

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

**MEMORANDUM OF COUNSEL REGARDING DRAFT CONDITIONS,
OUTCOME OF EXPERT CAUCUSING, AND REQUESTING DIRECTIONS**

13 September 2021

**ELLIS GOULD
LAWYERS
AUCKLAND**

REF: D A Allan / D J Sadlier

**Level 17 Vero Centre
48 Shortland Street, Auckland
Tel: 09 307 2172 / Fax: 09 358 5215
PO Box 1509
DX CP22003
AUCKLAND**

MEMORANDUM OF COUNSEL ON BEHALF OF THE APPLICANT

May it please the Panel:

Introduction

1. The purpose of this memorandum is:
 - (a) As directed by the Panel in Minute 15, to provide the Applicant's comments on the draft conditions of consent circulated by the Panel;
 - (b) Provide observations on behalf of the Applicant on the Joint Witness Statement prepared by the traffic experts pursuant to the Panel's direction in Minute 14; and
 - (c) To seek directions from the Panel regarding the format of and matters to be addressed in the hearing, if one is to be held.

Comments on draft conditions

2. The Applicant's planning consultants have prepared a document summarising the Applicant's comments in relation to the draft conditions, which is included as **Attachment 1** to this memorandum.
3. In particular, the Applicant has suggested additional and amended conditions that it considers will appropriately address many of the areas of disagreement recorded in the Joint Witness Statement of traffic experts.

Observations on Joint Witness Statement

4. The traffic experts for all participants in this process met at short notice on Thursday 9 September 2021, and prepared the joint witness statement that was provided to the Panel as directed in Minute 14 by 5pm on that same day.
5. The Panel's directions were that the joint statement record the issues agreed and not agreed between the experts, with reasons for any disagreement and commentary on the materiality or significance of the issue or disagreement.
6. The Applicant makes the following observations in relation to the Joint Witness Statement, which are intended to assist the panel and should not

be taken as criticisms of the Applicant's or any other party's traffic consultants or other participants in the conferencing process:

- (a) The substantive outcome of the conferencing process is included in Appendix 1 to the Joint Witness Statement, in which areas of agreement or disagreement are set out in tabular form.
- (b) Appendix 1 identifies the collective position of each party's expert(s), as opposed to the position of each individual expert, in relation to the identified topics. In the case of each of Harrison Grierson and Eden We Love that involves only one such expert – Mr Black and Mr McKenzie respectively. However, in the case of the Applicant and Auckland Transport, the "position" stated in Appendix 1 reflects the combined view of the various participants.
- (c) In the case of Auckland Transport in particular, and as expressly referred in Minute 14, participants in the conferencing process were employees of Auckland Transport. Accordingly, while it may be inferred that any internal technical input has been incorporated within the Joint Witness Statement, it does not directly attribute a professional opinion to one or more of those participants in particular.
- (d) The green, amber and red coding in Appendix 1 is useful insofar as it clearly identifies where a party is satisfied, generally satisfied subject to additional mitigation or assessment, or considers that a matter is not addressed. There is, however, no specific advice as to the materiality of the outstanding matters for the expert or group of experts raising those matters.

Hearing – request for guidance

7. The Applicant understands that the Panel has not yet determined whether a hearing of the application will be required.
8. The Applicant understands that any hearing will likely be focussed on traffic effects and the appropriate conditions should consent be granted. The Applicant seeks directions as to:
 - (a) The topics to which the hearing is to be limited;

- (b) Whether parties are required or entitled to present additional material from experts in support of their position as expressed in the Joint Witness Statement;
 - (c) Whether the Panel expects parties to present opening submissions and, on the part of the Applicant, closing submissions;
 - (d) The anticipated hearing process, with reference to the order of presentation and format of parties' case(s) and whether experts will present individually or collectively to the Panel; and/or
 - (e) Whether the Panel will allow cross-examination of the participants in expert caucusing.
9. Counsel is available at short notice for a conference (by Teams or telephone, at the Panel's convenience) to discuss the Panel's expectations for the hearing process, if that would be of assistance to the Panel. Otherwise, the Applicant respectfully requests that the Panel provide guidance as to the anticipated hearing process when it issues any notice of hearing, should it determine that a hearing is indeed required.

DATED this 13th day of September 2021



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 DRAFT CONDITIONS OF CONSENT

Land Use Conditions		Comment
1	<p>The development shall proceed in general accordance with the information and plans submitted with the application formally received by the Environment Protection Agency on 30 April 2021, including all supporting additional information submitted except that:</p> <p>...</p> <p>A19B.400 - Apartment Plan North Terraces Level 00</p> <p>A19B.410 - Apartment Plan North Terraces Level 01</p> <p>A19B.420 - Apartment Plan North Terraces Level 02</p> <p>A19B.430 - Apartment Plan North Terraces Level 03</p> <p>A19B.500 - Apartment Plan South Terraces Level 00</p> <p>A19B.510 - Apartment Plan South Terraces Level 01</p> <p>A19B.520 - Apartment Plan South Terraces Level 02</p> <p>A19B.530 - Apartment Plan South Terraces Level 03</p> <p>A19B.540 - Apartment Plan South Terraces Level 04</p> <p>A20B.001 - External Elevations</p> <p>A20B.002 - External Elevations</p> <p>A30B.001 - Typical Sections</p> <p>A30B.002 - Typical Sections</p> <p>A30B.003 - Typical Sections</p> <p>...</p>	<p>Amending an error in the draft conditions to ensure that the drawing numbers align with the latest set of drawings provided to the Panel on 14 June¹</p>

¹ [https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Dominion-Rd/applicants-FIR-response/Dominion Road RFI No1 Updated Architectural Drawings Appendix 9.pdf](https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Dominion-Rd/applicants-FIR-response/Dominion_Road_RFI_No1_Updated_Architectural_Drawings_Appendix_9.pdf)

4	No later than 3 months prior to the commencement of physical works the consent holder shall establish a Community Liaison Group (CLG) and hold the first meeting in accordance with Condition 7 6.	Reference should be to the CLG objectives listed under Condition 6.
8	At the first meeting of the CLG, the consent holder shall provide a list of three registered members of the New Zealand Institute of Building Surveyors Inc who are suitably qualified to undertake cosmetic and structural damage assessment and reporting. All listed persons shall have provided confirmation of their availability to undertake the work required by Conditions 70 - 75 76.	Reference should also include Condition 76 on remedial measures.
15	<p>The CNVMP shall include specific details relating to avoiding, remedying or mitigating adverse noise and vibration effects on the environment and neighbouring properties from demolition and construction, and management of all works associated with this development as follows</p> <p>...</p> <p>(e) A vibration monitoring program to establish site specific setback distances for the avoidance of building damage per Conditions 65 and 66 77, 79 and 80;</p> <p>...</p> <p>(i) Details of the management and mitigation measures required to comply with Conditions 58 to 79 80;</p> <p>(j) Procedure for undertaking building condition surveys of buildings in accordance with Conditions 70 to 75 76;</p> <p>...</p>	<p>(e) Reference should be to Conditions 77, 79 and 80 on vibration monitoring.</p> <p>(i) Reference should be to Conditions 58-80.</p> <p>(j) Reference should be to Conditions 70-76.</p>
23	The Preliminary Design Road Safety Audit shall be completed in accordance with the New Zealand Transport Agency Procedure Manual and shall address all transportation aspects of the development which shall include, but not be limited to, the following:	<p>Insertions following the traffic expert conferencing discussions to address comments in the Joint Witness Statement.</p> <p>Amendments to condition, and associated advice note, are</p>

	<p>(a) The Dominion Road / Prospect Terrace signalised intersection;</p> <p>(b) The Grange Road / Dominion Road / Grange Road upgraded intersection; and</p> <p>(c) The site vehicular accesses.</p> <p><u>Advice Note:</u></p> <p><i>The safety audit does not preclude the possibility of a signalising the Dominion Road / Grange Road intersection.</i></p>	<p>intended to reflect that a range of mitigation options are available and will be pursued and approved through the usual safety audit process through which Auckland Transport approval must be obtained. This context is set out expressly in Auckland Transport’s original comments on the application.</p>
25	<p>The consent holder shall provide to Auckland Transport for Engineering Plan Approval, the detailed design which implements the recommendations of the Preliminary Road Safety Audit and includes consideration of:</p> <p>(a) Dominion Road / Prospect Terrace signalised intersection showing tracking of 12.6m trucks, signal infrastructure, parking, vehicle crossings, pedestrian crossings (all arms), footpaths and associated works in accordance with Drawing 16316-SU-(1) prepared by Traffic Planning Consultants Ltd;</p> <p>(b) Grange Road / Dominion Road / Grange Road upgraded intersection showing tracking of 12.6m trucks and raised table;</p> <p>(c) Service relocation plans;</p> <p>(d) Extent of reinstatement works;</p> <p>(e) Regulatory and warning signage/markings (including those relevant to the bus lanes);</p> <p>(f) Visibility assessment, taking into account landscaping and signage;</p> <p>(g) Changes to the bus lane; and</p> <p>(h) Vehicle crossings.</p> <p><u>Advice Note:</u></p> <p><i>The safety audit does not preclude the possibility of a signalising the Dominion Road / Grange Road intersection.</i></p>	<p>Insertions following the traffic expert conferencing discussions to address comments in the Joint Witness Statement.</p> <p>Amendments to condition, and associated advice note, are again intended to reflect that a range of mitigation options are available and will be pursued and approved through the usual safety audit process through which Auckland Transport approval must be obtained. This context is set out expressly in Auckland Transport’s original comments on the application. The condition need not specify a particular mitigation option, but Panel may rely on JWS statement that Scenario D (refined) plus retention of mid-block crossing and/or Grange / Dominion signalisation is able to mitigate effects.</p>

29	<p>The consent holder shall submit a report from a suitably qualified and experienced acoustic specialist confirming the building design complies with Condition 30 achieves compliance with Auckland Unitary Plan Operative in Standard E25.6.10, to Auckland Council for certification.</p>	<p>The application does not include any reasons for consent to infringe Standard E25.6.10 therefore it is more appropriate to reference back to this AUP standard.</p> <p>The EPA draft condition 30 requires control over and above that described by the AUP. While the AUP uses the permitted noise from the adjacent sites as the external source, the condition adds the noise from 'other sources' such as Dominion Road.</p>																															
30	Delete this condition in its entirety.																																
41	<p>The consent holder shall at least 10 working days prior to the commencement of physical works provide written advice to the Dominion Road Business Association, the Eden We Love Society Inc and the owners and occupiers of the following properties:</p> <p>...</p> <p>(v) Details of monitoring (as per Conditions 76 to 79 77 to 80) that will be undertaken where concerns about noise or vibration are raised;</p> <p>...</p>	Reference should be to Conditions 77-80 on noise and vibration monitoring.																															
59	<p>Except as provided for in either Condition 58, 60 or 61, construction noise levels at occupied buildings shall comply with the following limits, when measured and assessed in accordance with NZS 6803:1999: Acoustics- Construction Noise.</p> <table border="1" data-bbox="316 1559 925 2031"> <thead> <tr> <th rowspan="2">Time of Week</th> <th rowspan="2">Time Period</th> <th colspan="2">Noise Limit, dB</th> </tr> <tr> <th>L_{Aeq}(30min)</th> <th>L_{Amax}</th> </tr> </thead> <tbody> <tr> <td rowspan="3">Weekdays</td> <td>7:30 am - 6:00 pm</td> <td>70</td> <td>85</td> </tr> <tr> <td>6:00 pm - 8:00 pm</td> <td>65</td> <td>80</td> </tr> <tr> <td>8:00 pm - 10:00 pm</td> <td>40</td> <td>70</td> </tr> <tr> <td rowspan="2">Saturdays</td> <td>7:30 am - 6:00 pm</td> <td>70</td> <td>85</td> </tr> <tr> <td>6:00 pm - 10:00 pm</td> <td>55</td> <td>80</td> </tr> <tr> <td>Sundays and public holidays</td> <td>7:30 am - 6:00 pm</td> <td>55</td> <td>80</td> </tr> <tr> <td colspan="2">At all other times</td> <td>45</td> <td>70</td> </tr> </tbody> </table>	Time of Week	Time Period	Noise Limit, dB		L _{Aeq} (30min)	L _{Amax}	Weekdays	7:30 am - 6:00 pm	70	85	6:00 pm - 8:00 pm	65	80	8:00 pm - 10:00 pm	40	70	Saturdays	7:30 am - 6:00 pm	70	85	6:00 pm - 10:00 pm	55	80	Sundays and public holidays	7:30 am - 6:00 pm	55	80	At all other times		45	70	<p>As 45dB is the permitted limit of both the AUP and the Construction Noise Standard (NZS 6803) for these two periods, the line should be deleted and can rely on last line to cover weekday dB limit from 8pm-7.30am.</p> <p>Illogical to have lower noise limit of 40 dB from 8-10pm and then 45bd from 10pm to 7.30am.</p>
Time of Week	Time Period			Noise Limit, dB																													
		L _{Aeq} (30min)	L _{Amax}																														
Weekdays	7:30 am - 6:00 pm	70	85																														
	6:00 pm - 8:00 pm	65	80																														
	8:00 pm - 10:00 pm	40	70																														
Saturdays	7:30 am - 6:00 pm	70	85																														
	6:00 pm - 10:00 pm	55	80																														
Sundays and public holidays	7:30 am - 6:00 pm	55	80																														
At all other times		45	70																														

93	<p>The consent holder shall satisfy:</p> <p>(a) Conditions 94 – 110 104(a) and 106 - 109 prior to any building commercial or retail activity being occupied operational/trading; and</p> <p>(b) Conditions 104(b), 105 and 110 prior to any residential unit being occupied.</p>	<p>To allow for the event of where the supermarket/car parking is completed prior to the construction of the residential units, the consent holder seeks to decouple the conditions relating to residential plant noise, landscaping and lighting.</p>
104	<p>The consent holder shall submit a report prepared by a suitably qualified and experienced acoustic specialist to Auckland Council for certification. The report shall demonstrate that:</p> <p>(a) noise from external commercial plant and the commercial activities with the development complies with Conditions 120 to 122 operational noise limits; and</p> <p>(b) noise from external residential plant complies with Conditions 120 to 122 operational noise limits.</p>	
94	<p>Signalisation of the Prospect Terrace/Burnley Ave/Dominion Road intersection, and upgrade of the Dominion Road / Grange Road and the associated works to the Prospect Terrace/Burnley Terrace/Dominion Road and Grange 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 drawings 16316-SII-(1), 16316-SII-(2), 16316-SII-(3), 16316-SIJ-(1) and 16316-SIJ-(2), prepared by Traffic Planning Consultants Ltd and dated 12.08.21, or as otherwise approved by Auckland Transport.</p>	<p>Amendments following the traffic expert conferencing discussions to address comments in the Joint Witness Statement.</p> <p>Intended to ensure mitigation is undertaken, but to enable flexibility to pursue other mitigation options if that is considered more appropriate at the detailed design stage.</p> <p>See also amendments to Advice Note 13 below.</p>
96	<p>All new traffic signal hardware for the Prospect Terrace/Burnley Ave/Dominion Road intersection shall be vested in Council. The consent holder shall meet all costs of vesting these assets.</p>	<p>Insertions following the traffic expert conferencing discussions to address comments in the Joint Witness Statement.</p> <p>Provides flexibility in the event alternative/additional signalisation is considered appropriate.</p>

123	<p>Within 2 months of the occupation of the first building, a Site Travel Management Plan (STMP) for the commercial and residential activities shall be provided to Auckland Council for certification. The objectives of the STMP is are to show how the commercial and residential activities will be managed and encouraged to minimise private car travel to and from the site:</p> <p><i>(a) Promote alternative sustainable transport modes to and from the site to help reduce reliance on private vehicle trips;</i></p> <p><i>(b) Communicate public transport option to and from the site;</i></p> <p><i>(c) Provide for and communicate cycle parking options at the site; and</i></p> <p><i>(d) Provide active monitoring of site travel.</i></p> <p>The monitoring assessments that need to be provided as part of the STMP should focus all trips generated by the development including deliveries, pick up/drop off trips, etc. In addition, modal split data should be complied with in order to give effect to the STMP.</p>	To provide for additional objectives to, and greater certainty regarding the required content of, the STMP.
124	<p>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.</p>	
New	<p><i>The consent holder shall undertake tube counts to monitor the speed and volume of vehicles using Grange Road and Prospect Terrace:</i></p> <p><i>(a) Prior to the supermarket trading; and</i></p> <p><i>(b) Following the commencement of supermarket trading, once per month for six months.</i></p> <p><i>A report must be prepared and submitted to Auckland Council by a suitably qualified traffic engineer to analyse the results and identify if</i></p>	<p>New condition following the traffic expert conferencing discussions to address comments in the Joint Witness Statement.</p> <p>Condition addresses request by Auckland Transport, Gary Black and Don McKenzie in relation to traffic monitoring pre and post development.</p>

	<i>there are any new safety concerns as a result of the development. Any associated mitigation measures and associated costs shall be the responsibility of the consent holder.</i>	
Land Use Advice Note		Comment
13	<p>Prior to the construction of any road signage, road markings, or traffic control devices <i>including any changes to bus operating times</i> within the legal road the consent holder is required to submit a Resolution report for approval by Auckland Transport Traffic Control Committee to legalise the proposed traffic control devices (e.g. traffic signs, road marking and traffic calming devices)</p> <p>...</p>	Amended advice note clarifies that resolution report process, including the required permanent Traffic and Parking Changes report required of the applicant, will address operation of the bus lane.
Subdivision Conditions		Comment
20	Survey Plan Approval (s223) Condition	This should be moved to above Condition 11 to be in a logical order and to be consistent with the other stages
21	Section 224(c) Compliance Condition	This should be moved to above Condition 11 but below s223 Condition to be in a logical order and to be consistent with the other stages