

Before the Board of Inquiry
Waterview Connection Project

in the matter of: the Resource Management Act 1991

and:

in the matter of: a Board of Inquiry appointed under s 149J of the Resource Management Act 1991 to decide notices of requirement and resource consent applications by the NZ Transport Agency for the Waterview Connection Project

Joint Memorandum of counsel on behalf of the **NZ Transport Agency, KiwiRail Group, Auckland Council and Auckland Transport** in relation to rail corridor questions.

Dated: 16 March 2011

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**JOINT MEMORANDUM OF COUNSEL ON BEHALF OF THE NZ
TRANSPORT AGENCY, KIWIRAIL, AUCKLAND COUNCIL AND
AUCKLAND TRANSPORT**

PURPOSE OF MEMORANDUM

- 1 The New Zealand Transport Agency (*NZTA*) is proposing to mitigate the impacts of the Project on the Avondale-Southdown rail line through the provision of a replacement rail corridor (the corridor). The Board has requested that Counsel address the following matters:
 - 1.1 Whether the NZTA has the legal ability to designate for the corridor as part of this Project (whether the land is reasonably necessary to meet the objectives of the NZTA)¹; and
 - 1.2 To what extent the Board should take into account the effects of moving the rail corridor?²

Designation Issues

- 2 The NZTA does not have requiring authority status or financial responsibility for railways and therefore cannot designate for a rail line. The Project cannot, and does not, provide for the establishment of the Avondale-Southdown rail line as an authorised activity.
- 3 Instead the Project seeks, through its alignment and design to mitigate the effects on rail by ensuring that a 20m wide corridor has been maintained for the future rail development.³
- 4 This approach is consistent with the Project objective to “support mobility and modal choices within the wider Auckland Region ... by protecting opportunities for future passenger transport development (e.g. rail)”.⁴
- 5 It is recognised that the Project requires land from the existing Avondale-Southdown Rail designation and corridor and that this is an effect of the Project. To mitigate this effect, the Project has sought to provide an integrated transport corridor solution for both the State highway and rail through Sector 9, including provision of an appropriate replacement rail corridor.
- 6 The land requirements to provide a replacement ‘rail land corridor’ were not the exclusive factor in setting the northern extent of the NZTA’s proposed designation in Sector 9.

¹ Hearing Transcript page 1447 (Friday 11th March).

² Hearing Transcript page 1342 (Thursday 10th March).

³ Refer AEE Part A, section 4.5.1, page 4.62.

⁴ Refer AEE Part A, section 3.3, page 3.3.

- 7 As set out in Ms Linzey's Fourth Supplementary Statement of Evidence, various sections of the corridor are required by the NZTA for purposes directly associated with the motorway, which are unrelated to the rail line. In particular, these purposes include the engineering requirement for a grout wall to address groundwater and settlement effects, and the construction requirement for Construction Yard 8. Therefore, the NZTA is proposing to designate land for Project-related purposes that will eventually become available for the rail corridor.
- 8 The only exception to this is the encroachment into 5 Barrymore Road at Chainage 1200 (a length of approximately 20m).⁵
- 9 The process by which the corridor becomes rail land is outside the scope of this Project, but in short, once the corridor is no longer required for the Project, sections 40 and 52 of the Public Works Act 1981 provide for land which is surplus to the public work for which it is held (i.e. the Project) to be transferred to another public work (i.e. the railway) for which that land is required.
- 10 The Agreement between KiwiRail and the NZTA, dated 23 February 2011 (the Agreement),⁶ accordingly provides for the NZTA to transfer the corridor to KiwiRail so that it may then designate the corridor for rail activity.

Assessment of effects

- 11 The Board cannot consider the effects of any future relocated rail activity as that activity is not included in, nor sought to be authorised by, this Project.
- 12 Neither should the Board consider the cumulative effects of rail and the motorway. As Counsel for KiwiRail noted in her opening submissions, "cumulative effects, to the extent that they are found to exist, will have to be assessed if and when rail is constructed and such effects will need to be considered when the rail designation is realigned."⁷
- 13 Accordingly, the effects of the rail activity, including any cumulative effects, will need to be considered by the relevant authority when KiwiRail seeks its own designation (or alteration to designation) for the Avondale-Southdown line, under the Resource Management Act 1991 (*RMA*).
- 14 By contrast, it is submitted that the Board can, and should, consider the effects of the use of the land that will eventually become part of the corridor for the various requirements set out in Ms Linzey's evidence (including for a grout wall and a construction yard), in addition to mitigating the impact on the future provision of rail.

⁵ It is noted that 5 Barrymore Road was owned by the NZTA at the time of lodgement of the Notice of Requirement and continues to be owned by the NZTA.

⁶ Agreement produced as Hearing Exhibit 6.

⁷ Legal Submissions on behalf of KiwiRail Group, 2 March 2011, paragraph 3.3.

- 15 Given the NZTA's proposal to then transfer the land to KiwiRail, it is submitted the Board can also consider the effects of the interim use of this land (for example, any amenity benefits of the planting or CPTED concerns), but noting that the corridor will ultimately sit outside the NZTA's operational (motorway) corridor.
- 16 Moreover, as noted in Counsel for KiwiRail's submissions,⁸ the effect of the Project on the existing rail designation is a relevant matter to consider. It is submitted, that this matter has been addressed through the design of the Project to ensure the provision of a rail corridor, and KiwiRail has provided its section 177 RMA approval on the basis of the Project and the Agreement.

Dated: 16 March 2011



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⁸ Legal Submissions on behalf of KiwiRail Group, 2 March 2011, paragraph 2.1.