

**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 TO PROVIDE FURTHER INFORMATION  
TO EXPERT CONSENTING PANEL IN RESPONSE TO MINUTE 8**

**13 August 2021**

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## MEMORANDUM OF COUNSEL ON BEHALF OF THE APPLICANT

**May it please the Panel:**

### ***Introduction***

1. At the applicant's request, the processing of this application is currently suspended pursuant to clauses 6(1)(b)(ii) and 23 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 ("FTA"). The suspension was sought by the applicant and granted by the Expert Consenting Panel ("Panel") to enable additional modelling work to be undertaken to demonstrate whether signalisation of the Dominion Road intersection with either Prospect Terrace or Grange Road might provide an acceptable solution and address concerns raised in the Harrison Grierson Report dated 6 July 2021, commissioned by the Panel.
2. The Panel also requested further information from the applicant:
  - (a) Confirmation of:
    - (i) Whether the site should include Lot 1 given the boundary adjustment with Lot 1 and the location of the proposed laneway and other aspects of the proposed development on (both the current and reconfigured) Lot 1; and
    - (ii) Whether the owner of Lot 1 has consented to the proposed development;
  - (b) Vehicle tracking identified as required by Harrison Grierson;
  - (c) Commentary on the alternative access arrangements shown in Figure 7 of the Harrison Grierson report; and
  - (d) Response to the concerns raised by Harrison Grierson regarding the lack of visibility splays at the vehicle crossings.
3. As noted by the Panel in Minute 8, the applicant has confirmed that a project can still be implemented that will achieve the purpose of the FTA, if the Panel is minded to accept the recommendations set out in the Munro Report and Marshall Day Report. However, in terms of Mr Munro's recommendations in particular, the applicant provides brief further commentary at the conclusion of this memorandum in relation to the

potential unintended consequences of accepting in full those recommendations.

***Additional modelling work and sensitivity testing undertaken***

4. The Harrison Grierson report does not support the applicant's "Scenario B" method of mitigating traffic effects, as it considers that Scenario B would give rise to inappropriate traffic and pedestrian safety effects. Instead, it proposes that more work be done to explore whether "Scenario D" mitigation (signalisation of the Prospect Terrace/Dominion Road intersection) could be supported as resolving these perceived traffic and pedestrian safety effects, while still having acceptable effects in terms of queueing on Prospect Terrace and travel times along Dominion Road.
5. In response, the applicant sought the suspension of processing of the application in order to undertake the necessary additional work. To ensure a robust, comprehensive, and efficient review and revision of the Traffic Planning Consultants ("**TPC**") modelling work, the applicant:
  - (a) Arranged for Flow Transportation Specialists ("**Flow**") to be brought on board as a subcontractor working directly with TPC (Mr Langwell) to complete technical modelling work;
  - (b) In light of comments from Harrison Grierson and Auckland Transport regarding modelling assumptions, retained Beca to work alongside Mr Langwell to test assumptions in the modelling work undertaken, and ensure that the model reflected as closely as possible the likely effects of the application; and
  - (c) Undertook further validation of proposed adjustments to assumptions in the model. Foodstuffs has analysed market transaction information through its marketing and customer insights team, and commissioned independent research from Imagine Research. This work has validated the amended mode split, pass-by, linked and diverted trip rates that now inform the refined Paramics model discussed in Mr Langwell's supplementary statement and supporting memoranda from Flow and Beca. In short, the proposed supermarket, in the context of a mixed use development on Dominion Road, will have an unusually high proportion of customers:

- (i) Accessing the site using alternative transport modes; and/or
  - (ii) Who would already be travelling on Dominion Road or close to the site independently of their decision to visit the proposed supermarket.
- 6. The result of this additional work is a refined Paramics model and Scenario D mitigation package, which incorporates:
  - (a) Optimisation of traffic signals along Dominion Road;
  - (b) Refined representation of site accesses, and more realistic representation of how customers will choose to exit the site, i.e. – by choosing to exit to Grange Road in the event that there is queueing on Prospect Terrace, or where a southbound left-turn on to Dominion Road is intended;
  - (c) Amended intersection designs at both Grange Road and Prospect Terrace; and
  - (d) Refined, more realistic, model inputs (described in 5(c) above).
- 7. The process followed and results thereof are described in the statement of supplementary evidence prepared by Mr Langwell, which appends technical memoranda prepared by Flow and Beca.
- 8. By way of summary of the results, an “optimised” and then “refined” Scenario D mitigation package will:
  - (a) Address the traffic and pedestrian safety concerns raised by Harrison Grierson and Auckland Transport;
  - (b) Result in improved journey times for buses northbound during the PM peak compared to the base case, which is a better outcome than Scenario B described in Mr Langwell’s primary statement of evidence;
  - (c) Create acceptable delays in terms of southbound bus journey times, when considered in the context of an intensifying city, where inevitably Auckland Council / Auckland Transport are likely, quite independently of this application, to be required to optimise the

capacity and use of existing facilities, such as the Dominion Road bus lane;

- (d) Generate delays and queues on side roads no different to those that motorists would experience at most intersections during the peak commuter periods;
  - (e) Result in a significant improvement in the unreleased vehicles recorded over Scenario B and the “base case” – the profile indicating fewer unreleased vehicles and for a shorter duration; and
  - (f) Overall, enable a development which will not adversely add to congestion along Dominion Road or result in other roads having increased vehicle activity.
9. In relation to traffic modelling, a criticism made in the Harrison Grierson report (with reference to Auckland Transport’s comments on the application) relates to a perceived “*lack of optioneering*”, and in particular that the applicant has not fully explored whether signalisation of Grange Road could appropriately mitigate traffic effects. As Mr Langwell describes in his supplementary statement, this mitigation option was included in the work detailed above, including with the same or similar refinements/adjustments that the applicant’s consultant team has applied to the Prospect Terrace signalisation option.
10. While the Grange Road signalisation option performs somewhat less effectively than signalisation of the Prospect Terrace intersection, it could still operate acceptably. Given that the work undertaken by the applicant confirms that there is at least one appropriate mitigation option available, if the Panel were minded to, it could condition any consent it grants to the application to require further collaboration between the applicant and Auckland Transport to determine which of the options (signalisation of Grange, Prospect or less likely both intersections) should be preferred and implemented.
11. Finally, counsel refers the Expert Consenting Panel to our previous memorandum of counsel, the Mr Langwell’s primary statement of evidence and commentary in his supplementary statement in relation to the inevitability of increasing congestion over time in an intensifying city,

particularly along key arterials and public transport corridors such as Dominion Road.<sup>1</sup> All of the modelling, discussion and assessment of the effects of the current proposal need to be considered in that context, including the positive effects of providing for a mixed-use development of the nature now proposed in this location and described in the application and evidence filed to date.

***Further information requested by the Panel (para 7 Minute 8)***

*Lot 1*

12. While the applicant is content for the Expert Consenting Panel to treat Lot 1 as part of the “site” for the purposes of determining the application, it does not consider it necessary to do so (except insofar as the minor boundary adjustment is concerned).
13. In terms of the position of the Lot 1 owners to the application, the applicant notes as follows:
  - (a) Lot 1 is subdivided into 14 principal units with carparking variously allocated exclusively to particular accessory units or held in common. The balance of the common property comprises the driveway entrances on Grange Road and vehicle circulation space.
  - (b) Various easements and rights of way are in place, which are governed by Easement Certificate C919743.6, included in Appendix 2 to the AEE. These govern the provision of access, mutual support and services as between Lots 1 and 2. As a matter of principle, and in consultation with the owners and occupiers of Lot 1, changes to these arrangements pursuant to the application, have been kept to an absolute minimum. Importantly however, and subject to any commercial arrangements in relation to compensation (a process that sits outside of the RMA), and (d) below, the applicant has the right to undertake the proposed works within existing Lot 1 pursuant to the existing registered easement instrument. See for example Yeomans Survey Solution’s

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<sup>1</sup> Memorandum of Counsel dated 23 June 2021, paras 7.7-7.10; Langwell EiC paras 141-145; Langwell Supplementary paras 11-15.

response to the Panel's Request for Information 2, Item 2, in relation to the party wall easements.

- (c) The 14 unit title owners for Lot 1 are represented by the Lot 1 Body Corporate through its chair (Martin Boase) and Committee under delegation, with whom the applicant has been engaged throughout the design and consenting process. Notably, the result of that direct engagement is that, despite direct notification and request for comments, no Lot 1 shop owner took the opportunity to comment on the application.
- (d) The applicant can confirm that, in the unlikely event it were not possible to effect the proposed boundary adjustment (e.g.: because a commercial arrangement with the Lot 1 owners could not be reached), the applicant could still implement the balance of the consents sought without reference to the Lot 1 owners. That would involve leaving the Lot 1 and Lot 2 boundaries as they currently exist and working within the provisions of the existing easement arrangements on the titles. The practical implication of this approach would be that:
  - (i) The Lot 1 carpark arrangements would remain as they currently are;
  - (ii) The laneway would be confined to the extent permitted by the Lot 2 boundary at this level;
  - (iii) Work to the physical assets in the Lot 1 Common Area and the interface between Lot 1 and Lot 2 would be kept to a minimum as provided for in the easement certificate; and
  - (iv) The Lot 1 Body Corporate would continue to lease out the 45 Common Area carparks on a casual basis.
- (e) While the applicant is fully engaged with the Lot 1 owners (through the Body Corporate), and can confirm that feedback received from the Body Corporate Chair and Committee has been incorporated into the proposed design, the commercial agreement will require the support of Lot 1 owners pursuant to the Unit Titles Act so there is no formal "consent" or written approval from those owners at this stage.

- (f) For the reasons given above, however, the applicant considers that formal consent from the Lot 1 owners is not necessary in order for the Expert Consenting Panel to grant the consent sought by the applicant.

*Vehicle tracking, alternative access arrangements and visibility splays*

- 14. The Harrison Grierson report raises a series of issues in relation to the proposed accesses to the site on Prospect Terrace. Harrison Grierson:
  - (a) Confirms that the three-lane access arrangements (supermarket service entrance, and residential entrance and exit, separated by pedestrian refuge island) illustrated in Mr Langwell's evidence addresses any perceived pedestrian safety issues. However, Harrison Grierson comments that vehicle tracking information is required to demonstrate that this arrangement would operate effectively;
  - (b) Suggests that an alternative access arrangement, with combined supermarket service and residential vehicle entry, should be considered and assessed in order to address perceived pedestrian safety issues; and
  - (c) Notes the lack of "*visibility splays*" for vehicles exiting from both the residential and supermarket customer exits.
- 15. In this regard:
  - (a) Mr Langwell has appended to his supplementary statement vehicle tracking information in relation to his proposed access configuration, which was omitted from his primary statement of evidence – see Attachment 5 to his supplementary statement. This demonstrates that the proposed access configuration can operate effectively as well as avoiding the pedestrian safety issues otherwise potentially associated with the positioning of the three lanes immediately adjacent to each other.
  - (b) While, subject to (c) below, it should be unnecessary for the applicant to further explore the alternative access arrangement shown conceptually in the Harrison Grierson Report, for completeness Mr Langwell has done so. He concludes that, while

potentially workable, this option would be less desirable than the option set out in his evidence for various reasons that he describes in his supplementary statement.

- (c) It should also be noted that, while still compliant with maximum height and height in relation to boundary controls, a consequence of the redesigned access way is that additional building mass is required, in order to accommodate a steeper (1:8) shared ramp enabling access into the residential carpark. This mass would be located in the north-eastern corner of the site, adjacent to the boundary of the dwelling at 86 Prospect Terrace, where the applicant intentionally maintained a lower height to respect the residential interface. For this reason, the applicant submits that its proposed access arrangements (with the changes described in Mr Langwell's supplementary evidence) are superior to these alternative access arrangements.<sup>2</sup>
- (d) Irrespective of whether the access arrangements pursued by the applicant, or those conceptually proposed by Harrison Grierson, are considered most appropriate by the Expert Consenting Panel, design amendments can easily accommodate visibility splays for both supermarket customer and residential vehicles existing the site. This is illustrated in Attachments 5 and 7 to Mr Langwell's supplementary statement.

### ***Additional building height, and laneway – response to Munro Report***

#### *Additional building height*

16. The applicant remains strongly of the opinion that the evidence of Ms de Lambert and Mr Brown, which comprehensively address issues of landscape/visual, urban design and special character effects, should be preferred over the evidence of Mr Munro in relation to the appropriate, consentable height of the buildings proposed by the applicant. As noted in applicant's memorandum dated 9 July 2021, a development can still be implemented if the Expert Consenting Panel accepts Mr Munro's

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<sup>2</sup> The additional mass required is illustrated and shaded red on the plans prepared by Warren and Mahoney in relation to the alternative access arrangements, included at Attachment 7 to Mr Langwell's supplementary statement.

recommendations. However, even if the Panel is minded to do so, the applicant requests that it consider rejecting one part of those recommendations relating to one half of Level 04 of Building D, due to the unintended consequences of this change, which we describe below.

17. Notwithstanding the above, and in order to consider the likely implications of the Ian Munro recommendations on key project outcomes the applicant has had the architectural team at TLC Modular complete an indicative redesign of the podium courtyard residential units.
18. The applicant notes having received the alternative TLC Modular scheme the following, likely unintended, consequence of Mr Munro's recommendations:
  - (a) The general reduction of height of the proposed development by one storey drives a change (for economic reasons) in design configuration and potentially construction methodology, – from an apartment typology on the podium Courtyard to a mixed apartment (Block B) and terraced housing configuration (Blocks A, C and D);
  - (b) In addition, and in particular, the deletion of one half of the Level 04 storey of Building D creates what the architectural team consider is an aesthetically and practically awkward half-sized floor plate on the second (residential) storey of Building D; and
  - (c) As a result of the above, the units in Block D comprise 1.5 storey Terraced Houses with the living on the ground floor and only sufficient area for 1-Bedroom at first floor. This in turn results in a greater proportion of smaller, one bedroom units within the development, and more than required in terms of surveyed market demand. While the application would still contribute to housing supply, efficient compact urban form and likely achieve the purpose of the FTA, it would be less able to provide a range of housing typologies including homes suitable for small families.
  - (d) If Mr Munro's recommendations were accepted only in part, with Level 04 of Building D being retained in full, that would mitigate the loss of potential family homes within the overall development by avoiding the loss of 11 two bedroom homes well suited to small family living.

19. The applicant considers that one of the advantages of the application as lodged is that it enables the provision of a range of housing typologies and configurations (types, sizes and amenity) for persons and families at different life stages and in different circumstances. Mr Munro's recommendations, and in particular the deletion of one half storey of Building D described above, will reduce the applicant's ability to achieve that outcome. Accordingly, even if the Expert Consenting Panel is otherwise minded to accept Mr Munro's recommendations in relation to building height, the applicant respectfully requests that the Panel modify those recommendations by declining to delete the portion of the building affected by this aspect of his recommendations.

*Laneway*

20. Mr Munro raises concerns with the proposed laneway located between Lots 1 and 2, and recommends that it be closed to be public access at all times, and used only as a service lane. His concerns appear to be safety, and diversion of pedestrians from the existing road perimeter of the site thereby reducing activation of these frontages, as well as difficulty for retailers to trade to both frontages (Dominion Road and the laneway).
21. The applicant requests that the Expert Consenting Panel decline this recommendation, for the following reasons:
- (a) The purpose of the laneway is to integrate activity and functions within the site, such as by providing opportunities for Lot 1 shop owners to leverage trade from supermarket customers;
  - (b) It is not intended to provide a diversion of pedestrians away from the footpaths around the perimeter of the site, although the applicant acknowledges that the laneway will present as a choice for pedestrians during business hours if the route is convenient for them;
  - (c) The laneway **will** (as always intended) be secure after hours and managed as described in the applicant's response to Further Information Request No. 1 (Item 5), thereby addressing Mr Munro's issues in respect of safety/security – see letter from Warren and Mahoney dated 3 June 2021 particularly Appendix A; and

- (d) The space of the laneway is intended to be flexible in its use, and capable of evolving and adapting over time to meet the needs of, and as determined by, the respective owners and Body Corporate members of Lots 1 and 2. It is designed to be legible, safe, flexible, adaptable and practical, and able to be managed simply with minimum effort or developed into a more dynamic space over time.

***Concluding comments – directions sought***

- 22. For the reasons set out in this memorandum, and the appended supplementary statement of evidence of Mr Langwell, the applicant respectfully requests that the Expert Consenting Panel:
  - (a) Recommence processing of the application; and
  - (b) Grants consent to the application, with modifications and/or subject to conditions necessary and appropriate to address the responses provided in this memorandum and the supplementary statement of Mr Langwell, particularly in relation to proposed traffic mitigation; the design of vehicle access arrangements; the consented height of buildings; and the proposed laneway.
- 23. In terms of traffic effects and mitigation issues in particular, the Panel may consider it would be assisted by, and be minded to direct, engagement between the applicant, Auckland Transport and/or the Harrison Grierson report authors to resolve any remaining areas of detail/disagreement. Were that to occur, the applicant would be ready and willing to engage constructively in such discussions.

**DATED** this 13<sup>th</sup> day of August 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