

BEFORE THE ENVIRONMENT COURT

ENV-2016-AKL-000

IN THE MATTER

of an appeal under section 157(1) of the Local Government (Auckland Transitional Provisions) 2010

AND

IN THE MATTER

of Designation Number 6727 relating to the Newmarket Viaduct (being a rollover of legacy Designation D09-32, Auckland Council District Plan (Isthmus Section 1999) for inclusion in the Proposed Auckland Unitary Plan)

BETWEEN

DILWORTH TRUST BOARD

Appellant

AND

NEW ZEALAND TRANSPORT AGENCY

Respondent

NOTICE OF APPEAL UNDER SECTION 157(1) OF THE LOCAL GOVERNMENT (AUCKLAND TRANSITIONAL PROVISIONS) 2010

29 November 2016

TO: The Registrar
Environment Court
AUCKLAND

1. Dilworth Trust Board (**Appellant**) appeals a decision on Designation Number 6727 relating to the Newmarket Viaduct, State Highway 1, Auckland (**Designation**).
2. The Appellant made a submission on the Designation.
3. The Appellant received notice of the decision on 18 October 2016.
4. The decision was made by the New Zealand Transport Agency (**Respondent**).

5. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**Act**).
6. The decision being appealed is that part of the Respondent's decision on the Designation accepting the recommendation of the Auckland Council (as territorial authority)¹ to require any use or development within the designation boundary involving 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, to be approved by the Respondent under s 176(1)(b) of the Act (**Decision**).²
7. The site or place to which the Designation applies is State Highway 1, Newmarket Viaduct, Auckland, including the airspace adjacent to the Viaduct. The Appellant owns land within the designation boundary and future building development on its land would be affected by the Designation.

Reasons for Appeal

8. The Designation is a designation under s 171(1)(b) of the Act intended for inclusion in the Proposed Auckland Unitary Plan (**PAUP**), with the stated purpose being "*to enable the New Zealand Transport Agency ... to manage neighbouring land use effects which may adversely affect the operation, maintenance or structural integrity of the Newmarket Viaduct*".
9. Management of the alleged effects of neighbouring land uses is proposed to occur by the requirement to obtain the Respondent's approval to any structure within the designation boundary under s 176(1)(b) of the Act. In considering that request for approval the Designation confines the Respondent to consider only the adverse effects on traffic safety on the carriageway of the Newmarket Viaduct caused by:
 - Obstruction to identified sight lines;
 - Lighting;
 - Reflective materials;
 - Signs;

¹ The Auckland Council accepted the recommendation of the Independent Hearing Panel on the Designation as set out in the Report to Auckland Council hearing topic 075 – New Zealand Transport Agency Designation 6727.

² This appeal does not challenge that part of the Designation that requires any use or development within the designation boundary involving earthworks within 12m or

- Falling debris;
 - Wind effects.
10. The Designation is unsubstantiated, misconceived and unreasonable:
- (a) Within the designation boundary the Designation seeks to control the bulk, location, materials and lighting of buildings, and signage that may be displayed on them, on the premise that such land uses may have adverse effects on traffic safety on the Newmarket Viaduct affecting, in turn, the operation of State Highway 1.
 - (b) The adverse effects in question are alleged to arise from the potentially distracting nature of such land uses, or (in the case of building bulk and location) their creation of wind currents, causing drivers to lose control of their vehicles.
 - (c) Drivers may be distracted by a multitude of things, both within and outside of their vehicles. However, there is no direct causative link between the land uses sought to be controlled and driver attentiveness/propensity to be distracted. A designation seeking to control the former to improve the latter is therefore unsubstantiated, misconceived and unreasonable.
 - (d) The inability of the Respondent to specify objectively certain built form and materials performance standards for buildings in the designation boundary, preferring instead to reserve a subjective discretion to itself on such matters, is a clear admission that the purpose of the Designation is flawed.
11. The Designation is arbitrary and therefore inappropriate:
- (a) The Designation only seeks to control the offending land uses noted above within a certain horizontal distance from the Newmarket Viaduct carriageway. No controls are proposed for such land uses beyond the designation boundary. Yet the same land uses established beyond the designation boundary could theoretically give rise to the same sorts of adverse effects sought to be controlled;

piling within 16m of a pier of the Newmarket Viaduct to be approved by the Respondent under s 176(1)(b) of the Act.

- (b) The location of the designation boundary, and therefore the basis of the Designation, is entirely arbitrary, and inappropriate as a land use control under the Act.
- 12. The Designation reserves unreasonable discretion to the Respondent in respect of the design of new buildings within the designation boundary, including the discretion to refuse approval to them under s 176(1)(b) of the Act. With no objective measure to verify the impact of building design on road operation, the discretion reserved is unreasonable and not in accordance with the sustainable management purpose of the Act.
- 13. The Designation will have adverse impacts on the Appellant (and other land owners affected by it) by creating development and investment uncertainty, and potentially constraining re-development opportunities in an area identified for significant urban growth, in a manner contrary to the provisions of the PAUP and Part 2 of the Act.

Relief Sought

- 14. The Appellant seeks the following relief:
 - (a) That the part of the Respondent's Decision challenged by this appeal is cancelled;
 - (b) That Designation Number 6727 be modified so as only to require any use or development within the designation boundary involving earthworks within 12m or piling within 16m of a pier of the Newmarket Viaduct to be approved by the Respondent under s 176(1)(b) of the Act;
 - (c) Such further, other or consequential relief as may be necessary to give effect to the grounds of this appeal.

Documents

- 15. The following documents are attached to this notice:
 - (a) A copy of the Appellant's submission;
 - (b) A copy of the Independent Hearing Panel's "Report to Auckland Council hearing topic 075 – New Zealand Transport Agency Designation 6727";
 - (c) The Auckland Council's recommendation;
 - (d) the Respondent's decision;

- (e) A list of names and addresses of persons to be served with a copy of this notice.

Signature:

DILWORTH TRUST BOARD by its
authorised agent:



K R M Littlejohn

Date:

29 November 2016

Address for service:

K R M Littlejohn
Quay Chambers
Level 7, 2 Commerce Street
P O Box 106215
AUCKLAND CITY 1143

Telephone:

(09) 374 1669 or 021 657 376

Email:

littlejohn@quaychambers.co.nz

Advice to Recipients of Copy of Notice

How to Become Party to Proceedings

You may be a party to the appeal if:

- a) *you made a submission on the matter of this appeal;*
- b) *within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and*
- c) *within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.*

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

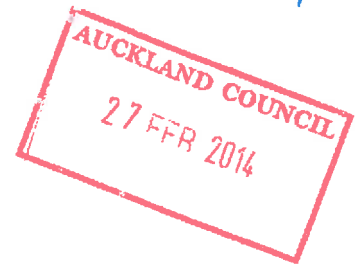
You may apply to the Environment Court under Section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see Form 38).

The copy of this notice served on you does not attach a copy of the relevant application and the relevant decision. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

ANNEXURE (a) - SUBMISSION



SUBMISSION ON PROPOSED COMBINED PLAN UNDER SECTION 123 OF THE LOCAL GOVERNMENT (AUCKLAND TRANSITIONAL PROVISIONS) ACT 2010 AND CLAUSE 6 OF THE FIRST SCHEDULE TO THE RESOURCE MANAGEMENT ACT 1991:

To: Auckland Council

Name: Dilworth Trust Board

1 INTRODUCTION

The Dilworth Trust Board

- 1.1 The Dilworth Trust Board ("Dilworth") has been established to provide boys from disadvantaged backgrounds with an education. The Dilworth Trust Board has provided this service to the community for over 100 years since it was founded in the 1800's by James Dilworth.
- 1.2 Dilworth School was codified as a Charitable Trust under an Act of Parliament – Dilworth Trust Board Act 1946. Dilworth oversees and runs Dilworth School, which operates from two Auckland City campuses (Great North Road and Market Road), and one rural campus (Mangatawhiri). In addition, the Dilworth own and operate ancillary boarding facilities, including the dwelling at 39 Market Road (formally Aachen House).
- 1.3 Much of Remuera and Epsom were part of the original James Dilworth farm. At the present time, in addition to the actual school facilities, Dilworth continues to remain a significant owner of land in the Newmarket, Epsom, Remuera and Mt Wellington areas. Funding to continue to achieve the Dilworth's mission of providing an education to underprivileged boys is generated from the revenue obtained from its property portfolio.
- 1.4 Accordingly, the Dilworth Trust Board has a vested interest in the direction, intentions and outcomes sought by Auckland Council as expressed in the proposed Auckland combined plan ("proposed Unitary Plan" or "proposed Plan").

2 SCOPE OF SUBMISSION

- 2.1 This submission relates to the specific provisions of the proposed Unitary Plan as identified in the tables attached as **Appendix 1**.

3 NATURE OF SUBMISSION

- 3.1 Dilworth supports or opposes the specific provisions of the proposed Unitary Plan identified in **Appendix 1**.

Dilworth Trust Board Submission

4 REASONS FOR SUBMISSION

4.1 For those provisions of the proposed Unitary Plan that Dilworth supports in **Appendix 1**, those provisions:

- will promote sustainable management of resources, will achieve the purpose of the RMA and are not contrary to Part 2 and other provisions of the RMA;
- will enable the social, economic and cultural well-being of the community in the Auckland region;
- will meet the reasonably foreseeable needs of future generations; and
- represent the most appropriate means of exercising the Council's functions, having regard to the efficiency and effectiveness of the provisions relative to other means.

4.2 For those provisions of the proposed Unitary Plan that Dilworth opposes in **Appendix 1**, this is because, without the amendments proposed by Dilworth, those provisions:

- will not promote sustainable management of resources, will not achieve the purpose of the RMA and are contrary to Part 2 and other provisions of the RMA;
- will not enable the social, economic and cultural well-being of the community in the Auckland region;
- will not meet the reasonably foreseeable needs of future generations; and
- do not represent the most appropriate means of exercising the Council's functions, having regard to the efficiency and effectiveness of the provisions relative to other means.

4.3 Without limiting the generality of paragraphs 4.1 and 4.2, further specific reasons for Dilworth's submission are set out in Appendix 1.

5 CONCLUSION

5.1 Dilworth seeks the following decision from Auckland Council on the proposed Unitary Plan provisions:

- That the proposed Plan be retained, deleted or amended, as set out in Dilworth's submission so as to provide for the sustainable management of Auckland's natural and physical resources and thereby achieve the purpose of the RMA.
- Such further or other consequential relief as may be necessary to fully give effect to the relief sought in Dilworth's submissions.

5.2 Suggested relief to deal with the concerns set out in Dilworth's submission is set out in **Appendix 1**. However, there may be other methods or relief that are able to address Dilworth's concerns, and the suggested revisions do not limit the generality of the reasons for Dilworth's submission.

5.3 Dilworth could not gain an advantage in trade competition through this submission.

5.4 Dilworth wishes to be heard in support of its submission.

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Dilworth Trust Board Submission

DILWORTH TRUST BOARD

by their planning and resource management consultants and authorised agents Bentley & Co. Ltd.

Date: 27 February 2014



Signature:

Aidan Kirkby-McLeod
Resource Management Consultant

Address for Service: Craig McGarr / Aidan Kirkby-McLeod
Bentley & Co Ltd
PO 4492 Shortland St
AUCKLAND 1140

Telephone: (09) 3095367
Email: akirkbymcleod@bentley.co.nz

3/23

Row	Provision	Dilworth's submission	Relief sought
20.	<p>Infrastructure - Designation 1619</p>	<p>Dilworth opposes designation 1619 in favour of Auckland Transport for road widening purposes as it applies to their properties at:</p> <ul style="list-style-type: none"> - 7 Great South Road; - 11-15 Great South Road; - 30 Great South Road; and - 69-71 Great South Road. <p>Designation 1619 is a rollover of existing designation D09-30 under the Operative District Plan, and adversely implicates the potential development on the land owned by Dilworth and similarly affected properties, and has done for a substantial period. The designation has been in place for the life span of the legacy District Plan, and works have been undertaken to Great South Road without the designated land being required. There is no evidence of future works being programmed or required, and the retention of this designation injuriously affects the Dilworth landholdings, and unnecessarily complicates and compromises their redevelopment opportunity, resulting in 'planning blight' on the future development of land on the Great South Road corridor, such that the opportunity provided for by the zoning cannot be readily achieved.</p>	<p>Delete designation 1619.</p>
21.	<p>Infrastructure - Designation 6727</p>	<p>Dilworth opposes designation 6727 in favour of the New Zealand Transport Agency, which places a 12.2m height restriction on land within 76.2m of the centre of the Newmarket Viaduct, and affects Dilworth's properties at:</p> <ul style="list-style-type: none"> - 2 Great South Road; - 40-46 Great South Road; - 50 Great South Road; - 3 Mauranui Avenue; - 9-11 Mauranui Avenue; - 9 St Marks Road; - 14 St Marks Road; - 16 St Marks Road; - 18 St Marks Road; - 20 St Marks Road; - 470-474 Broadway; and - 476-480 Broadway; and 	<p>Delete Designation 6727.</p>

22

23

#3477

19/23

#3477

Row	Provision	Dilworth's submission	Relief sought
		<ul style="list-style-type: none"> - 500 Broadway. <p>The operative provisions of this designation state that NZTA would give consideration to the ongoing need for the designation. Dilworth understands that this designation is now 'historic' and is no longer required, as evidenced by a resource consent recently granted to Westfield for an infingement to this restriction by 10 metres (i.e. a 22.2 metre building) at their site at 309 Broadway. This designation is inappropriate and should be deleted.</p>	
22.	Additional Zone Height Controls	<p>Dilworth are supportive of the overarching aspiration of Council in terms of developing an intense, high quality, compact city form. In this regard, Dilworth supports the "Additional Zone Height Control" overlay as it applies to their landholdings at the following sites:</p> <ul style="list-style-type: none"> - 99 Remuera Road (Newmarket, 24.5m/6 storeys) - 101 Remuera Road (Newmarket, 24.5m/6 storeys) - 8 St Marks Road (Newmarket, 24.5m/6 storeys) - 9 St Marks Road (Newmarket, 24.5m/6 storeys) - 470-474 Broadway (Newmarket, 24.5m/6 storeys) - 476-480 Broadway (Newmarket, 24.5m/6 storeys) - 500 Broadway (Newmarket, 24.5m/6 storeys) - 25-29 Carbine Road (Sylvia Park, 24.5m/6 storeys) <p>These sites are appropriately located to accommodate a greater building height and intensity of activity.</p>	<p>Retain the "Additional Zone Height Control" overlay at these sites.</p> <p style="text-align: right;">24</p>
23.	Built Environment - Special Character	<p>Dilworth opposes the "Special Character - Business Newmarket" overlay which has been applied to their sites at 470-474 and 476-480 Broadway. Appendix 10.1.8 "Special Character Statements - Business, Newmarket" justifies the extent of the boundary of the proposed Newmarket Special Character area on the basis that it "represents the extent of the traditional commercial area". The existing built form on the site and neighbouring land contain no special character that justifies their inclusion within this area, with these sites essentially 'severed' from the Newmarket Centre proper by the Newmarket Viaduct. It is appropriate that this overlay be amended to exclude these sites, if not deleted in its entirety.</p>	<p>Amend the boundary of the Special Character - Business Newmarket area to align with the northern edge of the Newmarket Viaduct and exclude Dilworth's sites at 470-474 Broadway and 476-480 Broadway.</p> <p style="text-align: right;">25 26</p>
24.	Historic Heritage - Pre 1944 Building Demolition Control	<p>Dilworth opposes the "Pre 1944 Building Demolition Control" as it applies to a number of their sites. A review of aerial photography for the following sites confirms that they do not contain any buildings constructed prior to 1944:</p> <ul style="list-style-type: none"> - 2 Erin Street, Epsom; - 56 Mount St John Avenue, Epsom; - 58 Mount St John Avenue, Epsom; - 60 Mount St John Avenue, Epsom; 	<p>Delete the Historic Heritage - Pre 1944 Building Demolition Control as it applies to Dilworth's sites at:</p> <ul style="list-style-type: none"> - 2 Erin Street, Epsom; - 56 Mount St John Avenue, Epsom; - 58 Mount St John Avenue, Epsom; - 60 Mount St John Avenue, Epsom; - 62 Mount St John Avenue, Epsom; <p style="text-align: right;">28</p>

20/23

ANNEXURE (b) – IHP REPORT

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

Contents

1. Introduction	3
2. Overview	3
3. Modifications	3
4. Submissions.....	3
5. Matters agreed in mediation	4
6. Matters not resolved and heard by the Panel	4
7. Assessment	4
8. Panel recommendations to Auckland Council	7

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

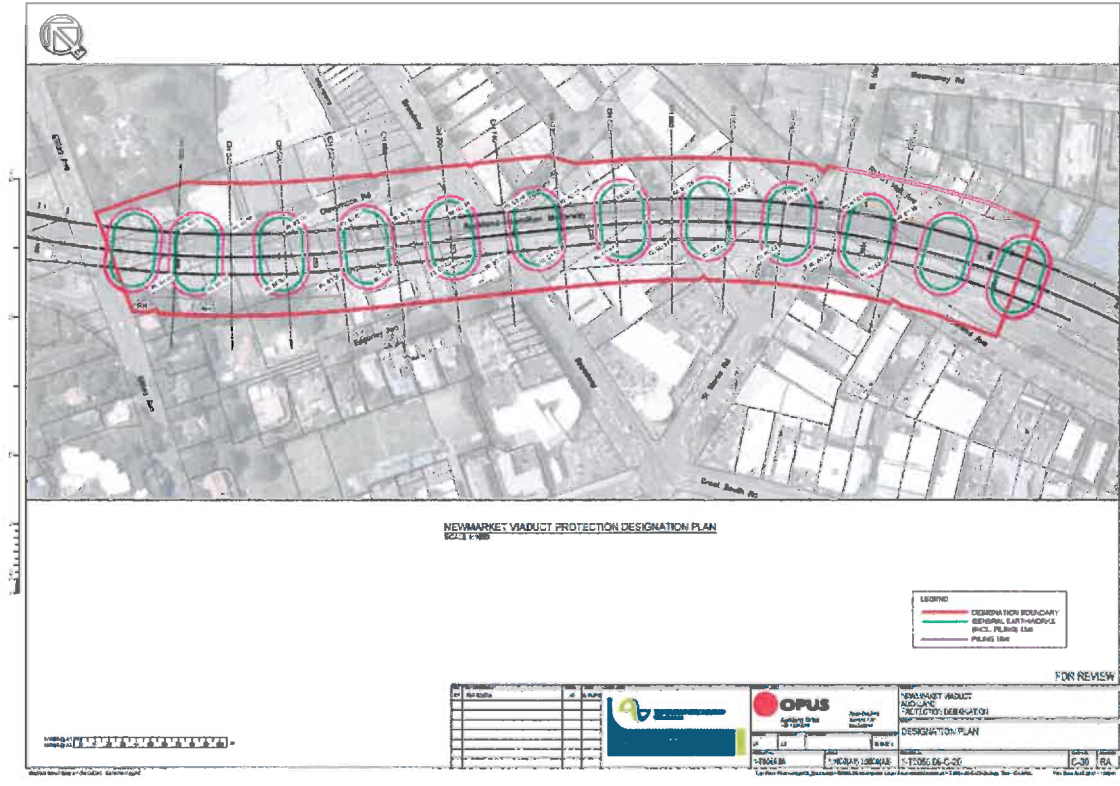
2. For any use or development within the extent of the designation which involves earthworks within 12 metres or piling within 16 metres of any pier of the Newmarket Viaduct (including its foundations) a person seeking prior written consent from the NZ Transport Agency should provide:
 - a. a Construction 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



ANNEXURE (c) – AUCKLAND COUNCIL RECOMMENDATION



**Decisions of the Auckland Council on
recommendations by the Auckland Unitary
Plan Independent Hearings Panel on
submissions and further submissions to the
Proposed Auckland Unitary Plan**

Attachment E
Designations (Parts 1, 2 and 3).

19 August 2016

Panel Reports delivered on 22 July 2016 on Other Requiring Authorities' designations containing recommendations proposed for acceptance:

1. Report entitled "*Report to Auckland Council Hearing topic 045 – Airports, July 2016*"

That the following Panel recommendation at section 4.2 of the above report be **ACCEPTED**:

"Therefore the Panel recommends adopting the modifications to the Auckland International Airport designations in the proposed Auckland Unitary Plan, and the further modifications made in mediation, subsequent evidence and rights of reply of Auckland Council, Auckland International Airport Limited and Board of Airline Representatives of New Zealand. The Panel has recommended an additional condition on temporary noise mitigation in designation 1100 Auckland International Airport as proposed by Auckland International Airport Limited. This condition relates to the amended D24 Aircraft Noise Overlay addressed in section five below. The Panel has produced a separate recommendation report on the Auckland International Airport Limited designations (see Report to Auckland Council – Hearing topic 045 Auckland International Airport designations July 2016)."

2. Report entitled "*Report to Auckland Council Hearing topic 074 – KiwiRail designations 6300-6305 and R6307, July 2016*"

That the following Panel recommendation at section 7 of the above report be **ACCEPTED**:

"The Auckland Unitary Plan Independent Hearings Panel recommends that Auckland Council recommends to the requiring authority that it confirms: the modifications in the notices of requirement for designations 6300, 6301, 6302, 6303, 6304, 6305; and confirms the notice of requirement R6307 included in the proposed Auckland Unitary Plan subject to the further modifications shown in Attachment 1 and Attachment 2."

3. Report entitled "*Report to Auckland Council Hearing topic 074 – Designations KiwiRail minor matters, July 2016*"

That the following Panel recommendation at section 4 of the above report be **ACCEPTED**:

"The Auckland Unitary Plan Independent Hearings Panel recommends that Auckland Council recommends to the requiring authority that it confirms the modifications in the notice of requirement for designation 6306 included in the proposed Auckland Unitary Plan subject to the further modifications shown in Attachment 1."

4. Report entitled "*Report to Auckland Council Hearing topic 074 – New Zealand Transport Agency designation 6727, July 2016*"

That the following Panel recommendation at section 8 of the above report be **ACCEPTED**:

“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.”

ANNEXURE (d) – RESPONDENT'S DECISION

22 September 2016

To: Auckland Council
Attn: Stephen Town, Chief Executive
Stephen.town@aucklandcouncil.govt.nz

Cc: Legal Department
c/- Mike Wakefield
mike.wakefield@aucklandcouncil.govt.nz

The Unitary Plan Team
unitaryplan@aucklandcouncil.govt.nz

Dear Stephen

Proposed Auckland Unitary Plan: Notice of Decision of the New Zealand Transport Agency under section 151 of the Local Government (Auckland Transitional Provisions) Act 2010

We refer to the recommendations of Auckland Council dated 19 August 2016 in relation to the designations for:

- 6709 State Highway 20 - Manukau Harbour Crossing to Mangere;
- 6710 State Highway 20 - Vicinity of Manukau Harbour Crossing;
- 6713 State Highway 20A - George Bolt Memorial Drive;
- 6720 State Highway 1 - Newmarket;
- 6721 State Highway 1 - Victoria Park Tunnel;
- 6722 State Highway 16 - Waterview Connection causeway to Patiki Road;
- 6723 State Highway 16 - Waterview Connection Waterview to Western Springs;
- 6724 State Highway 16 - Avondale;
- 6725 State Highway 16 - Avondale;
- 6726 State Highway 20 - Waterview Connection Great North Road;
- 6727 State Highway 1 - Newmarket Viaduct Height Restriction;
- 6730 State Highway 20 - Waterview Connection Mt Roskill;
- 6731 State Highway 20 - Hillsborough to Mt Roskill;
- 6732 State Highway 20 - Hillsborough to Mt Roskill;
- 6733 State Highway 20 - Road Access Mt Roskill;
- 6734 State Highway 1 - Otahuhu Interchange;
- 6735 State Highway 1 - Victoria Park Tunnel;
- 6738 State Highway 16 - Te Atatu;
- 6741 State Highway 16 and 18 - Westgate to Whenuapai and Hobsonville;
- 6742 State Highway 16 - Henderson to Massey;
- 6756 State Highway 18 - Upper Harbour Highway;
- 6757 State Highway 1 - North Shore Busway;
- 6758 State Highway 1 - Constellation Drive Station;
- 6761 State Highway 1 - Silverdale to Puhoi; and
- 6769 State Highway 1 - Puhoi to Warkworth.

Council's recommendation

Auckland Council has recommended the New Zealand Transport Agency ("Transport Agency"), as requiring authority, confirm the above designations in the Proposed Auckland Unitary Plan.

Transport Agency's decision

In accordance with section 151(2) of the Local Government (Auckland Transitional Provisions) Act 2010, the Transport Agency **accepts** Auckland Council's recommendations for the above designations, subject to the minor amendments outlined below.

The reason for the amendments is to correct minor typographical errors, update terminology and ensure consistency between the Transport Agency's designations.

6709 State Highway 20 - Manukau Harbour Crossing to Mangere

Replace reference to "Transit New Zealand" with "New Zealand Transport Agency" in the following conditions:

Conditions 23(f), 30(a), 30(b), 30(c), 30(d) and 42.

Replace reference to "Urban Design Implementation Principles (2006)" with "Bridging the Gap: NZTA Urban Design Guidelines (2013)" in condition 42(b).

Replace reference to "Manukau City Council" with "Auckland Council" in condition 49.

Amend condition 58 as follows:

...National Environmental Standards and Air Quality...

6710 State Highway 20 - Vicinity of Manukau Harbour Crossing

Replace reference to "Transit New Zealand" with "New Zealand Transport Agency" in the following conditions:

Conditions 23(f), 30(a), 30(b), 30(c), 30(d) and 42.

Replace reference to "Urban Design Implementation Principles (2006)" with "Bridging the Gap: NZTA Urban Design Guidelines (2013)" in condition 42(b).

Correct formatting as a heading for "Waterfront Road Reserve Restoration" (to precede condition 48).

6713 State Highway 20A - George Bolt Memorial Drive

Replace reference to "Auckland Regional Council" with "Auckland Council" in condition 19 Advice Note (b).

6720 State Highway 1 - Newmarket

Amend text in the table as follows:

Lapse Date: Five years from being operative in the Unitary Plan unless given effect to prior Given effect to (i.e. no lapse date)

Replace reference to "Transit New Zealand" with "New Zealand Transport Agency" in the following conditions:

Conditions 4.2(t), 7.1, 8.1, 8.3, 9.2 and 9.8.

Replace reference to "Urban Design Implementation Principles (2006)" with "Bridging the Gap: NZTA Urban Design Guidelines (2013)" in the following conditions:

Conditions 7.1(c) and 8.1(b).

6721 State Highway 1 – Victoria Park Tunnel

Replace reference to "Transit New Zealand" with "New Zealand Transport Agency" in the following conditions:

Conditions 4.2, 4.8, 10.1, 12.1 and 12.7.

Replace reference to "Urban Design Implementation Principles (2006)" with "Bridging the Gap: NZTA Urban Design Guidelines (2013)" in condition 12.1(3).

Replace reference to "Auckland City Council Urban Design Panel" with "Auckland Urban Design Panel" in condition 12.3(1).

Replace reference to "Auckland City Council" with "Auckland Council" in condition 12.6(1).

6722 State Highway 16 – Waterview Connection causeway to Patiki Road

Correct formatting of "Vibration Conditions – Operation" as a heading to precede condition OV.1.

Replace reference to "NZHPT" with "Heritage New Zealand" in condition OS.3.

6723 State Highway 16 – Waterview Connection Waterview to Western Springs

Replace reference to "NZHPT" and "New Zealand Historic Places Trust" with "Heritage New Zealand" in the following conditions:

Conditions 90 ARCH.1; ARCH.3; ARCH.8 Advice Note and 104 Advice Note (h).

6724 State Highway 16 – Avondale

Delete condition 18.

6725 State Highway 16 – Avondale

Correct formatting of "Mitigation of Effects" as a heading to precede condition 6.

Replace reference to "Attachment 1" with "Figure 1" in Attachments.

6726 State Highway 20 – Waterview Connection Great North Road

Correct formatting of "Vibration Conditions – Operation" as a heading to precede condition OV.1.

Replace reference to "NZHPT" with "Heritage New Zealand" in the following conditions:

Conditions OS.3 and ARCH.1.

6727 State Highway 1 – Newmarket Viaduct Height Restriction

Amend "Purpose" as follows:

...Designation 6720 (formerly A07-01B)...

6730 State Highway 20 - Waterview Connection Mt Roskill

Replace reference to "NZHPT" with "Heritage New Zealand" for condition OS.3.

6731 State Highway 20 - Hillsborough to Mt Roskill

Amend "Purpose" as follows:

...(Map Ref 6731 (formerly H08-05));

...(Map Ref 6732 (formerly H08-06)); and

...(Map Ref 6733 (formerly H08-07)).

Amend condition 1.7 as follows:

...for removal of the existing designation 6729 (formerly F05-05) 'proposed motorway; proposed motorway and railway; proposed road, Hayr Road to Richardson Road.

Amend condition 1.8 as follows:

...for removal of the existing designation 6718 (formerly A07-01) 'motorway' in the vicinity of Hendry Road where designation 6718 ~~A07-01~~ is replaced by the new designation.

Replace reference to "Transit New Zealand" with "New Zealand Transport Agency" in the following conditions:

Conditions 1.9B(h), 5.1(a) and 5.2.

Replace reference to "District Plan" with "Auckland Unitary Plan" in the following conditions:

Conditions 7.2 and 10.1.

6732 State Highway 20 - Hillsborough to Mt Roskill

Amend 'Purpose' as follows:

...(Map Ref 6731 (formerly H08-05));

...(Map Ref 6732 (formerly H08-06)); and

...(Map Ref 6733 (formerly H08-07)).

Replace reference to "Transit New Zealand" with "New Zealand Transport Agency (NZTA)" in the following conditions:

Conditions 2.9, 5.1(a), 5.2 and 5.7.

Delete "Historic Places Act" in Advice Note 2.

6733 State Highway 20 - Road Access Mt Roskill

Replace reference to "Transit New Zealand" with "New Zealand Transport Agency (NZTA)" in the following conditions:

Conditions 5.1(a), 5.2 and 5.7.

6734 State Highway 1 - Otahuhu Interchange

Correct numbering error as follows:

5.72 The Requiring Authority shall implement...

Replace reference to "Transit New Zealand" and "Transit" with "New Zealand Transport Agency" and "NZTA" in condition 6.1.

6735 State Highway 1 - Victoria Park Tunnel

Replace reference to "Transit New Zealand" with "New Zealand Transport Agency" in the following conditions:

Conditions 4.2, 4.8, 8.2(8), 8.3, 12.1 and 12.7.

Replace reference to "Auckland City Council (Group Manager City Planning)" with "Auckland Council Chief Planning Officer" in condition 4.8.

Replace reference to "Auckland City District Plan: Isthmus Section 1999" and "Auckland City District Plan: Central Area Section 2004" with "Unitary Plan" in condition 8.2(5).

Amend condition 10.1 as follows:

...The transplanting shall be accompanied by a maintenance programme approved in advance by the Auckland ~~Council~~ ~~City Arborist~~ Local and sports parks.

Replace reference to "Urban Design Implementation Principles (2006)" with "Bridging the Gap: NZTA Urban Design Guidelines (2013)" in condition 12.1(3).

Replace reference to "Auckland City Council Urban Design Panel" with "Auckland Urban Design Panel" in condition 12.3(1).

6738 State Highway 16 - Te Atatu

Correct formatting of 'Vibration Conditions – Operation' as a heading to precede condition OV.1.

Replace reference to "NZHPT" with "Heritage New Zealand" in condition OS.3.

6741 State Highway 16 and 18 - Westgate to Whenuapai and Hobsonville

Replace reference to "New Zealand Historic Places Trust" with "Heritage New Zealand" in condition 4(ii).

Replace reference to "Transit New Zealand" with "New Zealand Transport Agency" in the following conditions:

Condition 5(ii), 9(a), 9(b) and Advice Note 4.

Replace reference to "Waitakere City Council" with "Auckland Council" in Advice Note 5.

6742 State Highway 16 - Henderson to Massey

Replace reference to "NZHPT" with "Heritage New Zealand" in condition 19(iv).

6756 State Highway 18 - Upper Harbour Highway

Replace reference to "Transit's Draft Guidelines for the Management of Traffic Noise for State Highway Improvements, November 1994" with "New Zealand Transport Agency's Guidelines for the Management of Traffic Noise for State Highway Improvements, December 1999" in condition 4(i).

Delete "S6801 : 1991 Measurement of Sound" in condition 4(iii).

6757 State Highway 1 - North Shore Busway

Replace reference to "NSCC" with "Auckland Council" in condition 3.3.

Replace reference to "Transit New Zealand" with "New Zealand Transport Agency" in the following conditions:

Conditions 7.1, 7.7, 17.2 and 18.2.

6758 State Highway 1 - Constellation Drive Station

Replace reference to "Transit New Zealand" with "New Zealand Transport Agency" in the following conditions:

Conditions 7.1, 7.7 and 17.2.

6761 State Highway 1 - Silverdale to Puhoi

Replace reference to "Transit Guidelines for the Management of Traffic Noise for State Highway Improvements, November 1994" with "New Zealand Transport Agency's Guidelines for the Management of Traffic Noise for State Highway Improvements, December 1999" in condition 2.1.

6769 State Highway 1 - Puhoi to Warkworth

Add designation 6769 to the Designation Schedule - New Zealand Transport Agency as follows:

<i>Name</i>	<i>Purpose</i>	<i>Location</i>
...
6769	State Highway 1	State Highway 1, Puhoi to Warkworth

Designation conditions

The Transport Agency has included a marked up and a clean version of all of the Transport Agency's designation conditions in **Appendices A and B** respectively.

For any enquiries about this letter please do not hesitate to contact Mike Wood, Principal Planner on 09 928 8756 (or email mike.wood@nzta.govt.nz)

Yours faithfully

A handwritten signature in black ink, appearing to read "Brett Gliddon", with a short horizontal line extending to the right.

Brett Gliddon
Highways Manager - Auckland and Northland
New Zealand Transport Agency

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 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 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/m².
 - 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

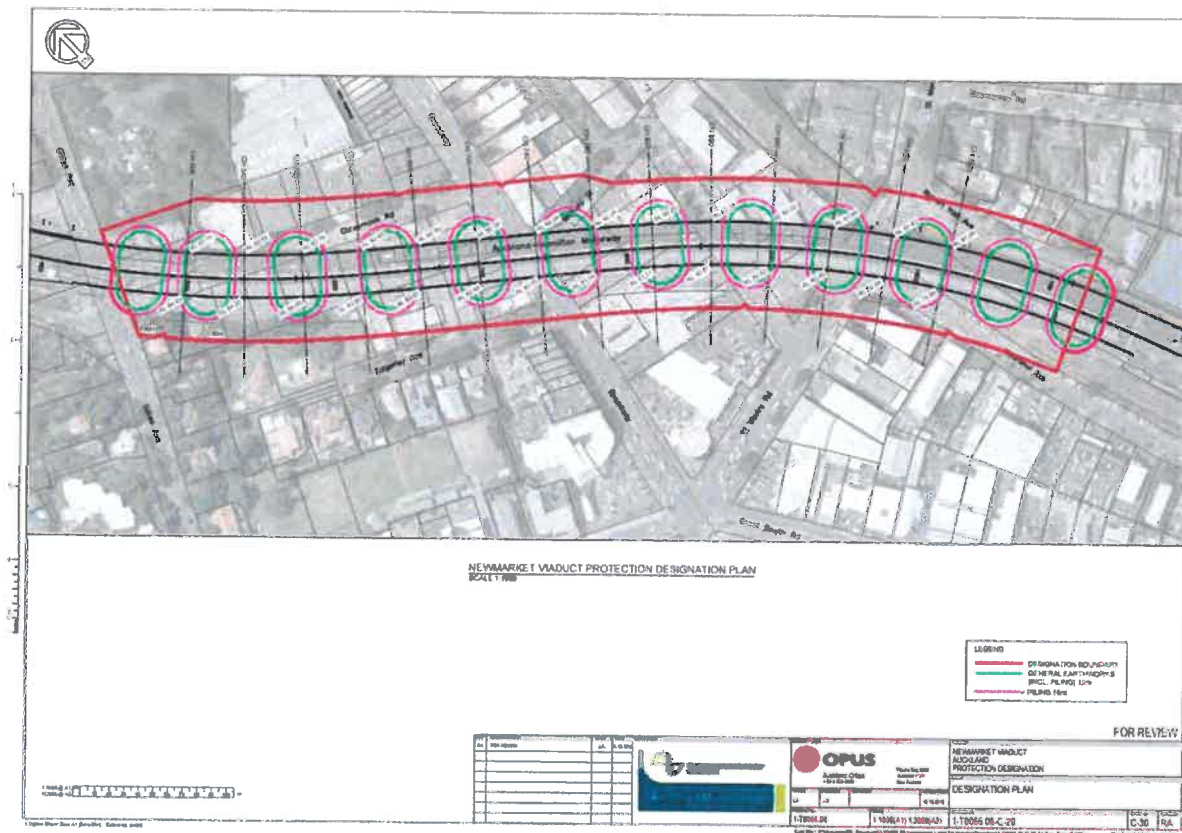
- condition C1 in Section 2.6 - Designation Conditions in State highway construction and maintenance noise and vibration guide, (NZTA, August 2013 or any subsequent update), and include the procedures, methods and measures for the control of vibration associated with all relevant construction works; 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



ANNEXURE (e) – PERSONS TO BE SERVED

Tram Lease Limited, Viaduct Harbour Holdings
Limited and Viaduct Harbour Management Limited
c/- Trevor Daya-Winterbottom
PO Box 75-945
Auckland 2243
daya.winterbottom@xtra.co.nz

Westfield (New Zealand) Limited (now Scentre (New
Zealand) Limited)
c/- Russell McVeagh
PO Box 8
DX/CX 10085
Auckland1140
daniel.minhinnick@russellmcveagh.com

Saint Marks Women's Health Limited
C/- Barker & Associates Ltd
PO Box 1986
Shortland Street
Auckland 1140
gerard@barker.co.nz

New Zealand Transport Agency
Private Bag 106602
Auckland1143
Mike.wood@nzta.govt.nz
Brett.gliddon@nzta.govt.nz
Patrick.mulligan@buddlefindlay.com