

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Report to Auckland Council
Hearing topic 074
New Zealand Transport Agency
Designation 6727**

July 2016

Adopted as Auckland Unitary Plan Independent Hearings Panel recommendations in accordance with the Auckland Unitary Plan Independent Hearing Panel procedure and in accordance with section 144 of the Local Government (Auckland Transitional Provisions) Act 2010.

Report to Auckland Council hearing topic 075 – New Zealand Transport Agency Designation 6727

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1. Introduction

The purpose of this report is to provide an assessment and recommendation in relation to the New Zealand Transport Agency Designation 6727 State Highway 1 – Newmarket Viaduct Height Restriction (Designation 6727). This designation was the subject of hearings in The Auckland Unitary Plan Independent Hearings Panel hearing topic: 074 Designations.

2. Overview

The New Zealand Transport Agency is the requiring authority for Designation 6727 that protects the operation of the New Market Viaduct which is part of State Highway 1.

The designation existed in the Auckland Council District Plan - Operative Auckland City - Isthmus Section 1999 referenced as D09-32 and was included in proposed Auckland Unitary Plan as a notice of requirement.

Designation Summary Table

Requiring authority	New Zealand Transport Agency
Designation number and name	6727 State Highway 1 – Newmarket Viaduct Height Restriction
Designation purposes	12.2m height restriction affecting land within 76.2m of the centre line of the Newmarket Viaduct.
Location	Vicinity of Newmarket Viaduct (State Highway 1), Newmarket
Designation given effect to	Yes
Modifications made when rolled into the proposed Auckland Unitary Plan	None
Submissions	Yes – refer to section 4 below.

All matters relating to this designation were heard in hearing topic 074 Designations. The Panel is required to provide Auckland Council with recommendations on the submissions on the notice of requirement.

3. Modifications

No modifications were included in the notice of requirement from the New Zealand Transport Agency requiring inclusion of Designation 6727 in the proposed Auckland Unitary Plan.

4. Submissions

Dilworth Trust Board (3447-23) – seeks deletion of Designation 6727.

Tram Lease Limited and Viaduct Harbour Holdings Limited and Viaduct Harbour Management Limited (5566-89 and 95) – seek deletion of the relevant part of Designation 6727 in so far as it affects sites in Broadway, Newmarket and including 2-38 Nuffield St, Newmarket.

Saint Marks Women's Health Limited (7237-9) – seek removal of Designation 6727 from 10-12 St Marks Road, 4-6 Robert Hall Place and 1 MacMurray Road, Remuera.

Westfield (New Zealand) Limited (2968-389) – seeks deletion of the New Zealand Transport Agency designation as shown in submission.

5. Matters agreed in mediation

The New Zealand Transport Agency and submitters engaged in ongoing discussions in 2015 and 2016. Those discussions were inconclusive.

6. Matters not resolved and heard by the Panel

The Panel heard legal submissions and evidence from the requiring authority, the Council and several submitters on two occasions: on 30 November 2015 and again on 2 May 2016. During this period a parallel process was being followed, where the requiring authority had lodged a fresh notice of requirement for the same purpose. In November 2015 it was hoped that the issues might be narrowed or resolved in the parallel process. That hope was not realised. By the time of the reconvened hearing of 2 May 2016, that process had progressed to the point of an appeal against the requiring authority's decision which was yet to be heard by the Environment Court. Just prior to finalising this recommendation the Panel was advised that the appeal had been withdrawn. While the material presented to us includes material that has also been presented in that separate process, this recommendation is solely focussed on the matters that are relevant to the requirement in the proposed Auckland Unitary Plan.

On the 2 May 2016, the Panel heard evidence from the New Zealand Transport Agency, Scentre (New Zealand) Limited (formerly Westfield (New Zealand) Limited) and Dilworth Trust Board.

7. Assessment

The Newmarket Viaduct is a critical component of State Highway 1 and the Auckland Motorway system. If for any reason (traffic accident, structural damage or the like) it could not be used, any detour (either southbound from Gillies Avenue to St Marks Road or northbound from Market Road to Gillies Avenue) would have to pass through Newmarket. At peak times both this part of the motorway and the road network around Newmarket are heavily congested. If the Viaduct were unavailable, the adverse effects on transportation in the centre of the Auckland isthmus would be severe. Compounding this (and differentiating this part of the motorway from most other parts), access to the carriageway of the Viaduct to deal with any accident or other event is limited by the height of the Viaduct. Consequently it is important to protect the Viaduct (both in terms of traffic safety and structurally) as far as reasonably practicable.

A designation under the Resource Management Act 1991 can serve two principal purposes:

- i. an enabling purpose to authorise a requiring authority with financial responsibility for a public work or project or work to undertake that work or project notwithstanding any land use control in a district plan which would otherwise apply; and

- ii. a protective purpose to prevent any other person (including the owner of the land) from doing anything in relation to the land which would prevent or hinder that designated work or project without the prior written consent of the requiring authority.

In this case, the purpose of Designation 6727 is protective: there is a separate enabling Designation 6720 which authorises the construction and use of the Newmarket Viaduct and, in particular, its reconstruction on a new alignment approximately 13m to the north in 2012.

The operative designation D09-32 (which became proposed Auckland Unitary Plan Designation 6727) simply placed a height restriction of 12.2m on all land within 76.2m of the centre line of the Viaduct. This was the basis of the requiring authority's notice to the Council for its designation to be included as a requirement in the proposed Auckland Unitary Plan. With the extent of the Designation 6727 needing to be relocated as a result of the realignment of the Viaduct pursuant to Designation 6720, the requiring authority then took the opportunity to adjust both the extent of land affected by reducing it and also the nature of the control by being more specific about the activities that were restricted.

As amended, Designation 6727 is proposed to be reduced in area from approximately 120,000m² to 46,000m² on a total of 63 separate sites, with its width reducing from 76.2m to approximately 37-48m with some adjustments to align with existing cadastral boundaries as shown on the designation plan. The height control is proposed to be amended from 12.2m to a height that exceeds both 12.2m and the height of the Carriageway of the Viaduct closest to any proposed development (at its highest point, the Viaduct is approximately 24m above ground level). Specific controls are also proposed on earthworks (within 12m) and piling (within 16m) around the piers that support the Viaduct.

Also as amended, Designation 6727 would no longer require prior written consent for any building at all exceeding the height limit of 12.2m: instead, the requiring authority volunteered to limit the matters it would consider for the purposes of section 176(1)(b) of the Resource Management Act 1991 to:

- i. obstruction to sight lines for motorists;
- ii. lighting;
- iii. reflective materials;
- iv. signs;
- v. falling debris;
- vi. wind effects; and
- vii. adverse effects of excavation and vibration on the structure of the Viaduct.

A preliminary issue of jurisdiction arose as to the scope for the requiring authority to propose, or for the Panel to recommend, these amendments. The Panel is satisfied that the proposed amendments to the requirement result in it placing fewer and lesser restrictions on affected landowners and occupiers than the requirement as originally notified, and that the submissions of landowners who sought that the requirement be removed afford ample scope for these amendments.

It is important to understand how Designation 6727 would operate in practice. As a protective measure rather than an enabling one, it has effect in relation to proposals to undertake works or activities within the designated area. In particular, as amended, it limits the extent to which the requiring authority may refuse its consent to reasons based on the matters listed above. Further, it includes 'advice notes' which do two things:

- i. guide the requiring authority in the exercise of its consenting discretion; and
- ii. guide persons seeking consent in how they may present their requests.

This is an unusual approach to drafting the conditions attaching to a designation. Advice notes have no regulatory effect. They are usually added to resource consents to assist the consent holder in implementing the consent and in associated dealings with the consent authority. In this case, however, the Panel heard evidence that the development value of the land affected by Designation 6727 was sufficient to warrant such an approach, especially so far as it might minimise the consenting risk associated with seeking consent from the requiring authority. On that basis the Panel has reviewed the terms of Designation 6727 and its conditions and advice notes carefully. The recommended amendments are intended to do the following:

- i. align the text more closely to the statutory language in Part 8 of the Resource Management Act 1991;
- ii. clarify the process to which the conditions and advice notes apply, being the seeking of consent from the requiring authority;
- iii. remove references to external documents where these do not directly affect the process of seeking consent; and
- iv. align the contents of the advice notes, where possible, to corresponding provisions of the Plan.

On that basis and in particular, the Panel recommends as set out below.

- i. In relation to obstruction of sightlines, deleting the reference to the AASHTO publication as the assessment based on a specified distance should be sufficient for any site-specific design and assessment.
- ii. In relation to lighting, retaining the threshold increment and surface luminance controls.
- iii. In relation to reflective materials, providing for potential glare to be addressed either by design or by choice of materials. In relation to the dispute about expressing light reflectivity as a percentage, the Panel think that this is feasible by reference to the material itself, rather than to any *in situ* use or application of it.
- iv. In relation to signs, and in circumstances where the issue is the grant of consent by the requiring authority rather than the regulation of signs generally (whether under the Plan or under any bylaw), retaining a basis for the requiring authority to assess any proposed signs.
- v. In relation to falling debris, retaining a basis for consenting for the requiring authority;

- vi. In relation to wind effects, simplifying the advice note and deleting Figure 1 (which is expressed in words in the advice note), deleting references to the Business zone control (together with Figure 2 and Table 1) as those controls are intended to maintain pedestrian amenity at ground level rather than deal with traffic safety on a viaduct, and encouraging the obtaining of a wind impact report which is focussed on the effect of increases in wind speed on traffic safety; and
- vii. In relation to excavation and vibration, clarifying the roles of the requiring authority and the person seeking consent.

8. Panel recommendations to Auckland Council

The Auckland Unitary Plan Independent Hearings Panel recommends that Auckland Council recommends to the requiring authority that it confirms the notices of requirement for Designation 6727 included in the proposed Auckland Unitary Plan subject to further modifications, and as set out in Attachment 1 and Attachment 2.

Panel Chair	David Kirkpatrick
Chair's Signature	
Date	22 July 2016

Attachment 1 recommended Designation 6727 State Highway 1 – Newmarket Viaduct Height Restriction

6727 State Highway 1 – Newmarket Viaduct Height Restriction

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)

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 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 designation boundary:
 - i. 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.
2. When considering whether to give its consent to any person doing anything that is subject to Condition 1, the NZ Transport Agency will only consider the following matters:
 - i. adverse effects on traffic safety on the carriageway of the Newmarket Viaduct caused by:
 - a. obstruction to identified sight lines;

- b. lighting;
 - c. reflective materials;
 - d. signs;
 - e. falling debris; or
 - f. wind effects.
- ii. adverse effects of excavation and vibration on the structure of the Newmarket Viaduct.

Advice Notes – Guidance for section 176 consent

Advice Notes 1, 2 and 3 have been included to provide guidance to persons seeking to undertake any use or development of sites within the extent of the designation as to how the NZ Transport Agency will give consideration to the giving of its consent in accordance with Conditions 1 and 2. Persons seeking consent are advised to contact the NZ Transport Agency at an early stage to discuss the particular circumstances of their proposed use or development and whether, or to what extent, the following assessments are necessary.

For any use or development that requires consent under section 176 the person seeking consent will be expected to address the following matters:

Traffic safety

1. For any use or development within the designation boundary 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, a person seeking prior written consent from the NZ Transport Agency should identify and address whether the proposed use or development, including signage and taking into account any proposed mitigation measures, will result in any adverse effects on traffic safety on the Newmarket Viaduct carriageway caused by obstruction of sightlines, lighting, reflective materials, signs, falling debris or wind effects using the following guidance:
 - a. Obstruction of sight lines: Any development located within the inside curve of the Newmarket Viaduct (both north and south) should not obstruct the visibility of a driver on the Viaduct to see at least 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. from any point on the State highway 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/m^2 .
- c. Reflective materials: Any proposed building must be:
 - i. located, oriented, designed, covered or screened so as not to cause sunstrike or light reflections which may obscure vision and reduce safety of drivers on the motorway network; or
 - ii. constructed so that light reflectivity from any building material used on any façade visible from the motorway does not exceed 20%.
- d. Signs: To limit driver distraction the following types of signs must not be visible from the motorway:
 - i. Video screens or digital displays;
 - ii. Flashing, rotating, or moving displays or lighting, except as may be required by any Civil Aviation Authority Rules to denote an obstacle to aircraft;
 - iii. Signage that contains reflective, fluorescent or phosphorescent materials likely to reflect light onto the road or distract drivers from traffic signs or driving;
 - iv. Signage which could cause confusion or be mistaken for an official road sign or traffic control device;
 - v. Signage which could cause alarm or unduly attract the attention of people operating vehicles on the road;
 - vi. Signage which could create or contribute to a traffic safety hazard.

Notwithstanding the above, the following signage will be considered to be acceptable:

- vii. Advertising signage which sits below the level of the Newmarket Viaduct carriageway and is not visible to vehicle drivers;
- viii. A single building identification sign with a fixed or constant text and/or logo 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 provisions of 1(d)(i)-(vi) above.
- e) Falling debris: For any proposed development that projects beyond a building envelope of a 45 degree recession plane above the top of the outer Viaduct safety barrier, the proposed development shall be designed and constructed to avoid the potential for falling debris from buildings (including from balconies and open air activities).
- f) Wind Effects: For any proposed development that projects beyond a building envelope of 10m plus a 45 degree recession plane above the height of the Viaduct carriageway, the person seeking consent should provide a wind impact

report that demonstrates that the proposed development does not increase wind speeds on the Newmarket Viaduct to a degree that adversely affects traffic safety. This may include the results of wind tunnel tests or appropriate alternative test procedures undertaken by a suitably qualified expert.

Excavation and vibration

2. 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 should 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
 - b. 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.

General

3. 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.

Attachments

Designation Plan

Attachment 2 recommended change to GIS viewer designation map of Designation 6727 in the proposed Auckland Unitary Plan

