

**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**)

CLOSING STATEMENT FOR AUCKLAND COUNCIL

11 August 2017

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MAY IT PLEASE THE BOARD

1. OVERVIEW

1.1 As set out in Auckland Council's (**Council**) opening statement, the Council supports the Proposal, and seeks that it be confirmed by the Board. The Council considers that:

- (a) The Proposal will result in significant (net) transport benefits, and will, overall,¹ achieve the objectives set by the New Zealand Transport Agency (**NZTA**).²
- (b) The Proposal is consistent with key planning and strategic documents including the Auckland Plan and the Auckland Unitary Plan Operative in Part (**AUPOiP**).³
- (c) The proposed extension of the highly successful Northern Busway will result in benefits in terms of increased patronage and efficiency. These benefits have been comprehensively addressed in evidence on behalf of Auckland Transport. The Council agrees that these benefits are significant.⁴
- (d) In relation to the proposed Shared Use Path (**SUP**), the Council supports the provision of the SUP, and acknowledges the benefits that the SUP will provide in terms of walking and cycling on the North Shore. NZTA has agreed to enter into a side agreement with Auckland Transport providing further extensions to the SUP to ensure that it connects to existing cycling facilities.⁵ In addition, NZTA has agreed to amend its proposal to:

¹ Mr Bray acknowledged that the Alexandra Stream underpass will not achieve the project objective of providing a safe connection for walking and cycling. Ms Hart agrees that while in this location the project objective would not be met, taking the proposal overall, it would be met. Summary statement of Ms Hart, paragraph 2.4.

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.

⁵ Opening Statement of Auckland Council, paragraph 3.3.

- (i) not preclude two connections being provided to the SUP at the Rosedale Closed Landfill, and Centorian Reserve in the future; and
 - (ii) provide two connections to the SUP at Cabello Place and through the currently closed connection at Jumento Place (the later connection is to be provided if it is shown to be feasible through detailed design).⁶
- (e) The 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 cycleway assets.⁷

1.2 This closing statement addresses the following matters:

- (a) The upgrade of the Alexandra stream underpass;
- (b) The proposed relocation of North Harbour Hockey;
- (c) Effects on recreation and reserves;
- (d) The area of stream to be reclaimed by the Proposal, and the adequacy of the off-set mitigation proposed by NZTA;
- (e) Whether or not it is appropriate to address certain matters in a side agreement;
- (f) The correct approach to take under section 104D of the Act in assessing whether the Proposal is contrary to the objectives and policies of the Plan;
- (g) The design changes to the SUP and busway sought by Kiwi Self Storage; and
- (h) The conditions.

⁶ Opening Statement of Auckland Council, paragraph 3.2.

⁷ Opening Statement of Auckland Council, paragraph 3.6.

2. THE UPGRADE OF THE ALEXANDRA STREAM UNDERPASS

- 2.1 As the Board will be aware, this was the key remaining area of disagreement between NZTA and the Council during the hearing.

Upgrading the underpass now would be a more efficient use of resources under Section 7(b) of the RMA

- 2.2 The evidence before the Board establishes that:

- (a) The cost to upgrade the underpass (option 3) as part of this Proposal is approximately \$5 million, based on accommodating the upgrade within the Proposal's traffic management measures;⁸
- (b) If the underpass was upgraded as part of a separate project, it would require separate traffic management measures that could be expected to cost approximately \$1 million.⁹ Other costs required as part of a separate project such as a construction yard, project management office and establishment costs could generally be expected to add a further 10%, or approximately \$500,000.¹⁰ Accordingly, the evidence establishes the costs of upgrading the underpass as a separate project would be likely to be approximately \$6.5 million. This is \$1.5 million more than completing the upgrade as part of the Proposal.
- (c) Undertaking the upgrade now as part of the Proposal would also minimise disruption to traffic on State Highway 18. The evidence is that the upgrade could be provided within existing traffic management measures with little or no additional disruption to traffic on State Highway 18.¹¹ Conversely, undertaking the upgrade as a separate Project would require

8 Evidence of Mr Moore, the transcript, page 148, line 35.

9 Evidence of Mr Hale, the transcript, page 183, lines 29 – 36, Evidence of Mr Tindall, the transcript, page 350, lines 10 -13.

10 Evidence of Mr Tindall, the transcript, page 350, lines 26 to 30.

11 Evidence of Mr Hale, the transcript, page 181, lines 5-18.

separate traffic management measures, resulting in between 1 to 3 months of traffic disruption on State Highway 18.¹²

2.3 In light of the evidence outlined above, in the Council's submission, upgrading the underpass now as part of the Proposal (rather than as a separate project in the future) would be a more efficient use of resources under section 7(b) of the Act, because:

- (a) it would cost less; and
- (b) it would reduce traffic disruption on State Highway 18 (avoiding a future adverse effect in terms of a second period of disruption on State Highway 18, if the upgrade was undertaken as a separate project).

Whether the upgrade is required to mitigate an adverse effect of the Proposal

2.4 Witnesses giving evidence on behalf of NZTA stated that:

- (a) upgrading the underpass is not required to mitigate an adverse effect of the Proposal;¹³ and
- (b) that the upgrade to the underpass that is proposed by NZTA¹⁴ will be an "improvement" on the existing environment.

2.5 Mr Brown, in response to questions from the Board, gave evidence that, in his view, the upgrade is necessary to mitigate adverse effects of the Proposal because:

- (a) The proposed SUP on the northern side of State Highway 18 will generate additional usage of the underpass. This will create an adverse effect on people using the underpass because the existing underpass is acknowledged to be substandard; and¹⁵

12 Evidence of Mr Tindall, the transcript, page 351, lines 17 – 24.

13 Evidence of Mr Schofield, the transcript, page 279, lines 17-18.

14 Evidence of Mr Bray, the transcript, page 422, lines 5 – 20. The evidence of Mr Schofield, the transcript, page 274, lines 26 - 34 confirmed the upgrade proposed by NZTA will comprise changing the alignment of the path to the south, installing lighting, and CCTV coverage.

15 Evidence of Mr Brown, transcript, page 446 lines 9 to 19.

- (b) While the proposed pedestrian connection at Paul Matthew's Drive will help reduce severance between Unsworth Heights and the SUP on the northern side of State Highway 18, In Mr Brown's view, other aspects of the proposal such as noise walls and visual screening will reinforce the isolation of Unsworth Heights, and create severance effects in a broader sense.¹⁶

The correct legal test for a valid condition: Waitakere City Council v Estate Homes Limited

2.6 However, in the Council's respectful submission, neither of the propositions set out at paragraph 2.4 above¹⁷ set out the correct legal test. In *Waitakere City Council v Estate Homes Limited*¹⁸ the Supreme Court found that:

- (a) the condition must be "logically connected to the development" and not relate to "external or ulterior concerns unrelated to the proposal";¹⁹
- (b) for a condition to be "validly imposed" it must be for a "planning purpose, rather than one outside of the purposes of the empowering legislation...";²⁰
- (c) overall, the condition must be "reasonable".²¹

The underpass is part of the designation and the project

2.7 In the Council's submission, it cannot be said that there is no connection between the underpass upgrade and the Proposal because:

- (a) The underpass sits inside of NZTA's designation; and

16 Evidence of Mr Brown, transcript, page 447 lines 1-15.

17 i.e. that the Proposal will improve the existing environment, or that the upgrade of the underpass sought by the Council is not necessary to mitigate an effect of the Proposal.

18 [2006] NZSC 112.

19 Paragraph 66 of the Decision.

20 Paragraph 61 of the Decision.

21 Paragraph 68 of the Decision.

- (b) NZTA is proposing to undertake works to upgrade the underpass as part of its Proposal (lighting and CCTV footage in the underpass and changing the alignment of the southern approach to the underpass to improve visibility).

The evidence

2.8 In terms of the degree of "connection" between the need to upgrade the underpass to the standard sought by the Council (NZTA's Option 3), and NZTA's proposed SUP on the northern side of State Highway 18, the evidence from Mr Bray and/or Mr Brown is that:

- (a) The underpass provides an important connection between residential areas in Unsworth Heights (particularly the western portion of Unsworth Heights) and NZTA's proposed SUP on the northern side of State Highway 18²² which will continue on to connect with existing cycle way facilities on Albany Highway.
- (b) The underpass provides one of only two connections between NZTA's proposed SUP and Unsworth Heights, the other being at Paul Matthews Drive. Mr Bray accepted that the underpass is likely to provide the most direct, and pleasant connection (when compared to alternatives such as travelling down Albany Highway) for some of the pedestrian and cycle trips from Unsworth Heights.²³
- (c) Usage of the underpass is likely to increase as result of NZTA's SUP on the northern side of SH18, which will provide a link up to the existing cycle path on Albany Highway and to schools, employment and entertainment opportunities along the Albany Highway. In that regard:
 - (i) Mr Bray considers that usage of the underpass is likely to increase from current levels; and²⁴

22 Evidence of Mr Bray, the transcript, pages 413 to 416 and in particular, page 416, lines 6-8.
23 Evidence of Mr Bray, the transcript page 419, lines 25-31.
24 The transcript, Mr Brown, page 440, lines 13-24.

(ii) Mr Brown considers that usage of the underpass could increase quite significantly as a result of NZTA's proposed SUP on the other side of SH18 generating demand from both commuters and recreational cyclists.²⁵

(d) Both witnesses considered that the level of safety and amenity in the underpass could affect levels of usage,²⁶ with Mr Brown describing this as a "chicken and egg situation".²⁷ This conclusion was also supported by Mr Southall of Bike Auckland who noted it was "no surprise" cycle numbers through the underpass were currently low, given the existing underpass is so "unattractive".

2.9 With respect to the upgrade of the underpass that is proposed by NZTA (limited to shifting the path on the southern approach, installing lighting and CCTV coverage), it was acknowledged by Mr Bray that this:

- (a) Will not resolve CPTED issues;²⁸
- (b) Is not best practice for urban design;²⁹
- (c) Is inconsistent with principles in section 5.6, page 36 of the UDLF for this Proposal;³⁰ and
- (d) Will not achieve the Project objective of providing a safe walking and cycling connection³¹

2.10 Mr Bray accepted that the upgrade of the underpass sought by the Council (Option 3 in NZTA's options assessment) would:

- (a) Better resolve CPTED issues;³²

25 Evidence of Mr Brown, the transcript, page 450, lines 31 to 35.

26 Evidence of Mr Bray, the transcript, page 417, lines 14-18, and the evidence of Mr Brown, the transcript, page 440, lines 27-36.

27 Evidence of Mr Brown, the transcript, page 440, lines 12-24.

28 Evidence of Mr Bray, the transcript, page 422, lines 21 and 22, and page 427, lines 5-15.

29 Evidence of Mr Bray, the transcript, page 423, line 18, page 424, line 10, and page 426, lines 1-13.

30 The Evidence of Mr Bray, the transcript, page 424, lines 1- 19.

31 The Evidence of Mr Bray the transcript, page 427, lines 7 to 21.

32 Evidence of Mr Bray, the transcript, page 422, lines 23-25.

- (b) Be more consistent with the principles developed by NZTA in the UDLF for this Proposal;³³ and
- (c) Provide a higher amenity environment, with more width (3 metres) to accommodate pedestrians and cyclists.³⁴

2.11 Option 3 has been acknowledged as being technically feasible, and not requiring any additional land acquisition.³⁵

2.12 The evidence from Mr Southall and Ms Cuthbert from Bike Auckland is that a width of 3 metres (what is proposed in Option 3) is the minimum requirement for pedestrians and cyclists to safely accommodate each other on a shared path.

The upgrade of the underpass is logically connected to the Proposal

2.13 Accordingly, in the Council's submission, the evidence establishes that upgrading the underpass is "logically connected" to NZTA's proposed development of a SUP on the northern side of State Highway 18 because:

- (a) The underpass is within the designation and project area;
- (b) The underpass provides an important connection between Unsworth Heights and the proposed SUP on the northern side of State Highway 18;
- (c) For many users it will provide the most direct, and overall, the most pleasant connection to the SUP; and
- (d) Usage of the underpass is likely to increase as a result of the proposed SUP on the northern side of State Highway 18; and
- (e) Upgrading the underpass, as proposed by Council (from 1.5 metres in width to 3 metres in width) will provide more space to

33 Evidence of Mr Bray, the transcript, page 424, line 20, line 33, page 426, line 24-30.

34 The transcript, page 423, lines 1-7.

35 The transcript, Mr Moore, page 148, lines 1-5.

accommodate pedestrians and cyclists, and is the minimum width required for it to function as a SUP.

The upgrade is for a valid planning purpose and is not unreasonable

2.14 Upgrading the underpass in the manner sought by Council is to achieve a "valid planning purpose(s)" by:

- (a) Promoting the efficient use of resources under section 7(b) of the Act;
- (b) Ensuring that principles for CPTED are complied with;
- (c) Good urban design outcomes consistent (or at least more consistent) with NZTA's UDLF for the Project are achieved; and
- (d) achieving NZTA's Project objective of providing a safe connection for pedestrians and cyclists, for this part of the Proposal.

2.15 Lastly, it is submitted that requiring NZTA to upgrade the underpass to comply with principles for CPTED, be more consistent with the UDLF it has prepared for the Proposal, and achieve its own project objective in relation to walking and cycling is "reasonable" (the last of the requirements in *Estate Homes*).

Comparison with Estate Homes

2.16 In the Council's submission, the facts outlined above are in contrast to the facts in *Estate Homes*. That case involved a condition on an application for subdivision requiring the construction of a road to an arterial road standard – when it was common ground that construction of a road to this standard was not needed for the subdivision.

2.17 The Supreme Court found that was the requirement under the condition to construct the road to an arterial road standard did have the necessary degree of relationship and connection with the proposed subdivision. However, the question then became whether this requirement was

reasonable. The Supreme Court remitted to the Environment Court the question of whether a collector road or local road was the appropriate basis for assessing the compensation to be paid to the developer.³⁶

2.18 In the Council's submission, this contrasts with the situation in this case. The Council is not seeking that the underpass, which forms part of the Project area, be upgraded to a higher standard than is needed to serve NZTA's proposed SUP on the northern side of SH18 (or some other ulterior motive). Rather the Council is seeking that underpass be upgraded to a standard consistent with the rest of the Project (i.e. a SUP of 3.0 metres that meets the principles in the UDLF that NZTA has set for this Proposal, and provides a safe connection for walking and cycling).

3. THE RELOCATION OF NORTH HARBOUR HOCKEY

3.1 The Council wishes to address the following matters arising from the proposed relocation of North Harbour Hockey (**Hockey**):

- (a) Whether, in relation to the proposed leases currently going through the notification and hearings process under the Reserves Act 1977, there is a right of appeal;
- (b) The nature of the resource consents required for the proposed relocation of the Pony Club and the BMX Club; and
- (c) Whether the condition relating to the relocation of Hockey should be a condition precedent.

3.2 Each of these issues is addressed, in turn, under the sub-headings below.

Whether there is a right of appeal from the Reserves Act process

3.3 In relation to the proposed leases that have been notified under the Reserves Act 1977 (in relation to the relocation of, the Pony Club and

³⁶ Paragraphs 67 to 70 of the decision.

BMX Club), the closing date for submissions (objections) is 24 August 2017.

3.4 Section 120 of the Reserves Act 1977 requires full consideration to be given to any objections that are received.

3.5 There is no statutory right of appeal.

The resource consents required for the proposed relocation of the Pony Club and the BMX Club

3.6 Ms Barrett confirmed to the Board that:

(a) The overall status for the resource consents sought by the BMX Club in relation to its proposed relocation is non-complying; and

(b) The overall status of the resource consents required by the Pony Club for its proposed relocation is restricted discretionary.³⁷

Whether the condition relating to the relocation of North Harbour Hockey should be a condition precedent

3.7 The condition relating to the relocation of Hockey that was agreed in the recreation conferencing provided for this to be a "condition precedent" (i.e. the relocation of Hockey was to be completed, prior to construction commencing).

3.8 This condition was subsequently amended during the planning conferencing so that the condition precedent aspect no longer applied.

3.9 Ms Barrett confirmed that she considers the condition precedent aspect to be important. If there is just a general obligation to relocate Hockey, but no timeframe is specified, there could be a "lag period" in which no

³⁷ Summary Statement of Ms Barrett, paragraph 4(e).

facilities, or only reduced facilities, are provided. This would adversely affect recreation opportunities on the North Shore.³⁸

3.10 The conditions as currently proposed (attached to the supplementary evidence of Mr McGahan dated 4 August 2017) provide that the relocation of Hockey is to be completed prior any works commencing, "unless otherwise agreed" by Hockey. The Council understands this wording is proposed in order to allow for a "staged relocation", if Hockey considers this to be acceptable to them.

3.11 The Council supports this condition.

4. EFFECTS ON RECREATION AND RESERVES

4.1 In relation to the effects of the Proposal on recreation and reserves, a very high level of agreement has been reached between Ms Barrett and Mr Greenaway through expert conferencing.

4.2 In relation to the specific issue of the effects of the Proposal on recreation at Constellation Reserve Ms Barrett confirmed that:

- (a) There are no recreation activities being undertaken on the part of Constellation Reserve proposed to be occupied by the Proposal at present;
- (b) If the Proposal proceeds, and that part of Constellation Reserve is required for the Project, there will be no adverse effects on recreational values;
- (c) The Council has plans to provide additional sports fields in the future. At present, these could be located on Constellation Reserve. However, if the Proposal proceeds, there are other locations within Albany where the future sports fields could be accommodated.

4.3 Ms Barrett's only outstanding area of concern in relation to the conditions was in respect of the proposed re-instatement plan for Rook

³⁸ Summary Statement of Ms Barrett, paragraph 4(f).

Reserve. Ms Barrett noted that it had been agreed in the recreation expert conferencing that this should include mitigation above and beyond what was included in the version of condition UDL.6B attached to Mr McGahan's supplementary evidence dated 4 August 2017.³⁹

- 4.4** Following discussions between counsel, NZTA has agreed to amend UDL.6B by inserting a new (ba) that would provide as follows:

"re-contouring and landscaping of the remainder of the reserve and including features such as walkways and seating."

- 4.5** Ms Barrett confirmed that she supports this amendment.

- 4.6** As a result of the proposed amendment, Ms Barrett confirmed that her only area of concern related to the proposed 10m by 10m hard stand area that is proposed to be used as both a basket ball half court, and, from time to time, by maintenance machinery for the stormwater pond. Ms Barrett expressed a concern that the use of this area by maintenance machinery would reduce recreational opportunities. To address this effect, Ms Barrett considers a second area should be constructed as a basket ball half court.⁴⁰

- 4.7** The Council acknowledges Ms Barrett's evidence on this point. However, the use of the hard stand area by maintenance machinery is expected to be a relatively rare occurrence. Accordingly, any adverse effect on recreational opportunities is expected to be low.

- 4.8** The Council does not seek that a second basket ball half Court area be required under condition UDL.6B.

- 4.9** With the addition to condition UDL.6B now proposed by NZTA, the Council and NZTA are in complete agreement on conditions.

³⁹ Summary Statement of Ms Barrett, paragraph 3(b).

⁴⁰ Summary Statement of Ms Barrett, paragraph 3(b).

5. THE AREA OF STREAM BEING RECLAIMED BY THE PROPOSAL AND THE ADEQUACY OF THE OFF-SET MITIGATION PROPOSED BY NZTA

5.1 In its opening statement, the Council indicated that it understood there was potentially a difference in opinion between it and the NZTA regarding whether resource consent for reclamation is required for streams within the constellation dry dam.

5.2 The Council considers it is important that the Board's decision on this aspect of the Proposal is legally correct.

5.3 The NZTA has applied for resource consent to fill in all of the streams within the dry dam.⁴¹ However, Mr McGahan advises that:

(a) "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

(b) 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".⁴²

5.4 In the Council's submission:

(a) NZTA has applied for resource consent to reclaim these waterways on the basis that they are "streams";

(b) The existence of a damming consent for the constellation dry dam over this area does not extinguish any need to obtain resource consent under section 13 of the RMA to reclaim the areas; and

(c) Accordingly, should the Board decide to approve the Proposal, it should be on the basis that it grants resource consent to reclaim 560 metres of streams.⁴³

41 AEE pages 92-93, and evidence of Mr McGahan, paragraph 8.9.

42 Evidence of Mr McGahan, paragraph 8.9.

43 Evidence of Ms Barnett, the transcript, page 263, lines 30-34.

5.5 In practical terms the Council notes that:

- (a) Regardless of what conclusion the Board reaches in terms of the extent of the "streams" that are to be reclaimed as part of the Proposal, NZTA has clearly applied for resource consent to fill in the entire area covered by the constellation dry dam. Accordingly, in the Council's submission, no issues of scope arise; and
- (b) It is clear from the evidence from Ms Barnett that further off-set mitigation is not required, even if all 560 metres are found to be "streams" requiring consent for reclamation, due to the low ecological values of the "streams" being reclaimed.⁴⁴

5.6 The Council maintains there is strong support in the policy documents for offset mitigation to be provided. However, in light of Ms Barnett's evidence that from an ecological perspective, offset mitigation is not required, the Council is not pursuing this matter further.⁴⁵

6. THE APPROPRIATENESS OF MATTERS BEING DEALT WITH BY WAY OF A SIDE AGREEMENT

6.1 The Council indicated in its opening statement that, following expert conferencing between witnesses for NZTA, the Council and Auckland Transport, NZTA has agreed to provide the following additions or extensions to the proposed SUP by way of a side agreement:

- (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

44 Evidence of Mr Barnett, the transcript, page 268, lines 20 to 32.

45 Summary Statement of Mr Turner, paragraph 14.4.

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
- (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).⁴⁶

6.2 The Council further indicated that, as a result of these matters being addresses through the side agreement with NZTA, the Council was no longer pursuing any relief in relation to these matters as part of this hearing.⁴⁷

6.3 During the hearing, her Honour expressed reservations about the appropriateness of using side agreements in certain circumstances.; and in particular, where a side agreement covers matters which are needed to manage the effects of a Proposal.

6.4 In the Council's submission, it is appropriate for the extensions to the SUP (outlined in paragraph 3.1 above) to be provided by NZTA by way of a side agreement. This is because:

- (a) The extensions will increase the benefits of the proposed SUP by connecting to already existing SUP facilities near-by, creating a "network effect";⁴⁸ however
- (b) the extensions are not required to manage any adverse effects of the Proposal on the environment.⁴⁹

46 Opening Statement for Auckland Council, paragraph 3.3.

47 Opening Statement for Auckland Council, paragraph 3.4.

48 Evidence of Ms King, paragraph 7.11.

49 The evidence of Mr Tindall, transcript, page 386 lines21 to 36, and page387, lines 1 to 15.

7. ASSESSMENT OF WHETHER THE PROPOSAL IS CONTRARY TO THE OBJECTIVES AND POLICIES OF THE PLAN UNDER SECTION 104D(1)(b) OF THE ACT

7.1 While Ms McIndoe was presenting the opening statement on behalf of the NZTA, her Honour queried the correct approach to take to the assessment of whether the resource consents for the Proposal are "contrary" to the objectives and policies of the relevant plan under section 104D(1)(b) of the Act.

7.2 In particular, her Honour has asked whether the Act requires the resource consents to be not contrary to the objectives and policies of the relevant plan "as a whole", given that Mr Turner and Ms Brabant had raised issues with respect to the consistency of the Proposal with some provisions.⁵⁰

7.3 Counsel understands, in light of Mr Turner's answers to questions from the Board and Ms McIndoe that:

- (a) He does not consider the Proposal to be contrary to objectives and policies in relation to stream reclamation; and
- (b) Rather, he considers the proposal is "not entirely consistent" with certain objectives and policies. In his view, this is a lower threshold than being "contrary" to those provisions.

7.4 Accordingly, it may be that none of the planning witnesses presenting evidence consider the Proposal to be "contrary" to specific objectives and policies.⁵¹

7.5 In terms of the case law, in the Council's submission, when assessing whether or not the Proposal is "contrary" to the objectives and policies of the plan:

⁵⁰ Opening Statement for the NZTA dated 18 July 2017, paragraph 4.32.

⁵¹ Counsel understands that Ms McIndoe will address in the closing statement of NZTA the position of Ms Brabant.

- (a) The Proposal does not need to be consistent with every objective and policy. A "holistic approach" (i.e. looking at the objectives and policies as a whole) can be taken;⁵² and
- (b) A proposal will not be "contrary" to the objectives and policies simply if it is inconsistent with some of them. It must be "opposed to the nature and thrust of the objectives and policies as a whole".⁵³

7.6 Mr Turner for the Council does not consider the Proposal to be contrary to the objectives and policies of the Plan. He considers that it passes the section 104D(1)(b) gateway for non-complying activities.⁵⁴

8. CHANGES TO THE DESIGN OF THE SUP AND BUSWAY SOUGHT BY KIWI –SELF STORAGE

8.1 The Council adopts the submissions of Auckland Transport in this matter, set out in its closing statement.

9. THE APPROACH TO CONDITIONS

9.1 There have been on-going discussions between NZTA, the Council, and Auckland Transport in relation to conditions.

9.2 NZTA lodged revised conditions with the EPA on 4 August 2017, **attached** to supplementary evidence of Mr McGahan. With respect to the proposed management plans for the Proposal, the revised conditions now structure these as follows:

- (a) The proposed Construction Noise and Vibration Management Plan (**CNVMP**) and Construction Traffic Management Plan (**CTMP**) attach to the designation; and
- (b) The Construction and Environmental Management Plan, Dust Management Plan, Avifauna Management Plan, Contaminated Site Management Plan, Construction Erosion and Sediment

37 *Crater Lakes Park Limited v Rotorua District Council* A126/09 at [169] – [170].

53 *Crater Lakes Park Limited v Rotorua District Council* A126/09 at [170].

54 Evidence of Mr Turner, paragraph 4.1(c).

Control Plan and Landfill Reinstatement Plan attach to the regional consents.

9.3 The Council supports the proposed split of the management plans between the designation and regional consents on the basis that:

- (a) Management plans which manage land use effects (traffic and noise) now attach to the designation; and
- (b) The other management plans all address regional matters, and attach to the regional consents,

9.4 The Council considers this to be an appropriate and orthodox approach. This addresses the concerns raised in the Council's opening statement.

9.5 There are no areas of disagreement between the Council and NZTA in relation to conditions.

10. CONCLUSION

10.1 The Council wishes to acknowledge the 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.

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

Dated at Auckland this 11th day of August 2017

W M Bangma
Counsel on Behalf of Auckland Council