

Before Hearing Commissioners

under: the Resource Management Act 1991

in the matter of: notices of requirement and resource consent applications by the NZ Transport Agency and Hamilton City Council for the Southern Links Project

Rebuttal evidence of Barry Dowsett on behalf of the **NZ Transport Agency**

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**REBUTTAL EVIDENCE OF BARRY DOWSETT ON BEHALF OF THE
NZ TRANSPORT AGENCY AND HAMILTON CITY COUNCIL**

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REBUTTAL EVIDENCE OF BARRY DOWSETT ON BEHALF OF THE NZ TRANSPORT AGENCY

INTRODUCTION

- 1 My full name is Barry Ernest Dowsett.
- 2 I have the qualifications and experience set out in paragraphs 2 to 5 of my statement of evidence-in-chief (*EIC*) dated 12 June 2014.
- 3 My rebuttal evidence is given in support of notices of requirement (*NORs*) and applications for resource consents lodged by the NZ Transport Agency (*the Transport Agency*) and Hamilton City Council (*HCC*) on 9 August 2013 in relation to the construction, operation and maintenance of the Southern Links Project (*Project*).
- 4 In this statement of rebuttal evidence, I respond to the relevant sections of evidence of the following:
 - 4.1 George Clark (Commercial Manager), on behalf of Titanium Park JV (38);
 - 4.2 Aidan Donnelly (Development Manager), on behalf of Titanium Park JV (38) and Waikato Regional Airport Ltd (55);
 - 4.3 Cameron Inder (Traffic Engineer), on behalf of Titanium Park JV (38) and Waikato Regional Airport Ltd (55);
 - 4.4 John Olliver (Planner) on behalf of Titanium Park JV (38) and Waikato Regional Airport Ltd (55);
 - 4.5 Ian Johnson (Environmental Consultant) on behalf of Meridian 37 Ltd (51);
 - 4.6 Ken Tremaine (Planner) on behalf of Future Proof Implementation Committee (56);
 - 4.7 Kathryn Drew (Planner) on behalf of Titoki Sands Ltd (39);
and
 - 4.8 Paul Ryan (Planner) on behalf of Hamilton City Council (44).
- 5 The fact that this rebuttal statement does not respond to every matter raised in the evidence of submitter witnesses within my area of experience or expertise should not be taken as acceptance of the matters raised.

RESPONSE TO EXPERT EVIDENCE OF SUBMITTERS

Titanium Park Joint Venture (TPJV) and Waikato Regional Airport Ltd (WRAL)

- 6 I have reviewed the evidence of the witnesses for the TPJV and WRAL and will respond to the evidence of Messrs Clark, Donnelly, Inder and Olliver. This primarily relates to the development of the Western Precinct of Titanium Park and the alleged effects of the Project's Notice of Requirement (*NoR*) in Waipa District.

Strategic importance of infrastructure

- 7 The TPJV witnesses refer to the strategic status of Hamilton International Airport and the economic value of the development of Titanium Park. The Transport Agency recognises the strategic nature of the Airport (as also recognised in the Regional Land Transport Strategy and the Waikato Regional Policy Statement). The Transport Agency also recognises the existing zoning and associated Structure Plan and thus the potential development of Titanium Park as a strategic transport hub of regional economic significance.
- 8 At the same time, the Transport Agency considers that recognition must be given to the national, regional and local strategic significance of the State highway network adjoining Hamilton International Airport and Titanium Park. The State highway network is a physical "resource of national importance" in terms of section 6 of the Resource Management Act 1991.¹ In this locality, the State highway is very important in the context of the Upper North Island Freight Story and the Waikato Expressway Network Plan (as referenced by Mr Brodnax in his EIC).²
- 9 In particular, State Highway (*SH*) 3 between Hamilton and New Plymouth is an important freight and tourism route (as well as carrying increasing commuting traffic between Te Awamutu and Hamilton). Work undertaken as part of the Upper North Island Freight Story included an assessment of the monetary value of freight carried on SH3. This economic value in 2007 dollars was assessed as \$3.67B **annually**, thus emphasising the national and regional economic benefit of SH3.

Titanium Park and Southern Links development

- 10 I have been indirectly involved in the development of Titanium Park at Hamilton International Airport since 2007, when Transit New Zealand³ engaged with WRAL and its joint venture partners

¹ *Auckland Volcanic Cones Society v Transit New Zealand* [2003] 7 NZRMA 316, 327-328.

² Robert Brodnax EIC, paragraphs 50-58.

³ Predecessor organisation that merged with Land Transport New Zealand in August 2008 to form the Transport Agency.

(together *TPJV*) about proposed Private Plan Change 57 (*PC57*) to the then Operative Waipa District Plan. *PC57* essentially sought to enable industrial business development of Titanium Park on land not required for airport operational purposes, in general accordance with a structure plan showing land use patterns, access and internal roading layout.

- 11 Our resource planners led the Transport Agency submission on *PC57* and then on appeal to the Environment Court about potential transport impacts and the need for upgrading of access points on both sides of the Airport. During the RMA process, the parties developed agreed responsibilities and access upgrade triggers.
- 12 These agreements became the basis for an Environment Court consent order⁴ which amended District Plan rule 7A.4.1 (Compliance with Structure Plan) and rule 7A.5 (Matters for Assessing Restricted Discretionary Activities).⁵ The effect of these amendments was to require an RMA process that involved the Transport Agency, and provided for the assessment (including upgrade triggers) of the extent and standard of the access to each part of the industrial business park.
- 13 The parties subsequently entered into a Memorandum of Agreement (*MOA*), dated April 2011, whereby we have agreed to engage in ongoing consultation and cooperation, with a focus on progressing traffic access and mitigation measures. That *MOA* remains in effect.
- 14 As described in *TPJV* evidence,⁶ the following access point for the Western Precinct of Titanium Park is included in the Airport Structure Plan:
 - 14.1 A new at grade channelised (seagull) intersection on SH3 at a location just to the south of No Exit Road (referred to as the "mid-point" access);
 - 14.2 When required by the upgrade triggers, that intersection is to be upgraded to provide partial grade-separation for northbound movements.
- 15 That access point remains an option for *TPJV* today.

Discussions about Western Precinct access solutions

- 16 During the scoping and then full investigation phase of the Southern Links Project, *TPJV* and *WRAL* (both in its joint venture role and in

⁴ Dated 22 April 2010, ENV-2008-AKL-000341.

⁵ Consent order attached to my rebuttal evidence as **Annexure A**. These rules are also referred to in the *TPJV* evidence.

⁶ For example, John Olliver, paragraph 2.11.

its role as airport operator/requiring authority) were consulted at various stages. Representatives attended at least one public information day of each of the three sets of information days. During the third set of information days (in May 2012) the form of the proposed interchange at the SH3/21 intersection, which is now the subject of the Project NOR, was shown and publically consulted on. By that stage it had become apparent that land (8,755m²) would be required from the Titanium Park Western Precinct to accommodate the SH3/21 interchange.

- 17 Given the proposed location of the new SH3/21 interchange, attention focused on whether it would be desirable to have another major intersection further north on existing SH3 Ohaupo Road, being the "mid-point" access into the Western Precinct as provided for under the Airport Structure Plan (referred to earlier in my evidence).
- 18 As a result, the Southern Links Project team (led principally by Mr Eccles) and the Transport Agency's Planning & Investment Group⁷ (led by Mr Andrew Wilson) started earnest engagement with TPJV on whether an interim solution, giving access to the Western Precinct at the SH3/21 intersection (instead of at the Structure Plan mid-point access) could be achieved.
- 19 The parties recognised that, if possible, it would be more efficient to avoid constructing infrastructure at the mid-point access to the Western Precinct that would become redundant if and when the Project's SH3/21 interchange was finally built.
- 20 This Transport Agency collaboration was within the spirit of the MOA, and accordingly the Agency's Planning & Investment team was involved.
- 21 The early engagement led to consideration of whether a permanent access could be constructed at the south-western corner of the Western Precinct by adding an extra (5th) leg to the eastern roundabout which was proposed at the SH3/21 interchange (being a dual roundabout configuration).
- 22 This extra leg has caused some concern within the Transport Agency's Traffic and Safety team, as ultimately this would make it a 5 legged roundabout which is not considered as safe as a 4 legged roundabout. Thus the interim decision from the Highways Regional Management team was to allow a 5th leg only with a single lane roundabout.

⁷ The Planning & Investment Group has responsibilities for integrated planning, including land use consideration under the RMA. This is distinct from the responsibilities of the Highway Network Operations Group that effectively acts as the local controlling authority for the State highway network.

- 23 The engagement with TPJV has carried on through the development of the Project Transport Agency's NOR and AEE lodged in August 2013 and has continued through to this pre-hearing period.
- 24 The Transport Agency has indicated options to TPJV to advance the design and construction of a roundabout at the SH3/21 intersection, subject to reaching agreement on design standards and cost sharing arrangements. This has been set out in recent correspondence from the Transport Agency to Mr Donnelly for the TPJV.⁸
- 25 An improvement project called 'SH3/21 Intersection Safety Improvement' was included for investigation and design in the 2009-2012 Regional Land Transport Programme (*RLTP*) and the 2009-2012 National Land Transport Programme (*NLTP*). However, it did not have a high priority for funding and thus did not proceed in those programmes. It has been re-activated in the 2012-2015 RLTP and NLTP, and investigation funding for that project has been allocated for 2014/15. In the meantime, the Transport Agency is moving to develop transport activities, including SH improvements via the principles of 'business case'⁹ process. As explained in my EIC (para 46), the improvement project at the SH3/21 intersection only has a moderate priority for construction (identified nationally as Years 4-6 in the 10 Year programme starting in July 2015), meaning from July 2019.
- 26 More recently, I have initiated a proposal to the Transport Agency's Highways Value Assurance Committee (VAC) to include the construction of this intersection improvement in the 2015-2018 SH Plan, subject to cost contribution from TPJV to advance it. If that is included, and funding could be confirmed, this would mean that the intersection improvement could potentially be constructed as early as 2015.
- 27 During 2013/14, a 'Strategic Case' for the whole SH3 corridor from Hamilton to New Plymouth was developed and this is being processed for "Strategy support" by the Transport Agency. This Strategic Case (SC) indicated that there were existing safety and future efficiency problems between Hamilton City and Ohaupo to warrant moving to the next step of a 'Programme Business Case' (PBC).¹⁰ Developing this PBC will occur during the current financial year (i.e. 2014/15).
- 28 During 2013/14, a National SC and then PBC was developed for 'Safer Journeys Roads and Roadsides', and this included (within the

⁸ For example, this was set out in a letter from the Transport Agency (Mr Wilson) to Mr Donnelly dated 6 June 2014.

⁹ <https://www.pikb.co.nz/home/planning-to-project-delivery-process/overview-documents/the-business-case-approach-high-level-overview/>.

¹⁰ <http://hip.nzta.govt.nz/processes/project-development>.

draft programme over a 10 year period) provision for the SH3/21 Intersection.

- 29 As a result, an activity level Strategic Case has started for this intersection and two investment logic mapping (ILM) workshops have so far been held with transport partners and key stakeholders. As Mr Donnelly (TPJV) has indicated he has been involved in this process, which will progress to solutions consideration in August 2014.
- 30 Completing the Programme Business Case and moving to Indicative and Detailed Business Cases depends on getting approvals at each step and the steps (phases) being funded in the National Land Transport Programme (NLTP) for 2014 /15 and then 2015/16 onwards. The latter requires support firstly by the Highways VAC, then the RTC to include phases in the 2015 -2021 Regional Land Transport Plan and finally the Transport Agency Board to include phases in the 2015-2018 NLTP.
- 31 As is apparent from the preceding discussion, advancing projects in the current programming environment is not straight forward. It has many hurdles and very high evidential tests (eg Business Cases). . As a result, any condition sought by TPJV requiring construction of a specific form of intersection improvement or within a specific time period is problematic. This is particularly the case given that the Transport Agency is subject to statutory requirements (i.e. the LTMA) separate from and additional to the RMA which must be complied with and which neither nor I nor any Transport Agency staff can ignore.
- 32 As a result there are often mis-matches of timing between the usually more fluid and urgent needs of the development community and Transport Agency processes. This is effectively the situation at present with TPJV and Western Precinct access discussions, complicated by the hearing and evidence exchange process for this Project. I am confident that the resolution of the Business Case process will produce mutually beneficial outcomes for TPJV and the Transport Agency, but not in a timeframe that coincides with the Southern Links hearing.
- Access off Ingram Road***
- 33 The Transport Agency's discussions with the TPJV have more recently focused on an assessment by the Transport Agency of an interim proposal by TPJV to develop land initially at the northern end of the Western Precinct using an upgraded Ingram Road/SH3 intersection. This would allow development of approximately 8 hectares of land. Because the development of that land area using Ingram Road is not consistent with the Western Precinct Structure Plan, a discretionary activity resource consent is required. The Transport Agency has advised that it will provide affected party

approval, subject to agreement on various items, to the necessary resource consent sought by TPJV to access this development off Ingram Road.¹¹ That is also consistent with our existing MOA.

Effect of the Project

- 34 The TPJV claims¹² that the Project is impeding the development of the Western Precinct and has effectively rendered redundant the original SH3 (i.e. mid-point) access. I disagree. The mid-point SH3 access is not currently redundant. It only becomes so when the Southern Links Project is constructed, which may not occur for 10-15 years due to a current lack of national priority funding (and for the reasons supporting a 20 year lapse period). To that end, the Project is not preventing development of the Western Precinct, as the mid-point access remains an option in the Structure Plan for the TPJV to utilise. If the TPJV chooses not to do so, that is its own commercial decision or risk in assessing if and when an alternative access arrangement could be achieved at the SH3/21 intersection that would be used in lieu of the mid-point access.
- 35 The Transport Agency's position is that the NOR is to protect a route for the future Southern Links Project. While the Southern Links NOR covers the area in question, this is separate to consideration of potential short term improvements at the SH3/21 intersection and interim access arrangements for TPJV.
- 36 I accept that TPJV considers its development plans have been disrupted by the Project because it is now uncertain whether it should proceed with its mid-point access, or plan on an alternative safe and effective access to the TPJV land being constructed in the near future at the SH3/21 intersection. The Transport Agency considers that achieving an interim intersection improvement in a way that matches the Project would provide a better and more efficient outcome for both the Transport Agency and TPJV in the long term. However, that interim access arrangement simply cannot be confirmed now or by the time of the Southern Links hearing.
- 37 Part of TPJV's uncertainty relates to property matters, specifically the value and timing of acquisition of land required at the south-west corner of the Western Precinct. These uncertainties will be resolved through relevant property acquisition processes.
- 38 As described above, another part of TPJV's uncertainty relates to commercial matters - such as how much TPJV wishes to invest in access to SH3 in its current form (when the timing of the Project

¹¹ See copy of letter dated 6 June 2014 from Mr Wilson to Mr Donnelly, attached as **Annexure B** to this rebuttal evidence.

¹² For example, Aidan Donnelly evidence, paragraphs 2.2, 2.17.

construction is not fixed) or in relying on interim improvements at SH3/21 intersection being able to be brought forward.

- 39 The Transport Agency acknowledges that uncertainty but the bottom line is that the mid-point access from SH3 still provides an adequate access solution for development of the Western Precinct. That access is also consistent with TPJV's MOA with the Transport Agency.¹³
- 40 I accept that if there is a significant change (such as a roundabout at SH3/21 with direct access for TPJV), then the original mid-point access point to SH3 becomes a secondary, rather than primary, development access for the Western Precinct. In that event, I understand that it would be less likely for the access point to require grade separation prior to the Project being constructed (depending on traffic conditions and development rates).
- 41 Development around the Airport is a significant source of traffic contributing to network problems between Hamilton and the Airport. There is little growth in traffic from the south. The Transport Agency highlighted its concerns in relation to the adverse impacts of development around the Airport in its submission and evidence to the Proposed Waipa District Plan provisions for the Airport and surrounding lands. As explained in my EIC,¹⁴ the Project itself once constructed is intended to significantly improve conditions on SH3 between the Airport and Hamilton.
- 42 Mr Donnelly states that the Agency is not proposing any works to address existing network problems on SH3 and safety concerns with the SH3/SH21 intersection.¹⁵ I disagree. The Agency does propose works to address network problems on SH3¹⁶ in the interim period before construction of the Project. However funding for improvement projects is subject to Regional Land Transport Plan consultation and National Land Transport Programme (*NLTP*) approval processes. NLTP decisions are based on nationally consistent factors as indicated by Mr Brodnax in his EIC, so network improvements have to have national significance, not just regional or local significance.
- 43 The Transport Agency is also working on a 'safe system' corridor strategy for SH3 between Hamilton and Te Awamutu and developing a safety improvement design for the Raynes Road/SH3 intersection.

¹³ Aidan Donnelly evidence, paragraph 2.16.

¹⁴ EIC, at paragraphs 26.8 and 32.

¹⁵ Aidan Donnelly evidence, paragraph 2.24.

¹⁶ For example, a project is planned for a safety improvement at the Raynes Road/SH3 intersection, utilising part of the Chinaman's Hill designation.

- 44 As part of the Transport Agency's business case approach to develop options for an improvement to the SH3/SH21 intersection,¹⁷ Mr Donnelly has participated in two workshops and will be invited to a workshop in August 2014 to develop those options.
- 45 Mr Olliver suggests¹⁸ a condition requiring a specific form of roading improvement (i.e. a dual lane roundabout) within a specific time period. As discussed previously, I do not consider that such a condition is desirable or necessary, nor currently able to be achieved. Should a condition relating to interim improvements and access at the SH3/SH21 intersection be contemplated, it should not pre-determine the option or set timing. The Business Case approach does not determine options, solutions or timing at the outset. These evolve as the Business Cases are progressively developed.
- 46 If a form of condition as sought by Mr Olliver and TPJV was imposed, and if funding priorities did not permit construction within 3 years, then the designation could be at risk or require a formal RMA alteration.
- 47 Mr Olliver¹⁹ comments on staging and considers that the SH3/21 intersection is simply a part of Southern Links that needs to be built early. I disagree.
- 48 The roundabout is a separate capital project being delivered through separate funding sources that is likely to be more readily constructed if the land is available and presents a higher strategic fit and effectiveness, and if it is consistent with Southern Links.
- 49 That said, given the current status of negotiations with TPJV, and taking into account the Transport Agency's business case and funding processes, the Agency would be prepared to accept the following new condition on its Waipa designation:

The Requiring Authority shall develop and construct a roundabout or equivalent access solution (hereafter, 'roading improvement') in the vicinity of the SH3/21 intersection, which shall include approaches and connections to the existing State highways and connectivity for the Titanium Park Western Precinct. The design of the roading improvement shall be finalised after consultation with Titanium Park Joint Venture. The roading improvement shall be constructed as soon as reasonably practicable once full funding for its design and construction has been obtained via the National Land Transport Programme (NLTP) or external funding sources or a combination of both. The roading improvement

¹⁷ As I described in my EIC, paragraphs 45, 46.

¹⁸ John Olliver evidence, paragraph 8.2.

¹⁹ John Olliver evidence, paragraphs 6.17 - 6.18.

shall include an access leg into the Western Precinct that is consistent with full provision of the Project's SH3/21 interchange.

- 50 Other comments in relation to staging and lapse period are dealt with in the rebuttal evidence of Mr Eccles.
- 51 I wish to comment however on the suggested 10 year lapse put forward by Mr Olliver for the 'Western Corridor' of the network.²⁰ In my view lapse periods on designations should not be used as a method to recognise the strategic importance of areas or sites, or to effectively try to force the hand of a Requiring Authority to construct a public work in a shorter timeframe than the Requiring Authority realistically calculates it can achieve. That appears to me to be the case with the suggested 10 year lapse. There are ample and more appropriate alternative processes available for such recognition to be achieved (eg RLTS, Regional Policy Statements, District Plans). As well, there are risks inherent in such an approach, as Mr Eccles points out in his rebuttal evidence.

Meridian 37 Ltd

- 52 I have read the evidence of Mr Ian Johnson on behalf of Meridian 37 Ltd. In paragraph 3.3, Mr Johnson refers to the Project Objectives (which I had outlined in my EIC), in the context of which he expressed his expectation that the Project needed to be "particularly mindful to the needs of the development industry to have certainty to support its investment decisions".
- 53 In my view, the proposed designation for the Project gives certainty for such economic development in terms of network form and potential timing. The fact that the Transport Agency cannot provide more clarity at the present time about when construction of the Project may be funded in the future is a consequence of the Agency's empowering legislation and the related programming process that the Government controls. Mr Brodnax's EIC covers the legislation (Land Transport Management Act 2003) and the programming requirements for the National Land Transport Programme.²¹
- 54 Mr Johnson refers to potential Project staging (paragraphs 4.1 to 4.4). I wish to rebut the inference (paragraph 4.3) that the funding or programming is based typically on "tipping points" on the network, and that tools such as traffic modelling can accurately predict these tipping points. Having being involved in transport programming for over a decade and in the build and operation of the Waikato Regional Transport Model, it is my experience that modelling predictions are only a minor component of the

²⁰ John Olliver evidence, paragraphs 7.6 – 7.7.

²¹ Robert Brodnax EIC, paragraphs 16 – 20 and 28 - 33.

decision-making for transport investments. Such investments are not made on the basis of “tipping points” and are increasingly being focussed on the scale of the transport problem in national terms.

- 55 Mr Brodnax in his EIC referred to the process for assessing and determining priority for inclusion of transport activities in the National Land Transport Programme, with three factors of Strategic Fit, Effectiveness and (economic) Efficiency.²² Traffic modelling is only a predicting tool based on assumed land use and is not “evidence of network problems”. It would only play a minor part in assessing the economic efficiency of any transport investment.
- 56 As partially covered in my EIC and that of Mr Lion-Cachet in regards to staging,²³ if a project were to be staged, each stage would have to be “economic in its own right”. The current transport investment programming rules²⁴ require any investment to achieve a ‘value for money’ absolute minimum benefit to cost ratio of at least 1.0. For example, building a Project link from SH21 to somewhere west that is capable of connecting to SH3 would never attract enough traffic to achieve a benefit to cost ratio more than 0.5.
- 57 Mr Eccles’ rebuttal addresses other aspects of Mr Johnson’s evidence.

Future Proof Implementation Committee

- 58 I have reviewed the evidence of Mr Ken Tremaine, on behalf of the Future Proof Implementation Committee (*FPIC*), and will respond to a number of points in his evidence.
- 59 Firstly, as a key stakeholder in the Future Proof strategy, the Transport Agency appreciates the FPIC’s support of the development of Southern Links Project as a key future component of the sub-region’s transport infrastructure. This aligns with the collaboration of the Transport Agency with Future Proof partners in activities such as the proposed Regional Policy Statement and Southern Sector Study, as well as the Waikato Expressway Network Plan, as indicated by Mr Brodnax in his EIC. I have been party to some of this collaboration since 2008 as a member of the Future Proof Transport Reference Group and more recently, as a member of its replacement Future Proof Technical Implementation Group.
- 60 FPIC’s support of the Project is indicated by Mr Tremaine in paragraphs 5.1 to 5.5 of his evidence. However, this support for long term route protection is then partially undone by his following

²² Robert Brodnax EIC, paragraphs 62 - 63.

²³ Shaun Lion-Cachet EIC, paragraph 132 and Barry Dowsett EIC, paragraph 82.

²⁴ <https://www.pikb.co.nz/home/planning-to-project-delivery-process/overview-documents/the-business-case-approach-high-level-overview/>.

paragraphs 5.6 to 5.13, which tends to confuse lapse periods with staging demands of land use development. I note however that ultimately Mr Tremaine records FPIC's support for a uniform 20 year lapse for the Southern Links designations.²⁵

- 61 The Transport Agency strongly supports the concepts of integrated land use and transport infrastructure. However, the transport demands of land use development often exceed the ability of transport providers, such as Road Controlling Authorities, to provide adequate infrastructure. In these circumstances, land use needs to be carefully staged and managed, or developers need to contribute to or forward fund infrastructure improvement to avoid road users suffering decreased safety and efficiency at a cost to "NZ Inc". This situation is not unique to this Hamilton southern sector area and is apparent throughout New Zealand in each local government area.
- 62 As FPIC will be well aware, the Transport Agency and the Waikato Regional Transport Committee (*RTC*) have given priority in the next 5-6 years to completing the Waikato Expressway. The regional priorities for major infrastructure (of the scale of the Southern Links Project, e.g. >\$500M) beyond this Expressway priority have not yet been developed. This will likely come through within the 2015-2025 Regional Land Transport Plan, which the RTC is developing for public consultation in early 2015.
- 63 In summary, it is not realistic to expect the Requiring Authority to advance delivery or staging of major infrastructure (such as this Project) when the need is not fully proven, if it is not a regional priority or if developers are not willing to contribute towards upgrading infrastructure. Thus I disagree with Mr Tremaine's conclusions²⁶ that unless the issue of staging and timing is addressed as part of this (Project) hearing, the benefits gained through the recent Proposed Waipa District Plan hearing decisions will not be realised.

Titoki Sands Ltd

- 64 I have reviewed the evidence of Kathryn Drew, on behalf of Titoki Sands Ltd (*TSL*), and will respond to a number of points in her evidence.
- 65 The Transport Agency acknowledges the role of the Titoki Sands sand winning facility and its resource consent, especially as it is being utilised for the construction of the nearby Cambridge Section of the Waikato Expressway. It is expected that this facility may also be utilised for the Hamilton Section, which currently has a

²⁵ Ken Tremaine evidence, paragraph 7.6.

²⁶ Ken Tremaine evidence, paragraph 7.7.

construction start in 2015/16 (subject to design and construction funding being approved later this year).

- 66 Potentially the utilisation of the sand from Titoki Sands for the Waikato Expressway construction, as well as for other transport infrastructure uses and land use development demands, could mean that the sand supply is exhausted around the time of or before opening of Southern Links. Hence, the traffic operational concerns outlined by Ms Drew (paragraphs 22 to 27) may not eventuate.
- 67 Even if the facility is still operating and the south facing ramps at Tamahere interchange were to be closed in the future,²⁷ it is my view that the effects of Southern Links and Tamahere ramp closures will not be that significant given that Tamahere Drive is a local arterial and is formed to an adequate standard for regular heavy vehicle use. Mr Shaun Lion-Cachet addresses this further in his rebuttal evidence.
- 68 Tamahere Drive was State Highway 1 until the mid-1980s. It was carrying much more traffic (including heavy vehicles) than the worst case scenario indicated in the rebuttal evidence of Mr Lion-Cachet (Figure 1 in Annexure A). Figure 1 also indicates that the traffic volumes around the Tamahere interchange and on Tamahere Drive in the vicinity of St Stephens Church actually reduce with opening of Southern Links (partially due to Airport and Titanium Park traffic diversion away from the congested area around the Tamahere interchange).
- 69 In paragraph 28 of her evidence, Ms Drew refers to my EIC where I discuss the potential ramp closure at Tamahere interchange being subject to a future publically notified RMA process.²⁸ I reiterate that the Transport Agency will commit to following the relevant statutory process, currently anticipated to be a publically notified alteration to designation. I expect that Titoki Sands Ltd (including any successors) will be a formally consulted party.
- 70 In paragraphs 29 to 34 of her evidence, Ms Drew refers to alternative access arrangements including making a request for provision of an eastern stub to the Project interchange with Waikato Expressway and a local road parallel to the Expressway to connect to Tauwhare Road. I disagree with this proposal and advise that the Transport Agency would not support this, nor any other intensive land use east of the Waikato Expressway in this locality from an integrated land use and transport planning perspective, given the content of the Future Proof Strategy and the proposed Regional Policy Statement. Nor would the Transport Agency support the

²⁷ After undergoing the requisite RMA process which is likely to be publicly notified.

²⁸ My EIC, paragraphs 75 and 85.

construction of a parallel road (on the eastern side of the Expressway), when Tamahere Drive is more than adequate to serve local traffic needs.

- 71 In paragraphs 35 to 37 of her evidence, Ms Drew refers to Titoki Sands' reasoning for shortening the Project lapse period to 15 years (being the sterilisation of land consented for mineral extraction). I disagree with this reasoning and consider that issues around sand extraction being impacted under the proposed designation are a matter for commercial negotiation under the Public Works Act 1981. As Mr Eccles explains in his rebuttal evidence, those negotiations are currently underway with Titoki Sands.²⁹

Hamilton City Council

- 72 I have reviewed the evidence of Paul Ryan, on behalf of Hamilton City Council (*HCC*), and make the following observations and responses. As will be confirmed by the legal submissions of the Requiring Authorities, most of Mr Ryan's evidence is "out of scope" (being beyond the scope of the HCC submission)..
- 73 As an in scope issue, Mr Ryan seeks to retain the grade separated cycle and walk way under the northern end of Cobham Drive bridge over the Waikato River. I confirm that it was the intention of the NOR to retain this facility and to reconstruct the cycle/walk connections, especially on the eastern side of the widened bridge (for example, connecting into Hamilton Gardens would need the cycle/walkway to be re-graded further into the Gardens to achieve an acceptable easy gradient). Amended scheme drawings better showing the cycle way connections at this locality will be provided with the rebuttal evidence of Mr David van Staden.

CONCLUSIONS

- 74 This rebuttal evidence has focussed on a number of issues which primarily relate to other parties wanting the Requiring Authority (in this case, the Transport Agency) to construct parts of the network early or reduce the lapse period to apply to the designations. For the reasons that I have given, early construction of parts of or all of the network is not achievable and cannot realistically or responsibly be conditioned or required under the RMA.
- 75 This is mainly because every roading improvement must be assessed in a national context and/or progress through a Business Case approach to evidence its justification for advancement. This assessment and evidential justification is processed under separate legislation (i.e. the Land Transport Management Act).

²⁹ A similar sand extraction situation was negotiated at the Waikato Expressway Horotiu interchange north-west of Hamilton City.

- 76 A potential safety improvement has been identified at the SH3/21 intersection which could be advanced if Titanium Park access was enabled together with a cost contribution from the developers. Whilst I do not agree that a NOR condition is warranted on the basis of effects mitigation on the Titanium Park development, the Transport Agency has proposed a condition as set out in paragraph (54) to recognise the positive effects that the safety improvement would generate.

Barry Dowsett

8 July 2014

Annexures:

A – Consent Order dated 22 April 2010.

B – Letter dated 6 June 2014.

ANNEXURE A: CONSENT ORDER DATED 22 APRIL 2010

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an appeal under Clause 14 of the First
Schedule of that Act

BETWEEN

THE NEW ZEALAND TRANSPORT
AGENCY

ENV-2008-AKL-000341

Appellant

AND

WAIPA DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge R G Whiting sitting alone under section 279 of the Act

IN CHAMBERS at Auckland.

CONSENT ORDER

Introduction

1. The court has read and considered the appeal, the respondent's reply, and the memorandum of the parties dated 29 March 2010.
2. Waikato Regional Airport Limited and James Robert Ashton have given notice of an intention to become parties under section 274 and have signed the memorandum setting out the relief sought.
3. The court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:




- (a) All parties to the proceedings have executed the memorandum requesting this order;
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

4. Therefore the Court orders, by consent, that Proposed Plan Change 57 to the Waipa District Plan 1997 is amended as set out in the attached Schedule 1 to this order. A clean version is attached as Schedule 2.
5. The appeal is otherwise dismissed.
6. There is no order for costs.

DATED at Auckland this 22nd day of April 2010.



R G Whiting
Environment Judge



SCHEDULE 1

7A.4.1 Rule – Compliance with Structure Plan

a) All Development

a)-All subdivision and development in the Airport Business Zone shall comply with the Structure Plan at Appendix 29. Strict compliance in terms of the internal road location is not required as the roads are indicative only, provided the roads are located to efficiently perform their functions and provide an efficient and integrated network of corridors for infrastructure. Strict compliance is required however in relation to the location and form of access points to State Highway 3, State Highway 21 and Raynes Road.

Subdivision and development that does not comply with this rule shall be a Discretionary Activity except as provided for within 7A.4.1 b) and 7A.4.1 c).

Development Accessed via SH21

b)-Notwithstanding Rule 7A.4.1(a), prior to the construction and completion of the new State highway 21 intersection near Lochiel Road, and any necessary intersection upgrade at SH3/SH21, an initial area of land of no more than 8 hectares excluding road reserve, as identified on the Structure Plan at Appendix 29 as Stage 1 Development may be subdivided and developed (but not for retail purposes) in accordance with these rules and accessed from the existing Airport Terminal access from State highway 21 or the new Lochiel Road / SH 21 intersection if constructed.

~~Subdivision and development that does not comply with this rule shall be a Controlled Activity.~~

~~Applications for a controlled activity under this rule will be controlled only with respect to the effects on the State highway network and need not be publicly notified. If traffic effects warrant it, conditions may be imposed requiring construction of the new intersection near Lochiel Road shown on the Structure plan and / or an intersection upgrade at SH3/21.~~

~~The applicant for resource consent shall consult with the Road Controlling authority with regards to the SH21 entrances and the SH3/SH21 intersection and shall lodge with the consent application evidence of consultation and a record of the outcomes confirmed by the Road Controlling Authority.~~

~~Applications for a controlled activity under this rule will be controlled only with respect to the effects on the State highway network and need not be publicly notified. If traffic effects warrant it, conditions may be imposed requiring construction of the new intersection near Lochiel Road shown on the Structure plan and / or an intersection upgrade at SH3/21.~~



~~The applicant for resource consent shall consult with the Road Controlling Authority with regards to the SH21 entrance and the SH3/SH21 intersection and shall lodge with the consent application evidence of consultation and a record of the outcomes confirmed by the Road Controlling Authority.~~

Any subdivision and development beyond the Stage 1 Development Area, up to a total of 43.5 hectares including road reserve, of the land area within the Airport Business Zone accessed from State highway 21 will require the closure of the existing terminal access and a new access point to be constructed on State highway 21 near Lochiel Road, in accordance with the Structure Plan at Appendix 29.

Subdivision and development that does not comply with this rule or any development that brings the total area of developed land above 43.5ha, including road reserve, shall be a Restricted Discretionary Activity.

When considering applications for a restricted discretionary activity under this rule, discretion will be restricted to the effects on the State highway network and need not be publicly notified, but is likely to be subject to limited notification to the NZ Transport Agency if the NZ Transport Agency does not provide its written approval to the activity.

The applicant for resource consent should consult with the NZ Transport Agency. The applicant shall include a statement with the consent application as to whether or not the NZ Transport Agency has been consulted and, if consultation has taken place, a record of the outcomes confirmed by the NZ Transport Agency.

c) Development Accessed via SH3

e) Prior to the subdivision or development of land up to a total of 24 hectares of land including road reserve accessed from fronting State highway 3 within the Airport Business Zone, the following works shall be completed;

- i) A new seagull intersection shall be constructed in the approximate location shown on the Structure Plan.
- ii) Closure of Ingram Road, No Exit Road and private accesses to SH3 within the Airport Business Zone except for those residential properties within the Special Amenity Area on Planning Map 23 and the Structure Plan within Appendix 29.

Subdivision and development that brings the total area of developed land above 24 hectares of the land area within the Airport Business Zone accessed from State highway 3 including road reserve will require an upgrade of the seagull intersection to a partial grade separation of the interchange access point, in the approximate location indicated on the Structure Plan at Appendix 29.

Subdivision and development that does not comply with this rule shall be a Restricted Discretionary Activity.



When considering a restricted discretionary activity under this rule, discretion will be restricted to the effects on the State highway network and need not be publicly notified but is likely to be subject to limited notification to the NZ Transport Agency if the NZ Transport Agency does not provide its written approval to the activity.

The applicant for resource consent should consult with the NZ Transport Agency. The applicant shall include a statement with the consent application as to whether or not the NZ Transport Agency has been consulted and, if consultation has taken place, a record of the outcomes confirmed by the NZ Transport Agency.

7A.5 Rule – Matters for Assessing Restricted Discretionary Activities

Except as otherwise provided for in Rule 7A.4.1, ~~When~~ when considering an application for a Restricted Discretionary Activity for noncompliance with a Condition for Permitted Activities the discretion shall be restricted to the subject of the condition not complied with.



SCHEDULE 2

7A.4.1 Rule – Compliance with Structure Plan

a) All Development

All subdivision and development in the Airport Business Zone shall comply with the Structure Plan at Appendix 29. Strict compliance in terms of the internal road location is not required as the roads are indicative only, provided the roads are located to efficiently perform their functions and provide an efficient and integrated network of corridors for infrastructure. Strict compliance is required however in relation to the location and form of access points to State Highway 3, State Highway 21 and Raynes Road.

Subdivision and development that does not comply with this rule shall be a **Discretionary Activity** except as provided for within 7A.4.1b) and 7A.4.1c).

b) Development Accessed via SH21

Notwithstanding Rule 7A.4.1(a), prior to the construction and completion of the new State highway 21 intersection near Lochiel Road, and any necessary intersection upgrade at SH3/SH21, an initial area of land of no more than 8 hectares excluding road reserve, as identified on the Structure Plan at Appendix 29 as Stage 1 Development may be subdivided and developed (but not for retail purposes) in accordance with these rules and accessed from the existing Airport Terminal access from State highway 21 or the new Lochiel Road / SH 21 intersection if constructed.

Any subdivision and development beyond the Stage 1 Development Area, up to a total of 43.5 hectares including road reserve, of the land area within the Airport Business Zone accessed from State highway 21 will require the closure of the existing terminal access and a new access point to be constructed on State highway 21 near Lochiel Road, in accordance with the Structure Plan at Appendix 29.

Subdivision and development that does not comply with this rule or any development that brings the total area of developed land above 43.5ha, including road reserve, shall be a **Restricted Discretionary Activity**.

When considering applications for a restricted discretionary activity under this rule, discretion will be restricted to the effects on the State highway network and need not be publicly notified, but is likely to be subject to limited notification to the NZ Transport Agency if the NZ Transport Agency does not provide its written approval to the activity.

The applicant for resource consent should consult with the NZ Transport Agency. The applicant shall include a statement with the consent application as to whether or not the NZ Transport Agency has been



consulted and, if consultation has taken place, a record of the outcomes confirmed by the NZ Transport Agency.

c) Development Accessed via SH3

Prior to the subdivision or development of land up to a total of 24 hectares of land including road reserve accessed from State highway 3 within the Airport Business Zone, the following works shall be completed;

- i) A new seagull intersection shall be constructed in the approximate location shown on the Structure Plan.
- ii) Closure of Ingram Road, No Exit Road and private accesses to SH3 within the Airport Business Zone except for those residential properties within the Special Amenity Area on Planning Map 23 and the Structure Plan within Appendix 29.

Subdivision and development that brings the total area of developed land above 24 hectares of the land area within the Airport Business Zone accessed from State highway 3 including road reserve will require an upgrade of the seagull intersection to a partial grade separation of the interchange access point, in the approximate location indicated on the Structure Plan at Appendix 29.

Subdivision and development that does not comply with this rule shall be a **Restricted Discretionary Activity**.

When considering a restricted discretionary activity under this rule, discretion will be restricted to the effects on the State highway network and need not be publicly notified, but is likely to be subject to limited notification to the NZ Transport Agency if the NZ Transport Agency does not provide its written approval to the activity.

The applicant for resource consent should consult with the NZ Transport Agency. The applicant shall include a statement with the consent application as to whether or not the NZ Transport Agency has been consulted and, if consultation has taken place, a record of the outcomes confirmed by the NZ Transport Agency.

7A.5 Rule – Matters for Assessing Restricted Discretionary Activities

Except as otherwise provided for in Rule 7A.4.1, when considering an application for a **Restricted Discretionary Activity** for noncompliance with a **Condition for Permitted Activities** the discretion shall be restricted to the subject of the condition not complied with.



ANNEXURE B: LETTER DATED 6 JUNE 2014

6 June 2014

Aidan Donnelly
Titanium Park Joint Venture
PO Box 614
Auckland 1140

Dear Aidan

Titanium Park Western Precinct - Interim Access via Ingram Road

Thank you for the Memorandum prepared by Bloxam Burnett and Olliver (BBO) dated 21 November 2013 and subsequent Addendum Report dated 31 March 2014. As detailed in the Memorandum, Titanium Park Joint Venture (TPJV) has requested affected party approval from the NZ Transport Agency (the Agency) in support of a resource consent application to the Waipa District Council (WDC).

Our understating is that the resource consent application will seek approval from WDC to develop 12 hectares within the Titanium Park Western Precinct, utilising the existing intersection between State Highway 3 (SH3) and Ingram Road for vehicular access on an interim basis.

Resource consent is required as access to SH3 via Ingram Road differs to the access identified in Titanium Park Structure Plan forming part of the Operative Waipa District Plan.

I am pleased to advise that the Agency will provide affected party approval subject to agreement to the following:

1. That the developable area within the Western Precinct and utilising access to State highway 3 via Ingram Road is limited to a maximum of 12 hectares. With initial development being limited to 8 hectares with any further development up to a combined total of 12 hectares being possible subject to the adequate performance (as confirmed by the Agency) of the intersection between State highway 3 and Ingram Road.

We anticipate that development beyond 8 hectares up to 12 hectares would be best achieved either by way of a separate resource consent or via a condition of a comprehensive consent allowing for staged development up to 12 hectares. Provided such a condition was not ultra-vires with respect to development beyond 8 hectares.

2. That prior to any new land use activities operating within the Western Precinct the existing intersection between SH3 and Ingram Road must be upgraded in accordance with a final detailed intersection design approved by the NZ Transport Agency.

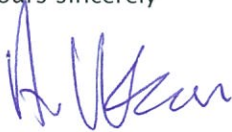
We anticipate that the upgraded intersection will be generally consistent with the concept drawing prepared by BBO (Drawing No: 136830/21/SK/03 Revision A - date: 12/12/13). However please note that the final design will need to be informed by a Safety Audit, with any matters identified being resolved to the satisfaction of the Agency. A final design would need to be agreed prior to the Agency providing affected party approval.

3. That following resource consent being granted, the existing Memorandum of Agreement between Titanium Park Joint Venture, the Waikato Regional Airport Ltd and the NZ Transport Agency is amended to incorporate the following:
- a) Acknowledgement that the previously agreed State highway access options for the Western Precinct may no longer be the preferred options from the perspective of all parties to the agreement.
 - b) Confirmation that the parties agree to work together and undertake best endeavours to identify and implement, in a timely manner, an alternative access arrangement capable of accommodating the full development of the Western Precinct of Titanium Park in a way that best supports the safe and efficient functioning of the wider transport network.
 - c) The details of any agreement reached with respect to the resource consent application for limited development with interim access to SH3 via Ingram Road along with any consequential amendments.
 - d) Agreement in principle to share in equal proportions the construction costs of upgrading the existing intersection between SH3 and SH21 if the improvement incorporates access to and enables full development of the Western Precinct of Titanium Park.

Please be aware that this letter does not constitute affected party approval. The Agency will provide affected party approval following agreement to the above items.

Please feel free to contact me if you have any questions or wish to discuss matters further.

Yours sincerely



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