BOARD OF INQUIRY

EAST WEST LINK PROPOSAL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER OF of a Board of Inquiry appointed under s149J of the Resource Management Act 1991, to consider notices of requirement and applications for resource consent made by the New Zealand Transport Agency in relation to the East West Link roading proposal in Auckland

MEMORANDUM ON TRANSPower DISPENSATION FOR TOWER 31 ON BEHALF OF THE ONEHUNGA ENHANCEMENT SOCIETY (TOES) AND OTHERS ("THE SUBMITTERS")
22 June 2017

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MAY IT PLEASE THE BOARD:

1. The submitters’ position is succinctly summarized at para 59 of Mr. Jackson’s evidence where he says (referring to the NZTA’s need for a dispensation): “Before we all waste our time in this hearing, shouldn’t this be sorted out now between NZTA and Transpower. If a dispensation cannot be granted and Tower 31 cannot be relocated, then isn’t the proposed EWL alignment at the Neilson Street interchange a dead duck?”

2. NZTA must either obtain a dispensation from Transpower under clause 2.4.1 of NZECP 34: 2001 (“the NZECP”) to locate the EWL within 5.30m and 6.55m from that Tower, or relocate the Tower. In addition, the Transpower lines hanging from Tower 31 must be 8.0m or more above the EWL in accordance with clause 4.2.1 and Table 4 of the NZECP. The latter is a mandatory requirement and no dispensation can be given for it.

3. NZTA has neither applied for, nor obtained, a dispensation from the requirements of the NZECP, and has not sought in either its NORs, nor its resource consent applications, the necessary RMA approvals that would be needed to relocate the Tower. Nor has NZTA confirmed that the vertical distances between the lines and the EWL will be more than 8.0m.

4. Although Counsel for Transpower said a dispensation might be given, he also confirmed that this was not certain. As its witness Mr Noble says, Transpower only infrequently grants dispensations in relation to structures. Transpower’s dispensation record shows that Transpower has not granted a dispensation for any roads in proximity to either towers or transmission lines during the period the record covers. Moreover, for each dispensation, Transpower requires indemnification against all obligations (including strict liability) to any party as a result of the location of a structure within the minimum safe distances.

5. NZTA’s evidence does not establish that its statutory role extends to giving such an indemnity, especially when Tower 31 is so critical to carrying electricity to north Auckland and Northland. If NZTA has obtained such dispensations and given such an indemnity in the past (for other Towers), it could and should have said so in its evidence and produced a copy as an example for the Board.

6. If NZTA can’t get a dispensation on terms acceptable to it, then it will have to apply for a further NOR and resource consents to move it. NZTA has provided no evidence as to whether it can be moved, and if so to where, and what the effects of moving it to wherever would be.
7. Occupying the time of the Board, and the parties, in an 8-10 week hearing in circumstances where it remains uncertain whether Transpower will grant a dispensation on terms that NZTA can actually accept (or that there is an 8.0m clearance between the EWL and the lines), or whether further consent applications and another hearing will be required, is not, an efficient use of the time and resources of either the Board or the many other parties, or a cost-effective process.

8. The requirements in s147L (4) (b) and 149R (2) as to timeliness and timeframes are not absolute. S147 (4) (b) also requires a cost-effective process. The Minister may under s 149S extend the time frames if special circumstances apply. The imperative of a cost-effective process is such a circumstance. Speed should not trump the need for a cost-effective process.

9. The applications before the Board are not ready for hearing. They should be adjourned until NZTA has either obtained a dispensation from Transpower, or the necessary applications have been made under the RMA to reconstruct the Tower in a location which complies with the NZECP.

Dated: 22 June 2017

Grant Hewison and John Burns
Co-Counsel for The Onehunga Enhancement Society Incorporated; The Re-Think East West Link Society Incorporated; The Manukau Harbour Restoration Society Inc; Jackson Electrical Industries Ltd; and The Local Lockup Ltd/Scott Palmer