry dam, this requires consent for the reclamation of the steams, earthworks, diversion and discharge of water, discharge of contaminants. These consents all "overlap" in that they relate to the same area, and cannot be separated out from each other.

*The lawfulness of conditions concerning monitoring within the construction area of the Rosedale landfill site*

- 11.6** The Board has asked counsel to address the lawfulness of conditions concerning monitoring within the construction area of the Rosedale landfill site that may require the applicant to take over responsibilities that Auckland Council has under its consents.
- 11.7** The landfill conditions require the development of a landfill management strategy, prepared in consultation with the Council, with the purpose of ensuring that existing consents held by the Council continue to be complied with during construction.<sup>46</sup>
- 11.8** The rationale behind these requirements is that the construction works have the potential to affect the Council's ability to undertake monitoring (due to site access and health and safety issues caused by construction of the proposal) and to comply with conditions under its consents.
- 11.9** Specifically in relation to monitoring, condition LW10 requires the consent holder to ensure that a monitoring programme is implemented, and the results of monitoring are supplied within 2 working days to the Council.
- 11.10** The Council acknowledges that the monitoring undertaken by the consent holder does not obviate the need for the Council to ensure compliance with any of the conditions of its existing consents –

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<sup>45</sup> Pages 89 – 103 of the AEE.

<sup>46</sup> Condition LW.1B.

effectively NZTA will be acting as the Council's agent in undertaking its monitoring obligations under the Council's consents, because the Council is unable to access the site. However, if there was any breach of the conditions on the Council's consents, the Council would still have responsibility for that as a consent holder.

- 11.11** To the extent that the Board may have any concerns around the lawfulness of NZTA agreeing to undertake this further monitoring (effectively as the Council's agent), the Council notes that NZTA has volunteered to undertake this monitoring (as part of the landfill management strategy under Condition LW.1B on an *Augier basis*).

*The appropriateness of side agreements to deal with mitigation measures*

- 11.12** The joint witness statement: Transport and Traffic – Construction dated 22 June 2017 refers (in various places) to matters relating to matters relating to the construction traffic effects of the proposal being addressed through "conditions and/or a side agreement".
- 11.13** In the Council's submission, where a mitigation measure is required to address the adverse effects of the Proposal on the environment, then this should be addressed through conditions. The potential role of any side agreement between the parties (for example NZTA and Auckland Transport) should be limited to matters which it is not generally appropriate to address through conditions (for example, matters relating to operation of the road network, operation of public transport services, communications between the parties, or funding arrangements).
- 11.14** With respect to the effects of construction of the Proposal on the local road network and buses, comprehensive changes to the construction traffic management conditions addressing Auckland Transport's concerns have been agreed through expert conferencing.<sup>47</sup> These conditions will ensure that all effects are appropriately avoided, remedied or mitigated.

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<sup>47</sup> See conditions CTMP.1 to CTMP6D of the conditions attached to the Joint Witness Statement: Planning dated 30 June/3-6 July 2017.

## **12. THE CONDITIONS**

- 12.1** As a result of conferencing between the planners, there is now an agreed set of conditions for the designation and the resource consent (noting that a further session of planning conferencing is still taking place in relation to the noise conditions).
- 12.2** The sole area of disagreement between the experts relates to the allocation of conditions to the notices or requirement and the resource consents.
- 12.3** Under the application by NZTA:
- (a) Land use matters – the construction and operation of the additions to the motorway, extension of the busway, SUP, are authorized under the designations;
  - (b) Resource consent is sought for various other regional consenting matters such as earthworks, reclamation, damming and diversion of water, discharge of stormwater and discharge of contaminants to air.
- 12.4** However, as a result of the way the proposed conditions are structured by NZTA:
- (a) The only conditions which attach to the designation relate to operational noise, urban design and landscape matters, stakeholder communications, and the relocation of North Harbour Hockey;
  - (b) The various regional consents include conditions relating to all of the various management plans – the construction environmental management plan, construction traffic management plan, dust management plan, lizard management plan, and the stakeholder communications management plan.
- 12.5** The management plans listed above, and proposed by NZTA to attach to the regional consents, largely do not relate to regional consenting

matters. They are necessary to avoid, remedy or mitigate adverse effects associated with the land use aspect of the proposal – the construction of the motorway infrastructure, busway, and SUP, that is authorized under the designation.

**12.6** For a condition to be a valid resource management condition it must relate to the effects generated by the particular activity that is being consented. Accordingly, the Council considers that the conditions should be amended so that the conditions addressing land use effects attach to the designation.

### **13. CONCLUSION**

**13.1** The Council wishes to acknowledge the generally collaborative approach of NZTA and its witnesses to resolving the issues raised by the Council, and the improvements made to the proposed mitigation and conditions.

**13.2** The Council supports the Proposal, and seeks that it be confirmed by the Board for the reasons outlined in the Council's evidence, and in this opening statement.

**Dated** at Auckland this 18<sup>th</sup> day of July 2017



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G C Lanning / W M Bangma /

D W Simpson

Counsel on Behalf of Auckland Transport