

BEFORE AN EXPERT CONSENTING PANEL

UNDER the COVID-19 Recovery (Fast-track Consenting) Act
2020

IN THE MATTER of an application by P0012 Auckland NZ Pty Limited in
relation to the Federal Street Residences – a mixed-use
high-rise building in central Auckland

**MEMORANDUM OF COUNSEL ON BEHALF OF
AUCKLAND REAL ESTATE COMPANY NEW ZEALAND LIMITED
REGARDING APPLICANT'S RESPONSE TO COMMENTS**

15 July 2022

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MEMORANDUM OF COUNSEL ON BEHALF OF THE APPLICANT

May it please the Panel:

Introduction

1. Auckland Real Estate Company New Zealand Limited (“**ARE**”) provided comments in relation to this application dated 14 April 2022 (“**ARE Comments**”).
2. The purpose of this memorandum is to communicate ARE’s observations in relation to the adequacy of the “response” provided to the Expert Consenting Panel in relation to the ARE Comments, particularly insofar as these relate to the “updated baseline streetscape concept” and related proposed conditions of consent.

ARE Comments

3. The ARE Comments (paragraphs 11-21) describe ARE’s concern regarding the Applicant’s proposal for physical changes in the Federal Street road reserve.
4. In particular, the ARE Comments identify that the Applicant’s proposed building design and the incorporation of a verandah (pedestrian canopy) necessitates an extension eastwards of the existing kerblines along Federal Street (and a corresponding narrowing of the road corridor). This, both in terms of the “baseline” and “optimised” streetscape upgrade scenarios illustrated in the Application, set up an inequitable situation in terms of the future layout of Federal Street, whereby a larger proportion of the public realm would be available for private use by the Applicant (subject to road-controlling authority approval), and a greater proportion of the “burden” in terms of provision for traffic, cycle and pedestrian movement spaces would be placed on ARE and its tenants on the opposite side of Federal Street.

Applicant’s response

5. In response to ARE and Auckland Transport, the Applicant has offered amended conditions 27-27B, and has produced an updated “Baseline Streetscape Upgrade Concept”. The latter diagram/plan purports to address concerns raised by Auckland Transport in particular, but retains the building design with the proposed 3m wide verandah and

corresponding increased width of footpath (600mm beyond the edge (eastwards) of the proposed verandah) as proposed in the Application documents and illustrated in the Architectural Report supporting the Application. ARE remains concerned that this physical change alone sets up an inequitable situation as between the western and eastern sides of Federal Street. These changes force future vehicle, cycle and pedestrian movements spaces to be located further east within the road reserve, making potentially less space available for other purposes such as al fresco dining, or otherwise activating the eastern Federal Street frontage. ARE's architects have prepared a dimensioned cross section to illustrate the the changes associated with the Baseline Streetscape Upgrade Concept, which is included as **Attachment 1**.

6. In the evidence of Mr Ross Cooper, the Applicant provides the following commentary to justify the proposed Baseline Streetscape Upgrade Concept (para 86, emphasis added):

*To be clear, the Baseline Streetscape Upgrade Concept is in no way intended to deliver an upgrade in place of Auckland Council's Federal Street Upgrade project. The intention is that it forms a minimum baseline expectation that would be delivered as mitigation for the impact the proposal is having on the adjoining streets – being the removal of existing loading and disabled parking spaces on Federal Street and the establishment of a wider footpath along the Federal and Kingston Street frontages. **The rationale for this request is that the Wind Report necessitates a pedestrian canopy of some 3m in depth, meaning that a physical change within the road reserve is needed. Having established the necessity for works within the street and the location of those works (i.e., the existing footpath and loading / parking spaces within 4m of the site boundary), the Applicant seek to facilitate an improved pedestrian environment immediately adjoining the Site and to support the active ground floor edges to the proposed building.***

7. The above comment appears to be the first time that the mitigation of wind effects has been identified as the reason why a 3m verandah (pedestrian canopy), and a corresponding eastwards extension of the Federal Street kerbline is required. The Wind Report which was provided in support of the Application does not refer to or contain any express recommendation in relation to required canopy dimensions. This suggests that the building design, including canopy, were confirmed prior to completion of the Wind Report. It is therefore unclear whether

any reduced canopy dimension may or may not be considered acceptable in terms of the wind effects of the proposal.

8. In any event, this commentary confirms that the Applicant's proposed changes to the location of the kerbline are not driven by any regulatory requirement for the provision of a 3m verandah, such as a rule in the Unitary Plan. Indeed the Unitary Plan does not require the provision of a verandah on Federal Street at all. Rather, a 3m wide verandah canopy is only "required" by the Applicant as a consequence of the design of their building, in order (ARE assumes) to mitigate the wind effects generated by the Applicant's proposal to a level which achieves compliance with the standards of the Auckland Unitary Plan¹. The changes to the kerbline are therefore the direct result of the scale, proportions, articulation, and dimensions of the building for which the Applicant has chosen to pursue consent for.
9. In ARE's opinion, it is inappropriate therefore for the Applicant to state that it has "*established the necessity for works within the street and the location of those works*". A more accurate characterisation is that the Applicant is relying on the ability to occupy the public realm, and to make changes to road layout (to the potential long-term detriment of its neighbours), in order to develop a building of its preferred scale.
10. Notwithstanding the above, ARE does not consider the Applicant's offered conditions 27-27B to be appropriate, as they leave resolution of the streetscape upgrade/design to be resolved until approximately 2 years after commencement of construction of the Proposal, when the building and canopy described above will be a *fait accompli* and any potentially adverse effects of those structures on the future layout of Federal Street in this location will have become unavoidable. ARE supports the position apparently taken by Auckland Transport in its email correspondence with the Applicant, that the final details of the baseline scheme should be resolved and approved by Auckland Council prior to the commencement of any earthworks or construction activities on site (see Attachment 12 to Applicant's response to comments).

¹ Auckland Unitary Plan Standard: H8.6.28. Wind

Concluding comments

11. ARE respectfully requests that the Expert Consenting Panel receive these additional comments, in light of the fact that it is only in the Applicant's response to comments that it has provided a rationale for the 3m dimension of its verandah canopy along Federal Street. ARE considers that, in the absence of any express discussion of this issue in the Wind Report, it cannot have been reasonably expected to have identified that rationale for itself.

12. ARE:
 - (a) Remains of the opinion that the Applicant is acting opportunistically, in proposing changes in the public realm that will be beneficial to itself, and potentially detrimental to other Federal Street stakeholders including ARE, in the long term;

 - (b) Remains concerned that the application is reliant on the use of the public realm to mitigate the effects of its development (which should be managed by a design response within its own site) to the detriment of other public realm users; and

 - (c) Notes that despite its offer to make Mr McGarr available for expert conferencing, and the Panel's express encouragement of conferencing, it has received no invitation to attend caucusing with Mr Cooper or any other of the Applicant's experts.

13. Counsel notes that the Panel's Minute 6, and draft conditions, were received from the EPA this afternoon. In addition to this memorandum, ARE will provide its comments in relation to the draft conditions as required by Minute 6 on or before 5pm, Friday, 21 July 2022.

DATED this 15th day of July 2022



Daniel Sadlier

Counsel for Auckland Real Estate Company New Zealand Limited

ATTACHMENT 1
FEDERAL STREET CROSS SECTION