

21 September 2021

Dominion Road Expert Consenting Panel

By email: dominionroad.fasttrack@epa.govt.nz.

Dear Panel,

Dominion Road Mixed-use Development

1. I refer to the Dominion Road Mixed-use Development application for consent lodged by the applicants on 4 May 2021 and the revised draft land use conditions circulated by the Panel on 16 September 2021.

Condition 1(b) and 94

2. The proposed condition 1(b) is inappropriate and consent should be declined for the following reasons:
 - (1) The Panel's mitigation proposal in condition 1(b) would require a separate and new consent and the Panel is required to give or decline consent to the proposal before it - the mitigation proposal submitted by the applicants, Scenario D – Refined.
 - (2) Scenario D – Refined does not appropriately mitigate the actual or potential adverse effects of the proposed development on the environment. As the traffic experts' Joint Witness Statement (JWS) confirms, the consensus of the expert caucusing was that the applicants' proposal does not adequately address pedestrian or cycle safety and effectiveness concerns and is accordingly, unsafe and cannot be supported in the current form. Therefore, the applicants' Scenario D - Refined proposal cannot be implemented and the application for consent should be declined.
 - (3) The actual or potential effects of the Panel's mitigation proposal in condition 1(b) on the safe, efficient and effective operation of the transport network, as well as on the people in the neighbourhood and the wider community, have not been evaluated/modelled and reported on by the applicants. As we have seen from the ITA and the applicants' second mitigation proposal, the traffic effects arising from implementing a mitigation package on the existing road network are complex and dynamic so that they cannot reliably be assessed via traffic engineering judgement – noting there was no agreement in the JWS regarding the appropriate mitigation package. However, there has not been any additional assessment/advice from the applicants to provide a technical substantiation for the Panels' proposed mitigation package or its decision to retain the signalised pedestrian crossing at King Edward St, rather than signalising Grange Road. Therefore, the Panel has inadequate information to determine the application.
 - (4) The proposed condition 1(b) breaches important principles of natural justice and procedural fairness because the applicants have not evaluated and reported on the mitigation proposal in condition 1(b) and I have not had the opportunity to challenge the appropriateness of the Panel's mitigation proposal, whereas the applicants have evaluated and reported on the both of their mitigation proposals: Scenario B; and Scenario D – Refined and I have had the opportunity to challenge them.

- (5) Sensitivity modelling results (weekend) requested by the Panel as part of its information request in Minute 13 are not available on the EPA website, indicating the information has not been received by the Panel, despite the applicants' having prepared the information:

"8. The Panel requests the applicants to provide:

(f) The information requested in paragraphs 14 – 16 of the comments received from Auckland Transport, if available;"

- (6) As recorded in the JWS, Stantec:

"Considers the sensitivity modelling results (weekend) presented today to show significant additional queueing at Prospect Tce and that this would have notable effect on the overall operation of the site driveway and existing users of Prospect Tce."

- (7) This information is important to determining the full effects of changes to the Dominion Road corridor and connecting side roads. Therefore, the Panel has inadequate information to determine the application.

- (8) The lack of availability of information the subject of an information request undermines the regulatory process and breaches important principles of natural justice and procedural fairness because I have not had the opportunity to assess that information and use it to challenge the appropriateness of the Panel's mitigation proposal.

- (9) Condition 1(b) does not mitigate or include any obligation on the applicants to mitigate the actual or potential effects of the Panel's proposed mitigation package on:

- (a) delays and queueing on the side roads;
- (b) the operation of the proposed development's driveways;
- (c) pedestrians, cyclists and other road users' safety arising from excessive queueing and delays on the side road, disruption to the site driveways and spill over effects on Dominion Road;
- (d) neighbourhood amenity;
- (e) the wider community;
- (f) bus and general traffic journey times along Dominion Road,

(the "**Adverse Effects on the Neighbourhood and Wider Community**").

3. If, notwithstanding paragraph 2 above, the Panel considers that the proposed condition 1(b) would be appropriate and lawful, please detail the process the Panel has followed to determine that:

- (a) the Panel has adequate information to determine the consent application;
- (b) the Panel's proposed mitigation package in condition 1(b) will mitigate the **Adverse Effects on the Neighbourhood and Wider Community**; or
- (c) the **Adverse Effects on the Neighbourhood and Wider Community** are acceptable.

Northern Bus Lane – Weekend Peak

4. The mitigation package in proposed condition 1(b) does not include any obligation to implement a Northern Bus Lane in the weekend, to mitigate the unacceptable adverse effect of the proposed development on bus journey times along Dominion Road.
5. Nor does condition 1(b) require traffic modelling to be completed prior to implementing of a Saturday Peak bus lane. In this regard, I note Harrison Grierson's comments that:

"At this stage, traffic modelling for a Saturday Peak Bus Lane has not been completed. ... Nonetheless, I recommend traffic modelling be completed prior to implementing of a Saturday Peak bus lane." [Emphasis added]

6. In the absence of any condition requiring implementation of a Northern Bus Lane in the weekend peak or any condition requiring traffic modelling to be completed prior to implementing of a weekend peak bus lane, please detail the process the Panel has followed to determine that:
 - (a) the Panel has adequate information to determine the consent application;
 - (b) the Panel's proposed mitigation package in condition 1(b) will mitigate the unacceptable adverse effect of the proposed development on bus journey times along Dominion Road; or
 - (c) the adverse effect of the proposed development on bus journey times along Dominion Road is acceptable.

Conditions 22 to 24

7. Conditions 22 to 24 inappropriately and unlawfully delegate the Expert Consenting Panel's decision-making authority to third parties.
8. The Panel must determine whether the applicants' mitigation proposal appropriately mitigates the actual and potential adverse effects of the proposed development on road safety and cannot delegate the substantive decision making to another person via a condition of consent.
9. The effect of conditions 22 to 24 is to delegate, via a condition of consent, the substantive decision as to whether the actual and potential adverse effects of the proposed development on road safety (including the decision regarding mitigation measures to address serious or significant traffic safety related concerns) are acceptable to:
 - (a) the road safety audit team - condition 22 and 23; and/or
 - (b) Auckland Transport - condition 24(a); and/or
 - (c) the applicants - condition 24(b).

This is inappropriate and unlawful.

Yours faithfully,

Brent Murdoch