BEFORE A BOARD OF INQUIRY
EAST WEST LINK PROJECT

UNDER the Resource Management Act 1991 (the "RMA")

AND

IN THE MATTER OF notices of requirement for designation and resource consent applications by the New Zealand Transport Agency for the East West Link Project

MEMORANDUM OF COUNSEL ON BEHALF OF THE NEW ZEALAND TRANSPORT AGENCY

7 April 2017

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BUDDLE FINDLAY
NEW ZEALAND LAWYERS
Barristers and Solicitors
Auckland

Solicitor Acting: Patrick Mulligan/Vanessa Evitt
Email: patrick.mulligan@buddlefindlay.com/ vanessa.evitt@buddlefindlay.com
Tel 64 9 358 2555  Fax 64 9 358 2055  PO Box 1433 DX CP24024 Auckland 1140
MAY IT PLEASE THE BOARD:

1. This memorandum has been prepared by counsel for the New Zealand Transport Agency (the "Transport Agency") to address the Board of Inquiry's (the "Board") Minute and Direction 1 dated 14 March 2017 ("Direction 1"), further to the Memorandum of Counsel dated 22 March 2017 (the "Memorandum").

2. In Direction 1, the Board directed the Transport Agency to:
   
   (a) Inform the Board (via the EPA), by 7 April 2017, of progress on discussions with iwi groups and a timeline for resolving any outstanding issues; and
   
   (b) Provide the Board with an estimate of time for the hearing that may be required for addressing unresolved concerns from iwi groups.

3. In the Memorandum, the Transport Agency:
   
   (a) Provided an update of progress of discussions with iwi groups, and attached a Cultural Values Report ("CVR") for the East West Link ("EWL") dated February 2017; and
   
   (b) Indicated that, following the receipt of submissions and the hui scheduled for 4 April 2017, a more fulsome update on the progress of discussions with iwi groups, a timeline for resolving any issues, and an estimate of hearing time would be able to be provided to the Board on or before 7 April 2017.

Update

4. Since the Memorandum was filed submissions have been received, including from iwi groups. Unfortunately the hui scheduled for 4 April 2017 was cancelled due to logistical reasons and so the Transport Agency was not able to use that event to gather further information about iwi intentions regarding the hearing.

5. In terms of the submissions, 10 submissions have been received addressing the potential impact of the EWL on Mana Whenua values. These are from various Mana Whenua representatives (including marae, societies, rununga and iwi).
6. The submissions received from Mana Whenua align with representation on the EWL's Project Mana Whenua group. There are no submissions from Mana Whenua organisations that have not previously been involved in the engagement process for the EWL Project.

7. Of the 10 submissions 2 indicate opposition, 1 partial opposition, 2 indicate neutrality and 5 support the EWL. Within these responses a number of issues are raised:

   (a) **Engagement process**: A number of submissions acknowledge the process of engagement and partnership with the Transport Agency, and the Transport Agency's response to issues raised by Mana Whenua.¹

   (b) **CVR**: A number of submissions acknowledge and support the CVR or the intent of the CVR.²

   (c) **Significant sites**: Some submitters have raised concerns regarding the cultural significance of some sites and areas, particularly Te Hōpua a Rangi, Mutukaroa and the urupa at Tip Top Corner.³

   (d) **Governance of reclaimed land**: A number of submissions from Mana Whenua raise issues in respect to the ongoing governance / co-management of reclaimed land, particularly in acknowledgement of outstanding claims on the Manukau Harbour (e.g. the Wai 8 Claim and others).⁴ These issues anticipate the separate statutory processes which will consider the issue of control over reclaimed land and are distinct from the RMA process the Board is concerned with.

   (e) **Dredging**: Several submitters have raised concerns regarding the use of dredging materials for construction of the containment bund.⁵ The Transport Agency plan to address this matter through the kaitiaki hui before the hearing.

¹ In particular, submissions from Ngati Tamaoho Trust (126362), Te Rūnanga o Ngāti Whātua (126384), Ngati Tai Ki Tamaki (126383), Te Akitai Waiohua Wkaa Taua Society (126332).
² Submissions of Ngati Paoa (126522) and Kawerau a Maki (126364) Ngati Tamaoho Trust (126362), Te Rūnanga o Ngāti Whātua (126384), Ngati Tai Ki Tamaki (126383) and Te Akatiai Waiohua Wkaa Taua Society (126332).
³ Including submissions from Ngati Maru Runanga (126358), Ngati Te Ata (126320).
⁴ Including submissions from Ngati Maru Runanga (126358), Ngati Tai Ki Tamaki (126383) and Te Akitai Waiohua Wkaa Taua Society (126332).
⁵ Including submissions from Te Rūnanga o Ngāti Whātua (126384), Ngati Paoa (126522) and Te Kawerau a Maki (126364).
(f) **Opposition to the EWL and reclamation:** One submission from Ngati Whatua Orakei is made in full opposition to the EWL Project.\(^6\) While the submission provides the submitters view on the EWL (Part 3 of the submission) it does not provide specific comment on particular issues or concerns. The submission however opposes all reclamation as a matter of principle.

8. We note that the submission made by Ngāti Te Ata\(^7\) opposes the EWL by reference to another submission made by a Mr McCaffery.\(^8\) While unclear from the detail in the submission by Mr McCaffery, it appears his concerns relate to the extent of works and impacts proposed at Gloucester Park / Port of Onehunga and possibly suggests amended coastal works or even increased reclamation to link the project to Taumanu Reserve. This does not appear consistent with previous indications from iwi and so is somewhat uncertain. Further clarification will be sought from this submitter in the next scheduled hui.

9. In summary the issues iwi have raised were not unexpected. The Transport Agency will continue discussing these issues with the relevant Iwi groups. It believes progress can be made in resolving at least some of these outstanding matters. It is hopeful that this will lead to the majority of iwi groups working together to convey their position in the hearing. The Transport Agency thinks if this occurs iwi issues can be comfortably accommodated within the Board’s timetable.

**DATED** this 7th day of April 2017

\[\text{\underline{Patrick Mulligan}}\]
Counsel for the New Zealand Transport Agency

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\(^6\) Submission 126251.
\(^7\) Submission 126320.
\(^8\) Submission 126218.