BEFORE THE ENVIRONMENT COURT

IN THE MATTER

of the Resource Management Act

1991 (RMA) and the Local

Government (Auckland Transitional Provisions) Act 2010 (LGATPA)

AND

appeals under s 157(1) of the LGATPA

BETWEEN

TRAM LEASE LIMITED ENV-2016-AKL-000270

DILWORTH TRUST BOARD ENV-2016-AKL-000275

Appellants

AND

NEW ZEALAND TRANSPORT

AGENCY

Respondent

AND

AUCKLAND COUNCIL

Territorial Authority

Principal Environment Judge L J Newhook sitting alone under s 279 of the Act In Chambers at Auckland

CONSENT ORDER

- [A] Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:
 - the appeals are allowed subject to the amendments set out in Appendix A to this order.
 - (2) the appeals are otherwise dismissed.



[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

- [1] These appeals relate to Designation 6727 regarding protection of the Newmarket Viaduct, State Highway 1.
- [2] The New Zealand Transport Agency sought to include the Designation in the Proposed Auckland Unitary Plan. Subsequent to the hearings for this plan change process, Auckland Council as the territorial authority, accepted the recommendation of the Independent Hearing Panel that the Designation be included in the PAUP. This recommendation was accepted by the Transport Agency.
- [3] In response to the Transport Agency's Decision, these appeals were filed, seeking that part of the Transport Agency's Decision be cancelled, and that the Designation be modified on the terms set out in the appeals.
- [4] The parties have agreed that the appeals can be resolved by amending the designation.
- [5] The Court has read and considered these appeals and the joint memorandum of counsel in support of this draft consent order dated 15 May 2017.
- [6] All parties to the proceeding have signed the memorandum setting out the relief sought to resolve these appeals.
- [7] The Court is making this order under s 279(1)(b) of the RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297 of the RMA.
- [8] The Court understands for present purposes that:



- (a) All parties to the proceeding have executed the memorandum requesting this order; and
- (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 of the RMA, including in particular Part 2.

Order

- [9] Therefore the Court, by consent, orders that Designation 6727 (which is intended for inclusion in the Proposed Auckland Unitary Plan), is confirmed by the Court subject to the amended designation conditions that have been agreed between the parties to these appeals, as attached in **Appendix A**.
- [10] The appeals by Tram Lease Limited and the Dilworth Trust Board are now resolved.
- [11] There is no order as to costs.

DATED at Auckland this

25° day

2017.

L J Newhook

Řrincipal Environment Judge

Appendix A

Designation Number

6727

Requiring Authority

New Zealand Transport Agency

Location

Vicinity of Newmarket Viaduct (State Highway 1),

Newmarket

Rollover Designation

Yes

Legacy Reference

Designation D09-32, Auckland Council District

Plan (Isthmus Section) 1999

Lapse Date

Given effect to (i.e. no lapse date)

6727 State Highway 1 - Newmarket Viaduct Height Restriction

Purpose

The designation is for the purpose of ensuring the safe and efficient functioning and operation of the Newmarket Viaduct (as part of State Highway 1). This enables the New Zealand Transport Agency (NZ Transport Agency) to manage neighbouring land use effects which may adversely affect the operation, maintenance or structural integrity of the Newmarket Viaduct.

The designation does not enable the NZ Transport Agency to undertake any project or work relating to the Newmarket Viaduct which is already covered under Designation 6720 (formerly A07-01B) *Motorway: Newmarket Viaduct Improvement Project.*

The extent of the designation is shown on the attached Designation Plan.

Conditions

- 1. Any use or development within the extent of the designation:
 - which involves any structure that exceeds both a height of 12.2m and the height of the edge of the Newmarket Viaduct carriageway closest to the development, when measured from ground level on the development site; or
 - ii. which involves any earthworks within 12m or piling within 16m of a pier of the Newmarket Viaduct;

requires prior written consent from the NZ Transport Agency under section 176(1)(b) of the Resource Management Act 1991.

Traffic safety

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2. The NZ Transport Agency will give its consent to any person doing anything that is subject to Condition 1 (being within the extent of the designation), provided the following conditions are satisfied:



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a. Obstruction of sight lines: Any development located within the inside curve of the Newmarket Viaduct (both north and south) shall not obstruct the visibility of a driver on the Viaduct to see 270m ahead, when measured along the centreline of the nearest lane.

b. Lighting:

- i. Outdoor artificial lighting operating on any site between sunset and sunrise must not produce a threshold increment which exceeds a value of 15%, as measured or calculated:
 - a. in the centre of any traffic lane for the given direction of travel: and
 - b. using a method of calculation or measurement that is consistent with AS/NZS1158.2:2005 *Lighting for Roads and Public Spaces* section 2.1.5.
- ii. The average surface luminance for an intentionally artificially lit building façade shall not exceed 5cd/m².
- c. Reflective materials: Any proposed building must be located, oriented, designed, covered or screened so as not to cause sunstrike from solar reflectivity to drivers.
- d. Signs: One fixed and constant identification sign per building façade related to the building and/or tenant or tenant-related brand which may be illuminated externally or internally, provided it meets the Illumination and glare from advertising provision in section 6.3 of the NZ Transport Agency Traffic Control Devices Manual - Part 3 Advertising Signs (NZTA January 2011 or any subsequent update) and could not be mistaken for an official road sign or traffic control device.
- e. Falling debris: No part of any building shall project into a building envelope measured at a 45 degree recession plane projecting from the top of the outer Viaduct safety barrier (see Figure 2e), unless it is designed and constructed to avoid the potential for falling debris from buildings (including from balconies and open air activities).
- f. Wind Effects: No part of any building shall project into a building envelope measured as a 45 degree recession plane commencing at 10m from the top of the outer Viaduct (see Figure 2f), unless it is demonstrated that the proposed development will not increase wind speeds on the Newmarket Viaduct so as to create a 'safety issue'.

For the purpose of this standard, a safety issue is created when wind conditions are increased to either Category D or E, where these Performance Categories are as set out in Figure 2 Wind Categories. This may be demonstrated by a wind report including the results of wind tunnel tests or appropriate alternative test procedures to show that the proposed development does not increase the wind conditions



on the Viaduct to either Category D or E. Alternatively a report from a suitably qualified expert that a development does not increase the wind conditions on the Viaduct to either Category D or E may be accepted without the need for a wind tunnel test depending on the nature of the proposal, its location, design and scale.

- 3. The NZ Transport Agency may (in light of the purpose of the designation) give its consent to any person doing anything that is subject to Condition 1 (being within the extent of the designation), which does not satisfy conditions 2(a) (f), provided the effects of a development which infringes those conditions can be mitigated to the NZ Transport Agency's satisfaction.
- 4. When the proposed activity includes signage not allowed by condition 2(d), the NZ Transport Agency shall consider the extent to which the signage is distracting to drivers travelling across the Newmarket viaduct including if the signage:
 - i. Could cause confusion or be mistaken for an official road sign or traffic control device;
 - ii. Could cause alarm or unduly attract the attention of people operating vehicles on the road;
 - iii. Has flashing, rotating, or moving displays, or moving video images or moving video screens or lighting, except as may be a flashing light required by any Civil Aviation Authority Rules to denote an obstacle to aircraft;
 - iv. Contains reflective, fluorescent or phosphorescent materials likely to reflect light onto the road or distract drivers from traffic signs or driving;
 - v. Could create or contribute to a traffic safety hazard.

Excavation and vibration

- 5. For any use or development within the extent of the designation which involves earthworks within 12 metres or piling within 16 metres of any pier of the Newmarket Viaduct (including its foundations) a person seeking prior written consent from the NZ Transport Agency shall provide:
 - a. a Construction Vibration Management Plan (CVMP) prepared in accordance with the relevant parts of condition C1 in Section 2.6 Designation Conditions in *State highway construction and maintenance noise and vibration guide*, (NZTA, August 2013 or any subsequent update), and include the procedures, methods and measures for the control of vibration associated with all relevant construction works; and
 - a methodology prepared by a suitably qualified and experienced person which details how the structural stability of each pier will be maintained at all times during and after earthworks or piling; and



c. written confirmation to the satisfaction of the NZ Transport Agency that the use or development will proceed at all times in accordance with those documents.

Advice Note

- 1. Any person undertaking any use or development, (particularly any open air use on, in or around any building), within a 10m horizontal distance from the edge of the Newmarket Viaduct at or below the level of the carriageway, should note there is a risk of falling debris from vehicles or unsecured loads travelling on the Newmarket Viaduct.
- 2. Compliance with conditions 2(b) (lighting), 2(c) (reflective materials) and 2(d) (signs) shall be established by a statement in writing from the applicant of an intention to comply with the condition.



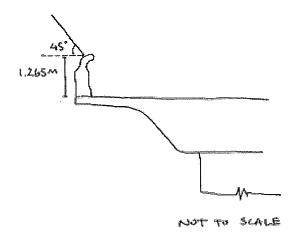


Figure 2e. Newmarket Viaduct Falling Debris Control

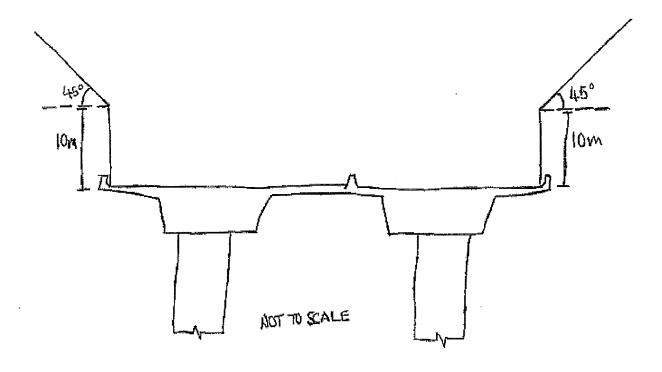


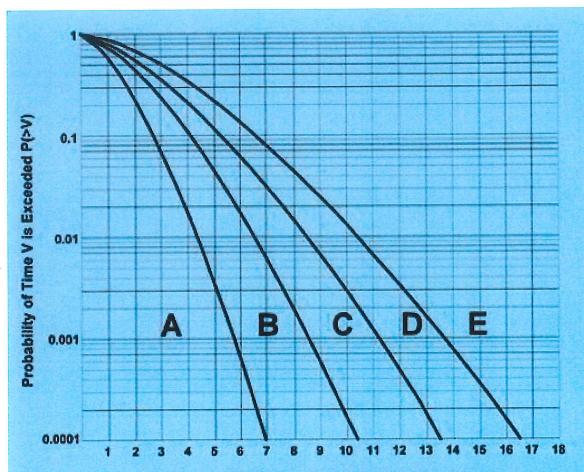


Figure 2f. Newmarket Viaduct Wind Control

Performance Categories:

Category A	Areas of pedestrian use containing significant formal elements and features intended to encourage longer term recreational or relaxation use, ie, major and minor public squares, parks and other public open spaces - e.g. Aotea Square, Queen Elizabeth Square, Albert Park, Myers Park, St Patricks Square, Freyberg Place.
Category B	Areas of pedestrian use containing minor elements and features intended to encourage short term recreation or relaxation, ie, minor pedestrian open spaces, pleasance areas in road reserves, streets with significant groupings of landscaped seating features e.g. Khartoum Place, Mayoral Drive pleasance areas, Queen Street.
Category C	Areas of formed footpath or open space pedestrian linkages, used primarily for pedestrian transit and devoid of significant or repeated recreational or relaxational features, such as footpaths where not covered in Categories A or B above.
Category D	Areas of road, carriage way, or vehicular routes, used primarily for vehicular transit and open storage, such as roads generally where devoid of any features or form which would include the spaces in Categories A - C above.
Category E	Category E represents conditions which are dangerous to the elderly and infants and of considerable cumulative discomfort to others. Category E conditions are unacceptable and are not allocated to any physically defined areas of the city.





Mean Hourty Wind Velocity V metres/second

Derivation of the Wind Environment Control Graph

The curves on the graph delineating the boundaries between the acceptable categories (A-D) and unacceptable (E) categories of wind performance are described by the Weibull expression:

 $P(>V) = e^{-\left(\frac{V}{C}\right)^{k}}$ where V is a selected value on the horizontal axis, and P is the corresponding value of the vertical axis:

and where:-

P(>V) = Probability of a wind speed V being exceeded;

e = The Napienan base 2.7182818285;

v = the velocity selected;

K = the constant 1.5; and

c = a variable dependant on the boundary being defined:

A/B.c = 1.548

B/C,c = 2.322

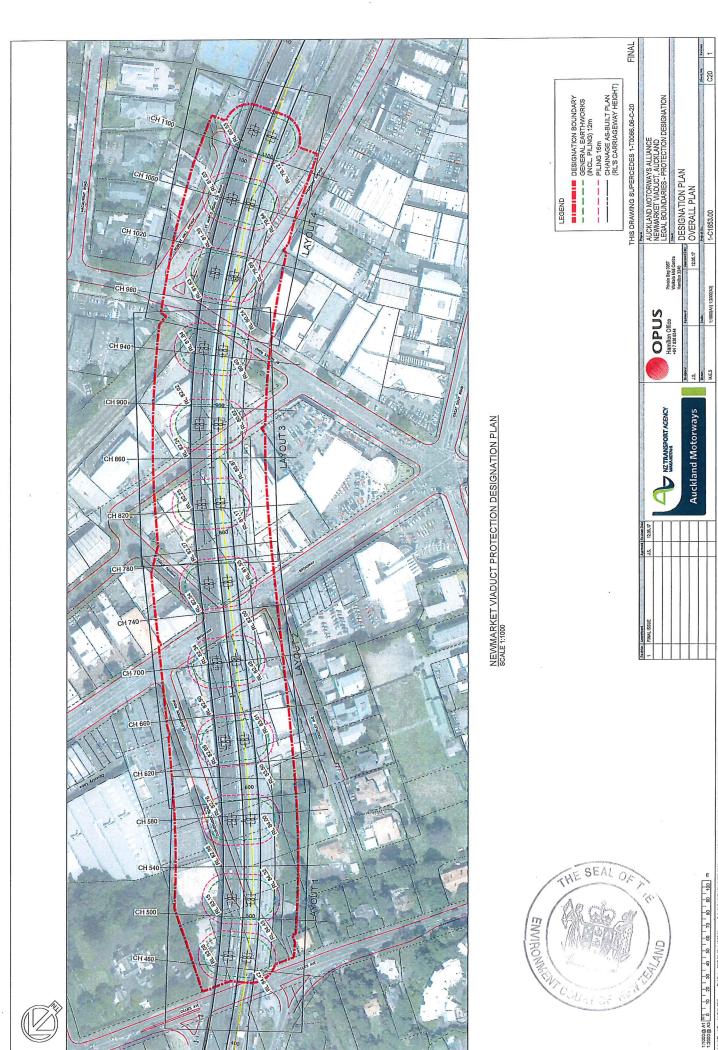
 $C/D_{,c} = 3.017$

D/E,c = 3.715



Designation Plan





CZ0

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