

**BEFORE AN EXPERT CONSENTING PANEL**

**UNDER** the COVID-19 Recovery (Fast-track Consenting) Act 2020  
**IN THE MATTER** of an application by Silk Road Management Limited,  
Pudong Housing Development Company Limited and  
Foodstuffs North Island Limited in relation to the Dominion  
Road Mixed-use Development

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**MEMORANDUM OF COUNSEL REGARDING APPLICANT'S COMMENTS  
ON REVISED DRAFT CONDITIONS OF CONSENT**

**21 September 2021**

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## MEMORANDUM OF COUNSEL ON BEHALF OF THE APPLICANT

May it please the Panel:

### *Introduction*

1. The purpose of this memorandum is to provide the Applicant's comments on the revised draft land-use conditions of consent circulated on behalf of the Panel by the EPA on 16 September 2021 ("**Revised Conditions**"). We note, the Applicant has no comments in relation to the associated revised draft subdivision conditions.

### *Comments on draft conditions*

2. The Applicant's planning consultants have prepared a document summarising the Applicant's comments in relation to the Revised Conditions, which is included as **Attachment 1** to this memorandum.
3. By way of summary the Revised Conditions provided by the Panel on 16 September 2021 are agreed by the Applicant subject to the following comments and suggested changes:

#### ***Condition 1***

- (a) Comment [BC2] asks the Applicant to confirm the gridline references in Attachment 1 in light of further advice from Ian Munro. The Applicant understands that this comment relates to the gridlines referred to in condition 1(a)(iii) and advises that no changes are required to the text of the condition.

#### ***Condition 21(g)***

- (b) Comment [BC34] seeks the Applicant's response to the Auckland Transport request to allow trucks to access the site during the construction phase only between 9.30am – 2.30 pm and 6-7 pm. The Applicant opposes that request and supports the current wording of condition 21(g):
  - (i) Construction of the Proposal will generate a very small proportion of the traffic on the neighbouring road network, particularly during peak traffic times. Any heavy vehicles will be manoeuvring onto and off the site via that portion of

the quieter local side roads immediately to the east off Dominion Road and should not generate any substantive delays for or disruption to commuter and school run traffic. In that context, there is no need to restrict trucks beyond the hours of 8:00am to 9:00am and 4:30pm to 6:00pm weekdays.

- (ii) The construction methodology is set out in the materials accompanying the application. Included as a key part of that methodology is the off-site construction of residential modules that when transferred to site are placed on-site for a brief preloading period before being incorporated into the structure. During the installation phase there will on average be 8-12 modules installed per day and temporary laydown capacity on site prior to the installation is limited. The intention is that modules would be brought progressively to the site during times permitted, and then worked on and installed throughout the working day. The process will involve relatively few heavy vehicle movements but the AT proposal to preclude early delivery times from 7.30am to 8.00am will compromise the efficiency of the work on site. Precluding truck movements from 2.30pm to 4.30pm will also compromise the ability to deliver additional modules in the afternoon.
- (iii) In practice, the AT proposal could unnecessarily constrain work hours on site by 2½ hours per weekday and, as a consequence, would extend the duration of the construction phase not only during the installation of the modules but also during other phases of construction as described in the Application without any benefit to the neighbours. The existing wording of condition 21(g) strikes an appropriate balance between the daily hours of operation and the duration of the total construction phase.

**Condition 37**

- (c) Comment [BC57] asks the Applicant to respond to the Council's request for specific details or a cross reference to an existing flood report. The Applicant suggests that a cross reference is included

to the report prepared by Ewaters New Zealand Limited in support of the application, being the Flood Assessment Report dated 5 March 2021, Issue 01.

**Condition 77**

- (d) Comment [BC72] asks whether a statement should be added regarding the vibration monitoring. The following wording is suggested: “*Vibration measurements must be taken by a suitably qualified and experienced vibration specialist in accordance with the Auckland Unitary Plan Operative in Part Standard E25.6.30.*”

**Condition 93**

- (e) It is anticipated that the supermarket construction may be completed prior to the residential units. However, two aspects of conditions 94-110 are unable to be satisfied until such time as the residential apartments have been developed. These are:
- (i) Compliance with noise limits for external residential plant, as no such plant will have been established; and
  - (ii) Full implementation of landscaping set out in approved landscape design, as significant aspects of these relate to courtyard and podium landscaping associated with the residential development.
- (f) Accordingly, to allow for the supermarket to begin trading ahead of the completion of the residential units the applicant requests that this condition is split into residential and commercial portions.
- (g) A new condition 105A below has also been included below to clarify the critical landscaping aspects that should be implemented prior to commencement of commercial/retail aspects of the development, being the treatment and landscaping of the eastern interface.

**New Condition 105A**

- (h) As a consequential amendment to give effect to the Applicant’s intent in relation to Condition 93 described above, the Applicant suggests a new Condition 105A to capture what aspects of the

proposed landscaping along the Site's eastern boundary should be implemented prior to commencement of operation of the supermarket or retail activities.

***New Water Supply condition*** (immediately prior to Condition 102)

- (i) The Applicant asks that this condition be amended to recognise that the development contains a mix of activities that are subject to varied firefighting requirements. The following wording is suggested: "*Any additional water supply required demand for fire-fighting beyond the applicable FW2 (fire flow water) classifications able to be provided through the public network must be provided on site.*"

***Comment [BC88]***

- (j) The Applicant is asked to confirm whether carpark numbers will reduce with the potential reduction in carpark numbers. No such reduction is proposed.

***Condition 114(b)***

- (k) The Applicant suggests a correction to this condition to read: "*arrive from ~~to~~ or depart to ~~from~~ the east*".

***Conclusion***

4. The Applicant respectfully requests that the Panel grant consent to the Application, subject to the Revised Conditions but amended as described above and set out in **Attachment 1**.

**DATED** this 21st day of September 2021



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**Douglas Allan / Daniel Sadlier**

Counsel for Silk Road Management Limited,  
Pudong Housing Development Company  
Incorporated and Foodstuffs North Island Limited

**ATTACHMENT 1**

**APPLICANT'S COMMENTS ON REVISED CONDITIONS OF CONSENT**

Land Use Conditions	Comment
1	<p>Comment BC2:</p> <p>It is presumed that this comment relates to 1.a.iii and not 1.a.i. Applicant confirms new additions are acceptable and no changes sought.</p>
24	<p>Retain the number 24 to ensure that the condition numbering does not change.</p> <p><b>24.</b> The consent holder shall implement the recommended Audit in the detailed design. On completion of the Flood Assessment Report, the applicant shall provide a copy to Auckland Council and Auckland Council and Auckland Transport on the recommended</p>
37	<p>The consent holder shall ensure that the development does not result in an increase in peak flows from the site resulting from a 1% AEP event <i>as per the Flood Assessment Report prepared by Ewaters New Zealand, dated 5 March 2021, Issue 01.</i></p> <p>Comment BC57 requests the Applicant's response to Council request for specifics or cross reference. Cross reference now included to Flood Assessment Report included with application.</p>
77	<p>Attended noise and vibration monitoring shall be undertaken during the first occurrence of rock breaking and during the first occurrence of any other activities that are predicted to reach the noise or vibration limits. Noise measurements must be taken by a suitably qualified and experienced acoustic specialist using calibrated sound level meters in general accordance with NZS 6801:2008 "Acoustics – Measurement of environmental sound. <i>Vibration measurements must be taken by a suitably qualified and experienced vibration specialist in accordance with the Auckland Unitary Plan Operative in Part Standard E25.6.30.</i></p> <p>Comment BC72: Applicant suggests additional wording for condition.</p>

93	<p>The consent holder shall satisfy Conditions 94 – 110:</p> <p><b>(a)</b> prior to <del>operation or trading of any commercial or retail activity on the site or</del> occupation of any residential unit <b>on the site; and</b></p> <p><b>(b)</b> <b>with the exception of conditions 104(b) and 105, prior to operating or trading of any commercial or retail activity on the site.</b></p>	<p>Comment BC75:</p> <p>It is anticipated that the supermarket construction may be completed prior to the residential units. However, two aspects of conditions 94-110 are unable to be satisfied until such time as the residential apartments have been developed. These are:</p> <ul style="list-style-type: none"> <li>(a) Compliance with noise limits for external residential plant, as no such plant will have been established; and</li> <li>(b) Full implementation of landscaping set out in approved landscape design, as significant aspects of these relate to courtyard and podium landscaping associated with the residential development.</li> </ul> <p>Accordingly, to allow for the supermarket to begin trading ahead of the completion of the residential units the applicant requests that this condition is split into residential and commercial portions.</p> <p>A new condition 105A has also been included below to clarify the critical landscaping aspects that should be implemented prior to commencement of commercial/retail aspects of the development, being the treatment and landscaping of the eastern interface.</p>
NEW	<p>Any additional <del>demand</del> <b>water supply required</b> for fire-fighting beyond the <b>applicable FW2 (fire flow water)</b> classifications able to be provided through the public network must be provided on site.</p>	<p>Comment BC83:</p> <p>Applicant requests that reference to FW2 is removed as FW2 classification generally relates to residential and other aspects of the development will have different classifications.</p>
105A	<p><b>Eastern boundary interface</b></p> <p><b>The eastern boundary treatments and planting (as described in the Boffa Miskell letter dated 3 June 2021 and attached Appendices A and B) set out in the approved landscape design shall be</b></p>	<p>The Applicant seeks this new condition, in light of its comments/request for amendment of condition 93 described above, and to clarify the scope of planting / landscape treatment that is required to manage the eastern interface with neighbours at Prospect Terrace and Grange Road, and that it acknowledges should be</p>

	<i>fully implemented and a maintenance plan shall be in place.</i>	implemented prior to commencement of supermarket and retail activities on the Site.
NEW after 112	Comment BC88: There is no change to the proposed parking numbers. The Applicant accepts this new condition.	
114	No heavy vehicles (8 – 12.6m) associated with supermarket deliveries must not: ... b. arrive <del>to</del> <i>from</i> or depart <del>from</del> <i>to</i> the east; ...	Comment BC92: Applicant suggests minor rewording to ensure condition is logical.
NEW after 115	All forklifts must be fitted with and use broadband reversing alarms (or similar <i>quite quiet</i> alternative).	Comment BC95: Applicant is accepting of this new condition with typo corrected.
124	Every 24 months, for the first six years from the date of occupancy of the first building, a report outlining the effectiveness of the proposed measures to achieve the objectives of the STMP required by Condition 123 shall be submitted by the consent holder (in consultation with building occupiers) to the Auckland Council.	Minor change again requested as more than one objective exists under Condition 123.