

**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 OF AUCKLAND TRANSPORT

11 AUGUST 2017

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MAY IT PLEASE THE BOARD

1. OVERVIEW

1.1 As set out in Auckland Transport's opening statement, Auckland Transport strongly supports the grant of consent to this Proposal.

1.2 Auckland Transport particularly wishes to acknowledge the collaborative approach of NZTA and its witnesses to resolving the issues raised by Auckland Transport and in particular:

- (a) The improvements to conditions agreed through the exchange of evidence and conferencing (particularly in relation to management of construction traffic and effects on buses); and
- (b) The additional benefit provided by the modifications to the SUP agreed to by NZTA, following conferencing, and to be provided under the side agreement.

1.3 As indicated by Mr Lovell when he gave evidence yesterday, all of the areas of interest raised by Auckland Transport have been addressed through a combination of agreed changes to the conditions, the Minimum Requirements for the Project, or the side agreement between Auckland Transport and NZTA.¹

1.4 This closing statement on behalf of Auckland Transport addresses the following matters:

- (a) the appropriateness of Auckland Transport and NZTA agreeing to address various matters by way of a side agreement;
- (b) damage caused to local roads by construction traffic;
- (c) the upgrade of the Alexandra Stream underpass; and
- (d) the design changes to the Busway and SUP sought by Kiwi Self-Storage Limited.

¹ Summary Statement of Mr Lovell, paragraph 13.

2. THE APPROPRIATENESS ADDRESSING MATTERS IN A SIDE AGREEMENT

2.1 The Board has asked Auckland Transport to address in its closing statement the appropriateness of it seeking to address the following matters through a side agreement with NZTA:

- (a) the extensions to the SUP outlined in paragraph 3.5(a) to (d) of Auckland Transport's opening statement;
- (b) the implications of projected increases in daily traffic flows on Albany Highway South as a result of the Proposal (a 5% increase in 2031), resulting in the need to "bring forward" planned improvements to Albany Highway South; and
- (c) the possible need to widen the Rosedale Over bridge Piers to facilitate the upgrade of Rosedale Road to four lanes as part of the operation of a possible future Rosedale Busway station.

2.2 In Auckland Transport's submission, where a proposed measure is required to address an adverse effect on the environment to be managed by the Council (as 'consent authority'), it should be addressed through conditions of consent rather than a side agreement. The potential role of any side agreement should be limited to matters which are not generally appropriate to address through conditions e.g. matters relating to the operation of the road network (that are within the road controlling authority's powers/responsibilities), communications between the parties, or funding arrangements.

2.3 The approach Auckland Transport and NZTA have taken in this Proposal is consistent with this. In particular:

- (a) Auckland Transport's concerns in relation to effects on the local road network and buses will be addressed through conditions (rather than a side agreement).

- (b) With respect to the extensions to the SUP agreed with NZTA, these are generally outside the designation for this Proposal.² The proposed works will be within Auckland Transport Road Reserve, and the design of the works will be approved by Auckland Transport in its capacity as the controlling authority. As noted in Ms King's evidence, the purpose of extending the SUP under the side agreement to connect to existing cycles lanes is to maximize the benefit of the Proposal through the creation of a "network effect".³ The extensions to the SUP have been agreed to with NZTA on that basis.⁴
- (c) In relation to Albany Highway South, Mr Clarke on behalf of NZTA, acknowledged that the Proposal is projected to result in a 5% increase in the volume of traffic on Albany Highway south of SH18 by 2031. This is likely to bring forward the need for Auckland Transport's Albany Highway South upgrade Project – noting that the Project will be needed at some point in the future, in any case. NZTA will financially contribute to the Albany Highway South upgrade Project. Accordingly, in Auckland Transport's submission, to the extent that this Proposal could bring forward the timing of the Albany Highway South Project, this is essentially a funding matter to be resolved between the two parties (and in accordance with the relevant legislation). A condition on this Proposal relating to NZTA's funding of the Albany Highway South Project is not necessary or appropriate to address this matter. Furthermore, the exact funding implications are unclear at this point, and there could be difficulties with trying to capture this in a condition.
- (d) In relation to Rosedale Station, Auckland Transport is currently exploring with NZTA the location of a possible future bus station in this vicinity. This project has yet to be confirmed, and has not been consented. Accordingly, in Auckland Transport's submission it does not at this point form part of the environment for the purposes of assessing the Proposal under the RMA. If the Rosedale Station proposal does proceed, it could result in

2 The exception to this is part of the works at Carribean Drive that fall within the designation.

3 Evidence of Ms King, paragraph 7.8.

4 Summary Statement of Mr Lovell, paragraph 2.

the need to upgrade and widen Rosedale Road to four lanes. This is likely to result in a need to widen the piers of the Rosedale Road over bridge. Works on the over bridge will be undertaken anyway as part of this Proposal – due to the need to widen the over bridge to incorporate the proposed extension to the Northern Busway. Accordingly, Auckland Transport wishes to ensure that the design of the over bridge for this Proposal does not preclude the Rosedale station road widening in the future. This is a matter that can be addressed through the detailed design of the Proposal, if, by that time, it has been decided that the Rosedale Station works will proceed. Auckland Transport and NZTA have agreed that this matter will be dealt with by way of a side agreement. In Auckland Transport's submission, this is appropriate given that:

- (i) NZTA will be a project partner in the Rosedale station (if that proceeds) and part fund that project;
- (ii) This is a matter which can be left to the detailed design stage of this Proposal, and accommodated within the designation; and
- (iii) A condition in relation to this matter is not necessary to address any adverse effect on the environment, and the Rosedale Bus station does not, in any case, form part of the "environment" (as defined under the RMA) as consent has not yet been obtained.

3. DAMAGE TO LOCAL ROADS

3.1 Auckland Transport indicated in its opening statement that it was continuing to work with NZTA, and that it was hopeful that agreed wording on a condition satisfactory to the parties could be presented to the Board.⁵

3.2 NZTA and Auckland Transport have now reached agreement on this issue. Conditions CTMP6 to CTMP6D attached to the supplementary

5 Opening statement of Auckland Transport, paragraph 5.5.

evidence of Mr McGahan dated 4 August 2017 address this issue and require:

- (a) Prior to commencement of construction the identification of all access points from the Project construction area to the local road network, confirmation of existing levels of traffic on the relevant local roads, an estimation of construction traffic volumes, and a monitoring programme to be implemented during construction;
- (b) At least 4 weeks prior to commencement of construction a RAMM visual condition assessment to be undertaken, including pavement strength testing;
- (c) Weekly inspections of the relevant local roads during construction, or upon a complaint being received; and
- (d) Any damage attributable to the Project to be repaired within one week, or an alternative timeframe agreed with Auckland Transport.

3.3 In Auckland Transport's submission, the condition agreed with NZTA is appropriate, and will ensure that any damage to local roads attributable to the Project is remedied. While the condition has been volunteered by NZTA, Auckland Transport considers the condition to be consistent with recent statements of principle by the Environment Court in relation to damage to local roads in *Norsho Bulc Limited v Auckland Council* [2017] NZEnvC 109.⁶

4. THE UPGRADE OF THE ALEXANDRA STREAM UNDERPASS

4.1 Auckland Transport supports the upgrade of the Alexandra Stream underpass sought by the Council (option 3 in NZTA's alternatives assessment).

4.2 Auckland Transport adopts the submissions of the Council on this matter.

⁶ In particular, see paragraphs 92 and 102 of the decision, and Condition 53.

5. THE DESIGN CHANGES TO THE BUSWAY AND SUP SOUGHT BY KIWI SELF-STORAGE

5.1 In its opening statement Kiwi Self Storage referred, in support of its proposed changes to the gradient of the busway and SUP increasing the maximum gradient of those facilities to 5.34%, to:

- (a) The fact that the existing Northern Busway has a grade of 5.34% for a length of approximately 630m between Constellation Drive Station and Sunnybrook Road. Accordingly, their proposed design changes would not require buses on the busway to ascend or descend at a gradient greater than they are already undertaking;⁷ and
- (b) In relation to the proposed SUP, Ms King had agreed in principle that a gradient of 5.34% was acceptable.⁸

5.2 With respect to the existing section of the busway that has a gradient of 5.34% Mr Maule indicated that this stretch of the busway affects the efficient operation of fully laden double-decker buses, and can result in them reducing in speed by up to 20 kph.⁹ Furthermore the gradient of this part of the busway is a result of topography and the hill that rises to a peak at Sunset Road.

5.3 Mr Hall on behalf of Kiwi Self-storage sought to distinguish the design changes Kiwi Self Storage propose (also a maximum gradient of 5.34%) on the basis that due to the location of Constellation Station in relation to the proposed area of increased gradient, the increased gradient would:

- (a) Assist with acceleration of buses headed down hill (from Constellation Station towards Albany Station); and

⁷ Opening Statement of Kiwi Self Storage, page 16.

⁸ Opening Statement of Kiwi Self Storage, page 15.

⁹ The transcript, page 308, lines 9-31.

- (b) The additional gradient would assist buses travelling uphill (from Albany Station towards the City) to decelerate before coming to a stop at Constellation Station.

5.4 No detailed analysis of how the proposed changes in gradient would affect acceleration or deceleration of buses has been undertaken. In Auckland Transport's submission, in the absence of such analysis, it is difficult for the Board (or parties) to establish that the efficient operation of this important public infrastructure will not be affected, to at least some degree. In particular, Auckland Transport notes that:

- (a) Mr Hall accepted that, from a traffic engineering perspective, the most efficient outcome for the bus way is a gradient of zero (or preferably traveling downhill);
- (b) A gradient of more than 5% is a departure from recognised design standards for the efficient operation of buses;
- (c) "Locking in" Kiwi-self storage's proposed design (with a maximum gradient of 5.34%) may prevent NZTA from achieving, through detailed, a gradient of less than 5%, which is acknowledged would be an even better or more efficient outcome.

5.5 In terms of Ms King's position on the appropriateness of a gradient of 5.34% for the SUP, Ms King confirmed that:

- (a) She did not attend the conferencing for Transport and Traffic Site Specific impacts resulting in the conferencing statement dated 23 June 2017. The reference in that conferencing statement¹⁰ to Ms King having agreed in the Joint Witness Statement Traffic and Transport General/Design/Layout/Model/Alternatives that a "gradient of 5.34% was in principle acceptable", is not recorded in that earlier conferencing statement,¹¹ and does not reflect her views.¹²

10 Paragraph 8(c), bullet point 4.

11 See page 11 of the statement for the record of discussion on SH1 SUP gradient.

12 The transcript, page 324, line 7 - page 325, line 24.

(b) With respect to the gradient of the SUP Ms King's evidence is that:

(i) A SUP that was flat (gradient of zero) would be the most desirable for users;¹³

(ii) A gradient of 5% would be at the "upper limit" of what was desirable;¹⁴

(iii) For a gradient steeper than 5% this would need to be approved by Auckland Transport through a departures process;¹⁵

(iv) Through the departures process Auckland Transport would consider whether appropriate mitigation could be provided for the increased gradient, as part of the design of the SUP. This would most likely consist of providing rest stops at specified intervals, as set out in Auckland Transport's Design Manual.¹⁶ Whether these rest stops could be incorporated as part of the SUP was a matter of detailed design and cannot be confirmed at this stage;¹⁷ and

(v) Although there are other examples of SUPs in Auckland with gradients steeper than 5%, these were due to topography, and it would not be desirable to deliberately design a SUP with such steep gradients.¹⁸

5.6 The evidence of Mr Southall of Bike Auckland on this issue was:

(a) A gradient of less than 3% would be ideal;

(b) A gradient of more than 5% would be a disincentive to members of the public to use this infrastructure.

13 The transcript, page 334, lines 9 - 14.

14 The transcript, page 326, line 35 - page 327, line 10.

15 The transcript, page 325, lines 17-24.

16 See the attachment to Ms King's summary statement.

17 The transcript, page 325, line 25 - page 326, line 8.

18 The transcript, page 334, lines 4-24.

- 5.7** In Auckland Transport's submission, the evidence establishes that amending the design of the busway and SUP to increase the gradient to 5.34% as sought by Kiwi Self Storage will permanently reduce the efficiency of this important public infrastructure, and is not desirable.
- 5.8** The reason proposed for these design changes is to preserve views from the motorway of a commercial storage business. There is no public interest in preserving such views – unlike for example views from public places of the Auckland Volcanic Cones, Museum, or prominent heritage buildings. The reason for preserving these views is the private interest of kiwi-self storage.
- 5.9** In relation to effects on Kiwi Self-storage's business, the evidence of its registered valuer, Mr Doyle, is that the loss of views of the Kiwi-Self Storage site as a result of the Proposal would be likely to reduce its facility from an exceptional site to a prime site. This could potentially affect its turnover by around 10%. However, Mr Doyle accepted that, even with reduced visibility, the site would occupy a highly favorable position on the eastern side of the motorway.
- 5.10** Mr Allan maintained that it was the visibility of the Kiwi Self Storage buildings (storage units) that was important to its brand, and attracting customers. However, in Auckland Transport's submission, the use of signage is clearly a possibility. As explained by Mr Lovell, fairly generous provisions for signage (with respect to size and height) apply to the site under the zone rules in the AUP(OP). Signage is used by other self storage businesses. The ability to provide signage that would be visible from the motorway, and the visibility of the site from the proposed busway (which has increasing levels of patronage) might reasonably be expected to offset, or at least partially offset the effects on Kiwi Self Storage's business.
- 5.11** Irrespective of the precise level of effect on Kiwi Self Storage from a reduction in the visibility of its property from the motorway, as Auckland Transport noted in its opening statement, the Courts have held that there is "no property in a view". As the Court stated in *Re Meridian Energy* [2013] NZEnvC 59:

*"When dealing with landscape and visual amenity issues several basic legal principles need to be remembered. The first is that there is no right to a view. Even though we must have particular regard to the maintenance and enhancement of amenity values, this is not the same thing as saying there is a right to a view. The second is that a landowner is permitted to use their land as they see fit, provided that the use of it does not breach any legal requirement. It follows that the use of land by a neighbor in some circumstances can lawfully change an existing view."*¹⁹

- 5.12** Auckland Transport submits that these principles apply in the present case. Kiwi Self Storage has no "right" to a view of the motorway – or a view of its site from people using the motorway. NZTA, is entitled to provide public infrastructure in a way which blocks or interferes with that view, or to plant trees, erect noise barriers, or other lawful activities which might reduce views of the Kiwi-Self-Storage site from the motorway. Furthermore, while the busway and SUP is likely to be present for a very long time (perhaps permanently), the nature of the use of the Kiwi-Self Storage site may change.
- 5.13** It is acknowledged by the witnesses involved in expert conferencing that the design changes proposed to the busway and SUP require a departure from recognised design standards.²⁰ Auckland Transport does not support these design changes on the basis that they seek to permanently reduce the efficiency of operation of public infrastructure, for a private benefit – when there is no guarantee that the Kiwi Self Storage's business will remain on the site.
- 5.14** Auckland Transport is also conscious that a decision to change the optimal design of these facilities in response to private interests, could set an unhelpful precedent for other projects in the future.

¹⁹ Paragraph 112 of the decision.

²⁰ Joint Witness Statement: Transport and Traffic - site specific impacts dated 23 June 2017, pages 4 and 5.

6. CONDITIONS

6.1 Auckland Transport has reached complete agreement with NZTA in relation to conditions. Auckland Transport supports the draft conditions **attached** to the supplementary evidence of Mr McGahan dated 4 August 2017. This is subject to the two minor changes outlined in Appendix 1 to the summary statement of Mr Lovell dated 11 August 2017. NZTA has indicated to Auckland Transport that it agrees to these two amendments, and that they will be included in NZTA's final set of draft conditions that will be provided to the Board with its closing statement.

7. CONCLUSION

7.1 Auckland Transport strongly supports the Proposal and seeks that it be confirmed by the Board for the reasons outlined in Auckland Transport's evidence, opening statement, and in this closing statement.

Dated at Auckland this 11th day of August 2017

W M Bangma
Counsel on Behalf of Auckland Transport