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 (the Project)

MEMORANDUM OF COUNSEL ON BEHALF OF THE NEW ZEALAND TRANSPORT AGENCY IN RESPONSE TO BOARD MINUTE AND DIRECTION 5

12 May 2017
MAY IT PLEASE THE BOARD:

1. This memorandum has been prepared in response to the Board of Inquiry (Board) Board Minute and Direction 5 dated 26 April 2017. In its minute, the Board directed the New Zealand Transport Agency (Transport Agency) to update the Board on the following matters raised in the Auckland Council’s (Council) Key Issues Report:

   (a) The mapping error identified within Designation 6734;

   (b) Confirmation that the inconsistencies within the geospatial dataset have been resolved; and

   (c) If there are implication of this with regard to the process.

The mapping error identified within Designation 6734

2. Designation 6734 is an existing Transport Agency designation for the maintenance, operation, use and improvement to the state highway network in Ōtāhuhu. This designation formed part of the upgrades to the Princes Street Interchange associated with the Waiouru Peninsula to SH1 Connection Project. This designation had a lapse date of 1 November 2015 in the Auckland City District Plan – Isthmus Section. The project was completed some time ago but the designation boundary extended to two properties at Frank Grey Place, Otahuhu, that were ultimately not required to complete the works at the Princes Street Interchange.

3. The Transport Agency identified that the two sections of designation 6734 had not been given effect to prior to the lapse date of 1 November 2015, and wrote to Council in June 2016 acknowledging that the sections of designation had lapsed and requesting that Council uplift the designation over these two sections. However, due to an administrative error, this did not occur and the designation was rolled over into the Auckland Unitary Plan (Operative in Part) (AUP(OP)) with the two lapsed sections still included. In addition, when designation 6734 was rolled over the lapse date condition was removed because the Transport Agency was under the impression the two lapsed sections had been removed and the designation had otherwise been given effect to. A further letter was sent to Council on 20 January 2017 when the Transport Agency became aware that these sections were still shown in the AUP(OP). Copies of the relevant correspondence are attached at Annexure A including a plan which shows the areas of land under discussion.

5. We understand from discussions with Council that they take the view that parts of the existing designation cannot now be removed under section 184 of RMA on the basis it has previously lapsed, because the newly confirmed designation 6734 in the Auckland Unitary Plan now has no lapse date. Council have confirmed that their preference is for the Transport Agency to write to it seeking removal of that part of the designation under section 182 of the RMA.

6. The Transport Agency has some reservations seeking removal of the designation from these areas of land when they are contemporaneously also the subject of the Notices of Requirement for the Project, given section 182 applies when the 'requiring authority no longer wants a designation or part of a designation'.

7. The Transport Agency considers that Council should remove the lapsed areas of Designation 6734 without reference to affected parties. If Council will not the Transport Agency would propose that these areas are left in the AUP(OP) and then removed from Designation 6734 using section 182 of the RMA following the determination of the current applications.

Inconsistencies with the geospatial database

8. At paragraph 129 of the Council's Key Issues Report, Council notes that the Transport Agency and Council utilise different geospatial datasets and that indicative coastline mapping inconsistencies from overlaying the datasets were being resolved. The use of the different data sets means that the proposed designation boundary does not align with the Indicative Coastline on the AUP(OP) in some locations. Transport Agency and Council representatives met on 1 May 2017 to identify and resolve these differences.

9. The two datasets are different because the Indicative Coastline is an approximation of the MHWS\(^1\), and as a jurisdictional boundary the exact location of the line of MHWS needs to be determined on a case-by-case basis.\(^2\)

10. The parties have agreed that where a MHWS survey has been undertaken, that determines the coastal boundary rather than the Indicative Coastline, with limited exceptions where provisions of the RMA and case law dictate a deemed boundary.

11. During the review of the proposed designation boundary, an error with the designation boundary at the Galway Street Intersection has been identified. A small

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\(^1\) The note accompanying the Indicative Coastline notation states that: “The coastline has been identified as an approximation of the Mean High Water Springs (MHWS) location. Where a more accurate identification of MHWS is needed, a current survey undertaken by a registered surveyor must be done”.

\(^2\) F1.1 Determining mean high water springs, in F1 Introduction to the regional coastal plan, AUP (OP)
finger of CMA has been included within the proposed designation. The Transport Agency will submit an amended designation plan which excludes this area of CMA from the proposed designation boundary, and an amended property schedule reflecting the same.

12. The Transport Agency can confirm that the inconsistencies within the geospatial dataset have been resolved on the above basis.

Implications for the process

13. The Transport Agency considers that there will be no implications on the overall processes from the mapping error identified in Designation 6734 (relating to the two identified areas). This is because the Transport Agency is not relying on these areas as part of the existing designation for SH1 and is separately designating these areas as part of the Project.

14. Council and Transport Agency representatives have agreed that the approach for defining the coastal boundary of the designation will be based on the Transport Agency's survey and on the RMA and case law. The final boundary of the CMA along the reclamation will be subject to legal survey post reclamation when the plan of survey is approved under section 245 of the RMA. This process will provide a clear boundary of the CMA for the purpose of identifying the district boundary. Given this future process the minor differences in boundaries will not affect the overall assessment of effects for the Project.

DATED 12 May 2017

[Signature]

Patrick Mulligan
Counsel for the New Zealand Transport Agency
ANNEXURE A

(Overleaf)
20 January 2017

To: Auckland Council
   Attn: Rebecca Greaves, Principal Planner
   Rebecca.Greaves@aucklandcouncil.govt.nz

Dear Rebecca

**NZTA Designation 6734 – State Highway 1, Otahuhu Interchange**

Further to our discussions, the New Zealand Transport Agency (the Agency) wishes to advise that parts of NZTA Designation 6734 (State Highway 1 – Otahuhu Interchange) have lapsed. A letter outlining the reasons for this partial lapse and the areas to be uplifted was previously sent to Auckland Council on the 16th June 2016 (see Attachment 1).

We understand that this letter has not been actioned and as a result the changes requested by the Agency will not be shown in the Auckland Unitary Plan (Operative in Part). In accordance with s184 of the RMA (1991), the Agency requests that the Council reflects this partial lapping of Designation 6734 by amending the designation boundary in the Plan in accordance with Attachment 1.

As you will be aware, the Agency has now lodged the Notice of Requirement for the East West link project; this includes an alteration to the designation 6718 for the Otahuhu Interchange. For your information I have also attached the proposed designation alteration to highlight those areas where s176 of the RMA (1991) will apply. Some of the land requirements under the proposed designation alteration will overlap with land affected by the partial lapping of Designation 6734, however, we believe it is still appropriate for the partial lapping to be addressed.

If you have any questions regarding the content of this letter please do not hesitate to contact me on 09 9288756 or mike.wood@nzta.govt.nz

Yours faithfully

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**Mike Wood**

Principal Planning Advisor
New Zealand Transport Agency

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**Attachment 1 – Letter sent to Council on 16/6/2016 Re: partial lapse of NZTA designation 6734**
16/06/2016

Auckland Council
Private Bag 92300
Victoria Street West
Auckland 1142

Attention: Policy Team Leader - Central South

Dear Sir/Madam,

NZTA Designation 114-38/6734 - Otahuhu Interchange

I refer you to the New Zealand Transport Agency’s (the Transport Agency) designation for the State Highway 1 Otahuhu Interchange (the Interchange), numbered 114-38 in the operative Auckland City District Plan - Isthmus section (the Operative Plan) and included in the Proposed Auckland Unitary Plan (the PAUP) as designation 6734 (the Designation). It has come to the Transport Agency’s attention that parts of the Designation have lapsed and as a matter of process, this change will need to be formalised by the Auckland Council in both the Operative Plan and the PAUP.

The Interchange was upgraded to its current form as a part of the Waipu Peninsula to State Highway 1 Connection project. This project has been completed for some time, with the majority of the designated land being utilised for the construction and operation of the Interchange. However, two sections of the Designation (identified in the attached map) in the vicinity of the Princes Street /Frank Grey Place intersection were not utilised as part of the project, and functionally do not support the operation of the Interchange. Most of the land forming these two sections of the Designation is currently being utilised for residential housing.

Under Conditions 1.2 and 1.3 of the Operative Plan version of the Designation, this Designation was provided a lapse date of 1 November 2015 unless it was “given effect to” prior to this date under Section 184 of the RMA (1991). For the reasons provided above, the Transport Agency considers that the two identified sections of the Designation have not been given effect to, and as a result have lapsed. The Transport Agency respectfully requests that the Auckland Council reflects this partial lapsing of the Designation by amending the Designation boundary in the Operative Plan and the PAUP in accordance with the attached map.

The Transport Agency is currently investigating improvements to the Otahuhu Interchange as a part of the East West Connections project. To facilitate these future works, the Transport Agency may need to redesignate property in the lapsed areas, however the extent of the designation footprint cannot be confirmed at this time.
If you have any questions regarding the content of this letter please do not hesitate to contact me on 09 9288818 or patrick.buckley@nzta.govt.nz.

Kind regards

Patrick Buckley
Planning Advisor