

**Before a Hearings Panel appointed
by the Auckland Council**

Under the Resource Management Act
1991

And

In the Matter Nineteen Notices of Requirement
(NORs) and one Resource Consent
application for the North West
project by Te Tupu Ngatahi
Supporting Growth Alliance (SGA)

**Joint Witness Statement (Planning –
Conditions)**

Dated: 20 September 2023

INTRODUCTION

1. Having attended expert conferencing with SGA, Council and other experts for submitters, the following planning witnesses (together, **The Witnesses**) have further considered the way in which the NOR conditions could be refined or better address issues discussed in evidence and the expert conferencing sessions referred to:
 - (a) Kay Panther Knight on behalf of CDL Land New Zealand Limited.
 - (b) Hannah Edwards on behalf of Cabra Development Limited, F Boric and Sons Limited and Kumeū Properties Limited.
 - (c) Mark Tollemache on behalf of Viscount Investment Corporation Limited.
 - (d) Hamish Hey on behalf of Stephen Anderson.
 - (e) Burnette O'Connor on behalf of Northland Waste Limited, Lendich Construction, All Seasons Properties, GR & CC McCullough Trustee Limited, Matvin Group Limited, Kumeu Central Limited and Tahua Partners Limited.
 - (f) Anthony Blomfield on behalf of Barney Holdings Limited.
 - (g) Mark Arbuthnot on behalf of Restaurant Brands Limited.
 - (h) Michael Campbell on behalf of Kāinga Ora.
2. The Witnesses confirm that no further expert conferencing session has been conducted but that collaboration via email and preparation of the following JWS has been undertaken in accordance with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023, specifically in accordance with section 9.5 of that document.
3. The intent of this JWS is to assist the Panel and to summarise the combined effort the Witnesses have made in condition drafting following formal expert conferencing.

THE ISSUES

Matters Agreed

4. All Witnesses agree that the SGA's NOR conditions (Legal submissions version, dated 18 September) do not adequately address or acknowledge the concerns raised by submitters in submissions; in evidence, and as discussed in expert conferencing with SGA.
5. The key issues that require further refinement in conditions to address are as follows:
 - (a) Strengthening an understanding of landowner / land occupier / stakeholder engagement in design, construction, integration and timing of the future NOR implementation and subsequent development relative to surrounding properties.
 - (b) The above applies in respect of existing property conditions (namely access), impacts on business activities, and in respect of development in the future.
6. All Witnesses agree that, absent the changes proposed in this JWS, the NOR conditions proposed by the Requiring Authority remain unclear, ineffective and inefficient relative to both the objectives of the projects themselves and to the potential for anticipated future development that the projects are designed to service.
7. Kay Panther Knight records that her focus is on the local package rather than the strategic package, and namely HIFTR and W5.
8. Hannah Edwards records that her focus spans both local and strategic packages, specifically S2, S4, W1, W4, and R1.
9. Mark Tollemache records that his focus is on W5.
10. Hamish Hey records that his focus is on S2 and S3.
11. Burnette O'Connor's briefs of evidence focus on S1, S2, S3, R1, W1 and W5.
12. Anthony Blomfield records that his focus is on S2.
13. Mark Arbuthnot records that his focus is on RE1.
14. Michael Campbell records that he has considered all NORs.

Matters Not Agreed or Further Discussed

15. Michael Campbell records that his interest in this JWS relates solely to the proposed changes and commentary regarding Condition 8A Stakeholder Communication and Engagement Management Plan.
16. Burnette O'Connor has inputted into the conditions this JWS relates to in the interests of professionalism and assisting the process; but does not consider that all matters raised in her evidence on behalf of her clients can be addressed by way of designation conditions. Some matters are fundamental and require a detailed re-look at the extent of the NOR, for example the evidence on behalf of Tahua Partners Limited and Kumeu Central Limited and the evidence on behalf of GR and CC McCullough Trustee Limited. Where these fundamental issues arise, Burnette O'Connor proposes to insert them in the Site-Specific Schedule – refer below.
17. Burnette O'Connor also records that consideration should be given to ensuring that the Requiring Authority shows and details all proposed changes when engaging with landowners in the framework of designation conditions, raising concern that one of the flaws in the process to date was not showing landowners changes etc that were proposed for adjacent land. Burnette O'Connor considers that landowners need to see the full picture of any changes proposed as a result of changes that respond to other parties' submissions on the same NOR.
18. Burnette O'Connor records that there is no funding stream identified by the Requiring Authority for the process identified in condition 2A Land use Integration Process and considers that the funding for this process should be confirmed so that unreasonable costs do not fall on landowners and/or occupiers.

REQUIRED DRAFTING CHANGES

Clear and effective engagement in design and construction of NORs

19. All Witnesses acknowledge the changes made to the conditions following expert conferencing. All Witnesses recognise that the Requiring Authority

considers the changes adequately address the concerns raised¹, and summarised below (snip taken from JWS Planning 30 August 2023):

3 Agenda and Outcomes

3.1 Certainty of engagement in Conditions, particularly management plans

[Conditions referred to this in the JWS are the version included in the evidence of Ms Atkins for SGA on the 2nd of August 2023]

Kay Panther Knight considers, recapping on the JWS- Transport and Planning (29 August 2023), further drafting of conditions is required to provide certainty and clarity as to how the RA intends to consult or engage with affected landowners and occupiers at both design and construction stage. This consideration is made with reference to the suite of management plan conditions and in respect of Condition 11 (Existing Access).

20. The Witnesses remain concerned to ensure that the NOR conditions clearly include a process by which the Requiring Authority will invite, consider and respond to feedback from stakeholders (including landowners and occupiers) at design stage, and onwards, in respect of reporting on that engagement to the local authority. Provision should be made for stakeholders to participate in the development of the suite of management plans proposed by the NOR conditions. These concerns are summarised from the JWS Transport & Planning 29 August 2023 (para 3.2).
21. The Witnesses acknowledge the changes to Condition 8A Stakeholder Communication and Engagement Management Plan (SCEMP) in rebuttal and legal submissions. These changes are beneficial. The Witnesses consider further edits are required to this condition to ensure comprehensive engagement is achieved, including an opportunity for stakeholders' feedback to be considered by both the Requiring Authority and Local Authority, to engender a level of accountability of the Requiring Authority regarding how it intends to respond to stakeholders' stated issues.
22. To best achieve this outcome, the Witnesses suggest a site-specific schedule be appended to the NORs, referenced in the SCEMP condition, to set a clear agenda and to act as a transparent record of issues that have been raised through the NOR process.
23. This approach ensures that when the Requiring Authority comes to implement the NORs in time, noting (as many Witnesses have in their

¹ Rebuttal evidence of Bridget O'Leary, dated 8 September, para 3.5, Rebuttal evidence of Holly Atkins, dated 8 September, para 6.2.

evidence to date) that the personnel may be entirely different from those involved in the drafting of the NOR conditions due to the long lapse periods sought, there can be no confusion as to what the expectations are on the Requiring Authority to best address and respond to key issues arising from the projects and their effects on stakeholders.

24. All Witnesses suggest the new Schedule X Communication and Engagement Site-Specific Issues can be referenced in the SCEMP condition as follows, and take the following format. The expectation is that submitters can address the Panel with requests to include site-specific issues and the Witnesses intend to address these in presenting evidence to the Panel.

Drafting Notes that Follow

Blue changes – proposed by SGA in rebuttal.

Orange changes – proposed by SGA in legal submissions presented to Panel on 18 September 2023.

Red changes – proposed by the Witnesses.

Changes to SCEMP Condition

- (a) A SCEMP shall be prepared in consultation with stakeholders (including directly affected and adjacent owners and occupiers of land), community groups, and organisations and businesses prior to any Outline Plan being submitted the Start of Construction for a Stage of Work. The objective of the SCEMP is to identify how the public, ~~and~~ stakeholders, community groups, organisations and businesses (including directly affected and adjacent owners and occupiers of land) will be engaged with prior to and throughout the Construction Works.
- (b) To achieve the objective of the SCEMP:
- (i) At least 18 months prior to any Outline Plan being submitted, the Requiring Authority shall identify:
- (A) A list of stakeholders, including community groups, organisations and businesses who will be engaged with;
- (B) A list of ~~T~~the properties whose owners and occupiers will be engaged with;
- ~~(C) A list of key stakeholders, including community groups, organisations and businesses who will be engaged with;~~

~~(C) Methods and timing to engage with landowners and occupiers whose access is directly affected; and~~

~~(D) Having regard to the above, cross-references to the parties listed in the Schedule X Communication and Engagement Site-Specific Issues;~~

(ii) The SCEMP shall include:

~~(A) Details of (b)(i)(A) to ~~(C)~~(D)~~

~~(B) Details of how the Requiring Authority has considered and responded to the issues listed in Schedule X Communication and Engagement Site-Specific Issues, where relevant to each Stage of Work;~~

(C) The contact details for the Project Liaison Person. These details shall be on the Project website, or equivalent virtual information source and prominently displayed at the main entrance(s) to the site(s);

(D) The procedures for ensuring that there is a contact person available for the duration of Construction Works, for public enquiries or complaints about the Construction Works;

(E) Methods for engaging with Mana Whenua, to be developed in consultation with Mana Whenua;

~~(F) A list of stakeholders, organisations (such as community facilities) and businesses who will be engaged with;~~

~~(G) Identification of the properties whose owners will be engaged with;~~

~~(H) Methods and timing to engage with landowners whose access is directly affected~~

(I) Methods to communicate key project milestones and the proposed hours of construction activities including outside of normal working hours and on weekends and public holidays, to the parties identified in ~~(iv)~~ and ~~(v)~~ (b)(i) above; and

(J) Linkages and cross-references to communication and engagement methods set out in other conditions and management plans where relevant, and including but not limited to condition 9 Urban and Landscape Design Management Plan (ULDMP) and condition 11 Existing Property Access.

(c) Any SCEMP prepared for a Stage of Work shall be submitted to Council ~~for information ten working days~~ prior to or with the submission of any Outline Plan the Start of Construction for a Stage of Work.

Proposed Schedule X Format

<u>Ref / Designation</u>	<u>Property Address</u>	<u>Party consulted (at NOR)</u>	<u>Site-Specific Issue</u>	<u>Requiring Authority Response (this column to be completed at each Stage of Work)</u>
<u>Category Heading, e.g Existing Property Access, Extent of Designation, etc</u>				
...

Associated Changes

25. Having regard to the above changes to the SCEMP condition, all Witnesses consider that associated or consequential changes ought to occur, as follows.
26. Condition 5 (Outline Plan) sets out what management plans are required to be submitted with the Outline Plan. This list should include the SCEMP.
27. Condition 6(a)(v) (Management Plans) excludes SCEMPs from being submitted as part of an Outline Plan. This reference should be deleted.
28. Condition 9 (Urban and Landscape Design Management Plan) has been edited by the Requiring Authority to reference the SCEMP condition, but specifically condition 8A(b)(i)(B). This reference should include all of the SCEMP condition, but specifically 8A(b)(i) and (ii).

Condition 11 Existing Property Access

29. All Witnesses record dissatisfaction with the Requiring Authority's changes to condition 11.
30. All Witnesses consider, as addressed in respect of the SCEMP condition, that the effect of the NORs on existing property access, parking and manoeuvring is critical for many landowners and occupiers.

31. Various witnesses in expert conferencing (and evidence) presented alternative wording that sought to insert a consultation process that requires the Requiring Authority to engage with those affected parties regarding effects on existing access, parking and manoeuvring, either during construction or in operational phases, e.g. the latter may include a solid median barrier that prevents flexibility of all manoeuvres from existing property accesses to and from the network.
32. All Witnesses consider that the Site-Specific Schedule proposed to be referenced in the SCEMP condition will appropriately cover the above concerns. To this end, all Witnesses consider the following changes to condition 11 are effective:

Where existing property vehicle access, parking or manoeuvring which exists at the time the Outline Plan is submitted is proposed to be altered by the project, and prior to submitting the Outline Plan, the requiring authority shall consult with the directly affected landowners and occupiers regarding the required proposed changes. The Outline Plan shall demonstrate how safe, efficient and effective access, parking or manoeuvring will be provided, unless otherwise agreed with the affected landowner.

To address this condition, the following process shall occur:

- (a) The Requiring Authority shall request, and if accepted, shall facilitate a meeting between itself, affected landowners/occupiers and Auckland Council planning officers to discuss any matters of disagreement that remain outstanding between the parties.*
- (b) The Requiring Authority shall prepare an assessment of the effects of the Project on the existing access(es), parking or manoeuvring in terms of safety, efficiency and effectiveness.*
- (c) That assessment shall be accompanied by a consultation record outlining engagement in accordance with the SCEMP and Schedule X Communication and Engagement Site Specific Issues.*
- (d) The Requiring Authority shall supply that consultation record and assessment to the Council for consideration alongside the Outline Plan.*

Condition 2A Land Use Integration Process

33. Condition 2A (Land Use Integration Process (LIP)) replaces former condition 7A (Land Use Integration Management Plan). This approach is suggested by the Requiring Authority to better “provide for an integration process” and

“placing the LIP earlier in the order of the condition set to reflect its early implementation (within 12 months of the inclusion of the designation within the AUP)”.²

34. All Witnesses record that the change from a management plan to a process does not materially alter the stated concerns in expert conferencing – specifically that integration of land use and roading should be a two-way street, i.e both parties seeking to integrate. As drafted, condition 2A now simply represents an information exchange by the Requiring Authority and the onus appears to be on developers or development agencies to inform themselves, to the extent the Requiring Authority can provide that information relative to their progress on each NOR and each Stage of Work.
35. All Witnesses accept this is useful but suggest that it lacks the approach in former condition 7A which included a stated objective “to provide a framework to assist and encourage developers and development agencies of land directly affected by or adjacent to the Project to integrate their master planning and land use development activities with the designation prior to the start of construction”.³
36. All Witnesses suggest that the LIMP was a better approach, subject to integration with the changes proposed to the SCEMP, and that could be most efficiently achieved by a simple cross-reference in condition 7A and corresponding cross-references where other management plans are listed (e.g. conditions 5 and 6).

MATTERS NOT CONSIDERED

37. We have not considered any site-specific matters relative to submitters’ concerns, except to identify that we consider the drafting set out above sufficiently and effectively addresses those matters, by clearly establishing and articulating the framework within which the interaction between design and construction of the NOR projects with surrounding land will occur.
38. We have not further considered the lapse dates or proposed review periods identified by the Requiring Authority in relation to the NOR projects, except to identify that we consider the drafting set out above is required in the

² Rebuttal evidence of Bridget O’Leary dated 8 September 2023, para 3.9.

³ Evidence of Holly Atkins dated 2 August 2023, para 5.4.

context of the lengthy and uniform lapse dates that result in long periods of uncertainty for surrounding landowners / occupiers / stakeholders.

Kay Panther Knight

Hannah Edwards

Mark Tollemache

Burnette O'Connor

Hamish Hey

Anthony Blomfield

Mark Arbuthnot

Michael Campbell