

Eden We Love Comments on Dominion Road Mixed-use Development Conditions

13 September 2021

The Draft Conditions provided by the Panel were circulated to the Society members and feedback sought, to be collated into the following comments.

Overall, and with the exception of the conditions relating to operational traffic, the conditions are comprehensive and well set out.

There are a few areas where the conditions could be improved.

We would like to suggest the following amendments:

1. General Conditions

- 1.1 To Condition 18 add –
j) The process for changing, any certifying and changes to the CMT.

The reason for the change is to provide consistency with the requirements for the CNVMP.

- 1.2 Add a new condition after Condition 21;
All construction activity shall only take place between the hours of 7:30 a.m. and 6:00 p.m. Monday to Saturday.

The reason for this change is that we note that there is nothing in the conditions that specifically limit the hours of construction activity. Concern has been expressed that the construction of the apartments will require the pre-fabricated pods, manufactured in Vietnam, to be delivered overnight as that is when there will be the least disruption to Dominion Road traffic for oversize vehicles. This has not been addressed in the submissions and knowledge of the pre-fabricated nature of the units was only provided to the Panel in the further information request 1. This has implications to both the noise limits on construction and the CTMP arrangements. The local residents would like certainty as to when construction activity is to be undertaken so an additional, specific condition is required.

- 1.3 To Condition 21 add -
m) The process for changing, any certifying and changes to the CMPT.

The reason for the change is to provide consistency with the requirements for the CNVMP.

- 1.4 To Condition 56 replace the existing wording with -
The Consent Holder shall avoid dust and fumes arising from construction activity being discharged beyond the site's boundaries.

and follow with appropriate provisions that require the Consent Holder to prepare a Construction Dust Management Plan (CDMP) which sets out the measures that are

required to ensure this provision can be met, including mitigation measure such as house washing should a discharge occur.

The reason for this change is that the current dust suppression condition is weak and does not give the adjacent neighbours confidence that they will not be subject to dust and fumes from the construction activity.

2 Traffic Conditions

2.1 Regarding Condition 1 b. Dominion Road intersections; Our understanding is that the 'conclusion' from expert conferencing was that either the mid-block pedestrian crossing or the Grange Road intersection will need to be signalised but these have not formed part of any of the analysis/reporting provided by the applicant to date. The issues related to this are similar to those discussed with respect to Condition 94. See below.

2.2 Regarding Condition 12 d.; This condition calls for Engineering Plan Approval but needs to reference the resolution of the plans and changes to traffic controls and markings (and hence incorporate the LGA/AT By-law matters triggering public consultation) including the required changes to the bus lanes and their operating times.

This condition should also specifically refer to the bus lane changes being in place prior to lodging the building consent application.

2.3 Regarding Conditions 22 – 24; These require the Preliminary Road Safety Audit to be completed by an independent audit and requires any identified changes to be implemented by the applicant. Some changes identified may be beyond the applicant's control. There needs to be provisions included within the conditions to ensure that these changes are implemented even if they are not the responsibility of the applicant i.e., if the changes cannot be delivered by the applicant, the application should not proceed.

These conditions are supported by an "Advice Note" that we recommend should be brought into a condition so that it is clear that consents and approvals are required before any construction commences, and can be the subject of enforcement if required.

The reason for this change is concern that the applicant will proceed with works that will become a fait accompli without the mitigation measures in place particularly where these mitigation measures are the responsibility of third-party enterprises as there is no guarantee or certainty that the third party will implement those measures that have been assessed as being necessary to address the adverse effects of the activity. Furthermore, while they are included in the Advice Note it would be relevant to have this captured within a condition so that they can be enforced.

The Draft Consent Condition 23 currently states "The Preliminary Design Road Safety Audit shall be completed in accordance with the New Zealand Transport Agency Procedure Manual...."

It is very important to Eden We Love that this audit is carried out referenced to well defined objectives, to agreed and specified road and traffic engineering standards with which to correlate all pertinent aspects of the preliminary design. It is also critical that the audit encompasses recognised auditing concepts and practises e.g., as presented in the contemporary, highly respected Standard ISO 19011:2018 "Guidelines for Auditing Management Systems"

The Consent Condition 23 reference to the "New Zealand Transport Agency Procedure Manual" is a somewhat oblique, general statement. There doesn't appear to be such a manual. However, in May 2013 NZTA published a document titled "Road Safety Audit Procedures of Projects - Guidelines, Interim Release May 2013" and this looks to be the information the Consent Condition is probably referring to. At the very least needs to be stated in Consent Condition 23.

Eden We Love would like the Panel to ensure agreement is attained (across the conferencing transport experts) as to precise definition of the auditing methodology, objectives, reference-benchmark traffic-safety standards, auditor qualifications etc, consistent with contemporary auditing standards (e.g. ISO 19011) and encompassing the NZTA's audit guidelines in its latest hybrid.

- 2.4 Regarding Condition 25; This condition makes reference to providing plans to Auckland Transport for Engineering Plan Approval. We think this condition needs to be strengthened to ensure that only once Engineering Plan Approval is granted can construction proceed (in a similar manner to Condition 36 which says that the consent holder "must" obtain Engineering Plan Approval.
- 2.5 Regarding Condition 94; This states that "*Signalisation of the Prospect Terrace/Burnley Ave/Dominion Road intersection, and the associated works to the Prospect Terrace/Burnley Terrace/Dominion Road and Grange 29 Road/Dominion Road intersections, shall be implemented, as described in, and illustrated on the plans attached as Attachment 5 to, the evidence of Todd Langwell, dated 13 August 2021.*"

As noted in 2.1 above, the proposed Condition 94 does not reflect the final traffic and transportation proposal. The 'conclusion' from expert conferencing was that, in addition to the Prospect Terrace intersection being signalised, either the Grange Road intersection or the mid-block (King Edward) pedestrian crossing will need to be signalised.

Eden We Love submits that it is not appropriate to deal with the applicants' traffic and transportation proposal by way of a condition because the proposal to be implemented has not been evaluated and reported on and therefore its effects are unknown. In particular, the effects of (a) signalisation of both the Prospect Terrace and Grange Road intersections (b) signalisation of Prospect Terrace and retention of the mid-block (King Edward) crossing have not been evaluated and reported on. A condition that is subject to future evaluation and reporting of its effects would be uncertain and invalid. The Panel must decide whether the actual and potential adverse effects on the environment of the applicants' proposal are more than minor. Where the effects of the proposal have not been evaluated and reported on the

Panel is unable to assess this and any condition requiring the proposal's implementation would be inappropriate and invalid.

We would like to see reference to the proposed bus lanes and proposed removal of on-street carparks as pre-conditions too as these will have significant negative effects on local business owners.

In addition, there needs to be a Site Traffic Management Plan (monitoring of traffic volumes and speed along Grange Road and Prospect Terrace as a minimum) as recommended by Gary Black (for EPA) as a pre-condition along with a first round of surveys/monitoring and feedback/communication with Community Liaison Group.

However, Eden We Love submits that it would be inappropriate to make it a condition of granting consent that the applicants implement a proposal (Scenario D - Refined):

- that is predicted by the applicants' evidence to cause traffic gridlock on Prospect Terrace in the weekend peak and render the site unable to function;
- that is predicted to significantly delay the buses travelling along Dominion Road with the applicants unable to mitigate these adverse effects;
- the effects of which on buses, general traffic and the side roads are unknown in the weekday PM peak because the results in Todd Langwell's evidence are implausible;
- the overall effects of which are unknown either because the modelling cannot be relied upon or the effects have not been assessed;
- that requires rat-running to make it workable, to the extent it is workable;
- with excessive parking provision, that will promote private vehicle usage and higher trip generation;
- that raises numerous safety concerns for pedestrians, cyclists and other road users.

In regard to bullet point 3 above, we note that the applicants also consider the results in Langwell's evidence, which show improvements in journey times on Dominion Road and reduction in queuing on the side roads compared to the base case (existing + consented) in the weekday PM peak, to be implausible. In the Memorandum of Counsel dated 3 September 2021, the applicants stated in paragraph 14:

"(a) (iii) In reality there will always be a need for "red lights" on Dominion Road to accommodate safe pedestrian crossings." It is not realistic to expect achievement of a similar travel time along Dominion Road to the modelled base case."

The onus is on the applicants to establish that implementing Scenario D – Refined will appropriately mitigate the adverse effects on the safe, efficient and effective operation of the transport network arising from the proposed development. It is clear from the above that the applicants have failed to do so. Todd Langwell's evidence does not establish it because:

- the evidence shows more than minor adverse effects;
- some of the evidence is implausible and/or unreliable; and

- evidence necessary to establish mitigation of adverse effects has not been provided.

Therefore, the proposed condition 94, requiring the applicant to implement Scenario D - Refined cannot be an appropriate and lawful condition.

The applicants' proposal must be based on the transport network as it exists. The applicants propose that the adverse effects of Scenario D – Refined on bus journey times on Dominion Road be mitigated by a third party. They propose that Auckland Transport implement a Northern bus lane in the weekend peak, to mitigate the delays. However, the legal requirement is that the applicants' proposal must be based on the transport network as it exists at the time consent for the development is sought, as stated by Fisher J in *Westfield (New Zealand) Limited v Hamilton City Council* [2004] NZRMA 556: “I agree with the Environment Court that a developer has to tailor his or her development to the environment as it exists at the time consent for the development is sought” [64].

Therefore, the adverse effects on bus journey times are unmitigated by the applicants and the proposed condition 94, requiring the applicant to implement Scenario D – Refined, would not be an appropriate and lawful condition.

The traffic conditions not only rely on third party approval to proceed but also on third party to implement and this is not something that is covered by the case law on the legal principle of delegation of judicial power that was cited in the Memorandum from the applicant's legal counsel in response to Minute 8 and 9.

The removal of parking on Prospect Terrace and Grange Road requires consultation and is, therefore, uncertain, i.e., dependent on third parties. The only way that the applicant can operate with certainty is that the conditions of consent specifies that the development cannot proceed until such time as the proposed bus lanes and proposed street parking removal consultation are completed.

Furthermore, that the applicants' proposal involves obstructing of the road and obstructing vehicle entrances and exits. Todd Langwell's evidence confirms that the proposal requires obstructing public roads, including large scale obstructing of entry and exit from driveways on the side roads proximate to the development.

It is also likely that the predicted queues from the development will obstruct Dominion Road, including obstructing buses travelling along Dominion Road, as cars are forced to queue on Dominion Road while they wait to enter the site.

Obstructing entry and exit from driveways is an offence under section 40 of the Land Transport Act 1998. The Land Transport (Road User) Rule 2004 states: -

“6.9 Obstructing vehicle entrances and exits

- (1) A driver or person in charge of a vehicle must not stop, stand, or park the vehicle so as to obstruct entry to or exit from any driveway...”*

Under the Land Transport Act – Section 40 Contravention of ordinary rules

- (1) A person commits an offence if the person contravenes a provision of an ordinary rule and the contravention of that provision is for the time being prescribed as an offence by regulations made under section 167.
- (2) If a person is convicted of an offence referred to in subsection (1), the person is liable to the applicable penalty set out in the regulations.

It is also a tortious nuisance under common law to obstruct the road and/or vehicle entrances and exits.

It would clearly be inappropriate for the Panel to approve a proposal that is predicted by the applicants themselves to involve large scale offending.

Table 1: Obstructing public roads and entry and exit from driveways on the side roads

Obstructing of entry/exit from driveways		Scenario D - Optimised	Scenario D - Refined
Prospect Terrace			
Average Queue (metres)	Thurs PM Peak	35	27
	Saturday MD Peak	75	75
Maximum Queue (metres)	Thurs PM Peak	115	63
	Saturday MD Peak	217	192
Grange Road			
Average Queue (metres)	Thurs PM Peak	58	33
	Saturday MD Peak	38	33
Maximum Queue (metres)	Thurs PM Peak	120	80
	Saturday MD Peak	91	82

The evaluation and reporting of the proposal, including the sensitivity modelling (Scenario D - Optimised), shows long queues back past both the entry and exit point and the site that will obstruct the side roads, driveways and likely Dominion Road.

The figures in red in Table 1 above are all queue lengths that would extend past driveways, including residential driveways, proximate to the development on the side roads, resulting in large scale obstructing of entry and exit from driveways.

The applicants predict that the proposal will cause gridlock on the side roads. The proposed Level 00 access on Prospect Terrace is 50 metres from the Dominion Road intersection. As set out in Table 1 above (the information is extracted from Tables 5 & 6 of Langwell's evidence), the average queues are predicted to extend well past the Level 00 access and the maximum queues well past the site. In the ITA, in relation to Scenario D, TPC confirmed that queues extending back to and past the site would render it unable to function:

"The model shows large increases in delays and queue lengths on both Prospect Terrace and Grange Road, extending back to, past and within the site, to the point where the site would effectively be unable to function." (ITA page 37, Section 6.2.4)

Scenario D being unworkable due to excessive queuing was the reason the applicants proposed Scenario B but it failed on safety grounds. The above conclusion in the ITA indicates that the applicants were cognisant of the fact that

they cannot obstruct entry and exit from driveways on the side roads or obstruct Dominion Road, including buses travelling along Dominion Road.

It would be inappropriate to consent to a proposal that is predicted by the applicants' evidence to obstruct the road and vehicle entrances and exits on the side roads and potentially obstruct Dominion Road, including buses travelling along Dominion Road. A condition requiring the implementation of such a proposal would be invalid, obviously. Therefore, the proposed condition 94, requiring the applicant to implement Scenario D - Refined is not an appropriate and lawful condition

If, notwithstanding the above, the Panel were to grant consent, it should be on the basis that the development does not open until the bus lane and on-street parking changes have been implemented.

In addition, there needs to be a Site Traffic Management Plan (monitoring of traffic volumes and speed along Grange Road and Prospect Terrace as a minimum) as recommended by Gary Black (for EPA) as a pre-condition along with a first round of surveys/monitoring and feedback/communication with Construction Liaison Group.

- 2.6 To Condition 95 add –
and to the satisfaction of the road controlling authority (Auckland Transport)

The reason for this change is to give more certainty that Auckland Transport are satisfied.

- 2.7 Regarding Condition 96; If it is decided that Grange Road should also be signalised then this condition will need to be extended to include Grange Road.

- 2.8 Regarding Condition 113; This condition suggest that the idea of a pedestrian refuge between the service ramp and the residential access ramp has been discarded. The plans provide that showed the pedestrian refuge had the service ramp and the access in to residents' carpark sharing the entry. Eden We Love seek clarity on this situation.

- 2.9 To Condition 114 add –
Vehicles making supermarket deliveries shall not park or idle on Prospect Terrace, Grange Road, Burnley Terrace, King Edward Street or Paice Avenue at any time.

The reason for this change is for consistency with Condition 21 (g) c. It has been noted that when our local Countdown had issues with its truck loading and unloading arrangements or when trucks turned up earlier than permitted arrival times, trucks used to noisily park, often double park or block residential driveways, in Valley Road. We don't want this sort of trucking frustration to happen to us.

- 2.10 Add a new condition after Condition 115;
115 A There are to be no more than 15 supermarket deliveries per day.

The reason for this change is that Foodstuffs have said on a number of occasions, e.g. Todd Langwell's 23/6/21, page 12, response to comments on his traffic analysis work, that there will be no more than 12 to 15 supermarket deliveries

per day. If this is the case then Foodstuffs should be held to this and there is currently nothing in the consent Conditions that reflects the maximum of 15 deliveries per day.

- 2.11 Add another new condition after Condition 115;
115 B Supermarket associated supply/collection vehicles shall not traverse Prospect Terrace, Grange Road, Burnley Terrace, King Edward Street or Paice Avenue.

The reason for this change is that there is concern that supermarket delivery vehicles will join the Prospect Terrace and Grange Road rat-runs to either get to the supermarket or to depart eastwards. Harrison Grierson said on page 37 of their 6 July report to the Panel "...larger vehicles (*might choose to go*) east on Prospect Terrace or Grange Road to Mt Eden Road. Both roads are residential and commercial vehicles using these roads should be avoided". There is nothing in the current conditions that requires this to be avoided so it would be good to get a condition invoked imposing a restriction on supermarket associated vehicle travel in the local residential streets.

- 2.12 Add another new condition after Condition 115;
115 C All forklifts operating in association with supermarket activity should be fitted with broadband reversing alarms.

The reason for this change is that the Hegley Accoustics report, Appendix 20 of Foodstuffs original Application to the Panel, pages 30 & 31 commented that forklifts unloading trucks should have broadband reversing alarms instead of the usual penetrating, bleeping reversing alarms. There is nothing in the current conditions that requires this.

- 2.13 Add a further new condition after Condition 116;
115 D The supermarket operators shall maintain a complaints register that is to be available to the compliance monitoring on request.

The complaints register shall record all complaints and include that the following steps being taken as soon as practicable:

- a. Acknowledge receipt of the concern or complaint within 24 hours*
- b. Time and date the complaint was received and who received it;*
- c. Time and date of the activity subject to the complaint (estimated where not known);*
- d. The name, address and contact details of the complainant (unless they elect not to provide);*
- e. The complainants' description of the activity and its resulting effects; and*
- f. Any relief sought by the complainant (e.g. scheduling of the activity).*
- g. The relevant activity and the nature of the works at the time of the complaint.*
- h. Review the mitigation and management measures in place.*
- i. Record the findings and recommendations*
- j. Report the outcomes of the investigation to the complainant within 10 days of the complaint being received, identifying where the relief sought by the complainant has been adopted or the reason(s) otherwise.*

The reason for a formal complaints process is that it is a means by which the neighbourhood can hold the supermarket operator to account for the adverse effects of their operation. We are aware that Albert Eden Local Board gets a lot of complaints from residents around PAK 'n SAVE New North Road and trucking issues frequently arise. Foodstuffs seem to be ineffective in resolving the majority of the complaints.

- 2.14 Regarding Conditions 123 – 124; It is understood that the Site Traffic Management Plan was discussed at expert conference, and that Gary Black (for EPA) recommended that, as a minimum, monitoring of traffic volumes and speed along Grange Road and Prospect Terrace should be included as pre-condition along with a first round of surveys/monitoring and feedback/communication with CLG prior to construction starting. In effect these two conditions should be taken up to a new condition under “Prior to Occupation” to establish baseline conditions.

Eden We Love agree with these suggestion.

- 2.15 We note that there is no specific condition that relates to the allocation of parking within the development. The provision of 177 car parking spaces on level 0, with a fixed allocation of 110 car parking spaces to the supermarket, would result in 37 surplus car parking spaces in peak demand - see Table 1. below. There is no other demand for these spaces, as resident parking is on level 1 and the applicant has advised that there will be no on-site staff parking.

If the supermarket car parking is capped at 110 parking spaces, then the number of car parking spaces on level 0 should be reduced to 140 to remove the surplus. Alternatively, the surplus carparking could be allocated to staff and capped at this level so that this does not impact on the parking demand in local streets. (See Table 2 below.)

The caps should be a condition of consent.

Table 2:

Peak Parking Demand – Weekday Evening Peak					
	trips	Vehicles	Parking Spaces required	Car parking Spaces Provided	Surplus
Supermarket			110 ¹		
Small retail/commercial	25 ²	13	13		
Commercial Offices	33 ²	17	17		
Total			140	177	37

Notes:

1. Claimed fixed allocation for supermarket customers
2. Langwell’s evidence, Attachment 3: Flow Transportation Memorandum, page 4, Section 4.1 Table 2 - in the Weekday Evening Peak there will be 25 small retail/commercial trips and 33 commercial office trips. This equates to 30 vehicle visits.

The applicants have confirmed that the proposal will have a more than minor adverse effect on resident car parking in the vicinity of the site. The applicants

confirmed in the expert conferencing that there will be no staff parking on-site and staff from the supermarket would be parked off-site. The applicants confirmed there will be approx. 120 supermarket staff, with not all 120 total staff on-site simultaneously. The effect on the side roads of supermarket staff parking off-site has not been assessed or reported on and consequently the effects are unknown. Clearly the effects will be adverse. Because the effects of the proposal on resident car parking in the vicinity of the site have not been evaluated and reported on, any condition requiring the proposal's implementation would be inappropriate and invalid.

3 Other Matters

- 3.1 There is an unnecessary apostrophe after complaints in Condition 21 (l) (x).
- 3.2 The indent formatting on Conditions 22, 23, 24, 26, 27 and 41 (bb) needs to be adjusted.
- 3.3 Further, we note there is an unnecessary hyphen at the start of Condition 75.

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For EdenWeLove Society Inc