

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

Notices of Requirement to enable the
Construction, Operation and Maintenance of the
City Rail Link

BETWEEN

Auckland Transport (Requiring Authority)

AND

Auckland Council (Local Authority)

AND

Tram Lease Limited (Submitter)

**STATEMENT OF EVIDENCE OF MICHAEL JOHN FOSTER
FOR TRAM LEASE LIMITED**

JULY 2013

1. INTRODUCTION AND EXPERIENCE

Introduction

- 1.1 My full name is Michael John Foster. I am an independent Planning Consultant and Director of Zomac Planning Solutions Limited ("**Zomac**"). I have a Bachelor of Arts (Massey), Diploma in Town Planning (Auckland) and am a past-President and Fellow of the New Zealand Planning Institute (NZPI) and a Member of the Planning Institute of Australia (PIA). For 16 years from 1985 to 2001 I was Director of Planning at Beca Carter Hollings & Ferner Ltd, consulting engineers and planners.
- 1.2 I was chairman of the 2010 Infrastructure Technical Advisory Group advising the Minister for the Environment with respect to changes to the Resource Management Act 1991 ("**RMA**"). I was also a member of the 2009 Streamlining and Simplifying Technical Advisory Group.

Experience

- 1.3 I have over 30 years experience in planning and resource management fields and over the last 20 years I have had specific and extensive experience in development planning and infrastructure projects. During this 20-year period, I have also been responsible for the planning and resource management inputs for a range of major retailing clients on a number of proposed and operative district plans and a wide range of property developments such as Countdown Ponsonby and the Westfield Albany Town Centre.
- 1.4 In the major infrastructure area I was Team Leader for the ALPURT Motorway Project, Team Leader for the North Shore Busway Project and Strategic Consents Adviser to the SH20 Waterview and Victoria Park Tunnel Projects. I am currently Strategic Consents Adviser to the Puhoi to Warkworth Road of National Significance (RoNS) project having led the initial options evaluation phase in 2011-12. I am also currently Strategic Consents Adviser to the Additional Waitemata Harbour Crossing Project.
- 1.5 I believe my experience and understanding of both property development and major infrastructure dynamics around New Zealand gives me a sound appreciation of the impacts that the requirements of the RMA have

on appropriate district planning and infrastructure provision as that relates to commercial activity within urban areas. Specifically in terms of the CRL project I have a thorough understanding of the extent to which effects on private property owners have to be robustly investigated and understood as part of a designation process.

Code of conduct

- 1.6 I confirm I have read the Expert Witness Code of Conduct set out in the Environment Court's Consolidated Practice Note 2011. I have complied with the Code of Conduct in preparing this evidence and I agree to comply with it while giving evidence before the Hearing. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

Background

- 1.7 I have been engaged by Tram Lease to provide planning advice on the Central Rail Link (CRL) project insofar as it could affect Tram Lease's freehold property interest at 32 Normanby Road.
- 1.8 In preparation for my evidence, I have reviewed a draft brief of evidence prepared by Mr Paul Gunn. I have also read the section 42A report on the six Notices of Requirement (NoRs) prepared by Auckland Council (Council) and refer to this report as necessary throughout my evidence. In preparing my evidence I have also read the relevant parts of the Assessment of Effects prepared by Auckland Transport (AT) and its technical advisers. I have also reviewed the relevant parts of the Concept Design Report prepared by Aurecon and reviewed the evidence of witnesses for AT.
- 1.9 I am familiar with the Tram Lease site at 32 Normanby Road and the surrounding area, having visited on a number of occasions.

2. SCOPE AND STRUCTURE OF EVIDENCE

- 2.1 My evidence is structured in four parts. Section 4 addresses the CRL project from an overall consenting approach perspective, section 5 describes the nature of and background to the commercial development

currently on 32 Normanby Road, section 6 assesses the effects of the CRL project on 32 Normanby Road and section 7 contains some commentary on the evidence being given on behalf of AT.

3. SUMMARY OF KEY CONCLUSIONS

3.1 My conclusions, based on my review of the relevant material and evidence, can be summarised as follows:

- (a) The CRL project is a major piece of Auckland's future infrastructure that I strongly support and it is not a question of if, but when;
- (b) A concept designation type approach, whereby subsequent detailed design issues are addressed via a Construction Environmental Management Plan (CEMP) approved pursuant to s176A of the Resource Management Act (RMA) is appropriate **provided** *all edge effects are adequately addressed as part of the designation consenting process;*
- (c) Failure to do so does not protect the rights of a private landowner; and
- (d) The extent to which the adverse effects on 32 Normanby Road have been assessed by AT and its advisers is seriously flawed and any decision to approve the designation No.6, in particular, should be withheld until such time as these adverse effects are adequately addressed and the landowner's legal rights are protected.

4. THE CRL PROJECT – AN OVERVIEW

4.1 My reading of the CRL's documentation supporting the six NoRs is that it is effectively adopting a 'concept' designation approach whereby the resource consents required to give effect to the designations would be lodged at a later date once detailed design has been completed. This type of approach is not new and was the approach we adopted for the ALPURT project.

- 4.2 Such an approach is quite legitimate provided particular emphasis is placed on understanding, avoiding and/or mitigating the “edge effects” of the project. How and in what manner the CRL is constructed inside the designation footprint is not relevant provided the edge effects do not change.
- 4.3 For reasons I give in section 6 of my evidence I am not satisfied that the edge effects will remain unchanged as a result of detailed design of the Normanby Road overbridge and its effective sign off through the Outline Plan of Works process (s176A of the RMA). If the edge effects do change then an affected landowner has no right of appeal of a Council s176A decision. I am also not satisfied that AT and its advisers currently understand what the adverse effects of the Normanby Road overbridge will be on the long-term reasonable use of the Tram Lease property at 32 Normanby Road. In my view if they had more thoroughly investigated such effects the extent of the designation footprint over the 32 Normanby Road property would, and should, have been a rather different shape.
- 4.4 I note that the Officer Report has expressed rather similar concerns to mine (eg. section 16 Recommendation) where they are “*not able to recommend that the notices of requirement be confirmed at the present time*” and for example, “*consider the provision of a Draft Indicative CEMP would aid in understanding of the level of detail that the CEMP would provide in terms of scope, methodologies and mitigation measures.*” (page51, section 8.3.1.2).
- 4.5 Section 9.5.17 of the Officer Report addresses some of the effects on private properties in the vicinity of the proposed Normanby Road overbridge but does not discuss the effects of loss of on-site parking and all movement property access, a rather surprising omission. Otherwise I do not disagree with the concerns raised in the Officer Report.
- 4.6 Notwithstanding the concerns I express above, I strongly support the CRL project from a strategic transportation planning perspective and consider that the Normanby Road overbridge component of the project is an essential infrastructure improvement. But this does not mean that the edge effects of the project can be ignored: they need to be appropriately avoided or remedied or mitigated via the statutory approval process for the designations, as opposed to being left over for subsequent decision under the designation conditions.

5. NATURE & BACKGROUND TO 32 NORMANBY ROAD

Physical Attributes

- 5.1 Mr Paul Gunn has outlined in his evidence the nature of the current uses, tenancies, lease terms and so on, relating to this 4765m² site described as Lot 1 DP 64473, and I do not repeat that information here. The site borders the North Auckland Line (NAL) and has a relatively narrow frontage to Normanby Road.
- 5.2 The site is zoned Mixed Use in the Operative District Plan where retail less than 500m² gfa, commercial, residential and food and beverage premises are permitted activities. Retail premises in excess of 500m² are a discretionary activity. Building coverage of up to 100% is allowed, a 15m height limit is permitted and the floor area ratio is 2:1.
- 5.3 The current configuration of the existing buildings results in a site coverage of less than 75% because of the need to provide on-site parking. Vehicular access to the site is down a ramp off Normanby Road where the difference in height of the on-site carpark and Normanby Road varies between 1m and 1.5m.
- 5.4 Currently the site is capable of providing for 41 carparking spaces and two loading bays. The predominant area for carparking is the right angle spaces immediately adjoining the NAL boundary (see **attached** plan-attachment 1).

Historical Background

- 5.5 For reasons I will now explain the history behind the development of the site is important to understand when assessing the possible adverse effects of the CRL.
- 5.6 In June 2001 the Council processed an application by Colosseum Gym Ltd to use part of an existing warehouse building as a gymnasium. The Planning Officer in her planning report under the heading "Existing Use Rights for Parking" stated:

"The subject site is fully developed and contains two commercial buildings with 28 carparking spaces. It is considered that the subject site currently has existing use rights pursuant to Section 10 of the Act in regard to parking and those activities existing.

The commercial buildings on the subject site have been lawfully established and subject to a number of building permits in which parking was assessed and complied. In 1985 a planning consent was granted on the site to erect a showroom and office addition to an existing warehouse premises and 'to allow a double width crossing'. However in the reasons for granting consent it was stated that the site complied with the parking and manoeuvring standards for cars and trucks. The parking standards for the site at this time were specified in the Mt Eden Borough Operative District Plan, Third Review 1985. The parking on the site was calculated as follows:

Activity	Floor Area/ Person designed for	Parking Ratio Mt Eden Borough District Scheme	Parking Required
Warehousing	1760m ²	1 for every 120m ²	14.6 spaces
Warehouse (Showroom)	802m ²	1 for every 120m ²	6.6 spaces
Office associated with Warehouse	308m ²	1 for every 50m ²	6.1 spaces
Parking Spaces Required			28 spaces

The applicant has contended that Holland's Office furniture have been operating for the past 15 years. The planning consent granted in 1996 was granted to A Hurdley for H R Holland Limited, it is therefore considered that since this time Holland's have not ceased to operate.

Furthermore the activities have remained unchanged with the same floor area allocated for the different activities on the site. Therefore it can be stated that activities on the site are the same intensity, character and scale as that which was lawfully established on the site. The subject site has provided 28 carparks and a loading bay during this time. Accordingly it is considered that the subject site is subject to existing use rights for carparking for these activities.

Current Proposal – Existing use Rights for other Activities

The applicant proposes no external alterations to the existing building. However the proposal relates to a change to the use of part of the building into a gymnasium which is considered an entertainment facility under the Operative District Plan Isthmus Section. Given that the remaining showroom and warehousing activity would require 76 carparking spaces, it is considered that these components of the activity have existing use rights

and can be considered a separate planning unit of the site. Furthermore the scale intensity and character of this portion of the building will remain unchanged.

The current parking requirements on the site are detailed below.

Activity	Floor Area / Person Designed for	Parking Ratio Auckland City Operative District Plan	Parking Required
Warehousing	999m ²	1 for every 50m ²	19.9 spaces Existing Use Rights 8.3 spaces
Showroom	945m ²	1 for every 17m ²	55.5 spaces Existing Use Rights 7.8 spaces
Entertainment Facility	40 persons	1 for every 4 persons designed for	13 spaces
Parking Spaces Required			89 (88.5) spaces
With Existing Use Right Parking			29 spaces

Therefore the activities are required to provide 29 carparking spaces however the subject site provides 41 carparks and a loading bay. Therefore as the site has existing use rights for warehousing and showroom activities the site will provide sufficient parking with the change of use."
(underlining added)

- 5.7 The consent was then granted on a non-notified basis. In my view the key points to take from this assessment relative to the CRL project are:
- (a) The Operative District Plan carpark provisions have not changed since this application was made in 2001;
 - (b) The site is significantly under provided for carparking if each of the current land uses changed tomorrow;
 - (c) The current 41 parking spaces plus a loading dock make a significant contribution to the use and leasability of the site, as explained by Mr Gunn; and

- (d) More importantly, the current on-site carparking layout has been optimised to maximise the number of spaces able to be provided.

These aspects need to be carefully borne in mind when assessing the effects of the CRL on the property.

6. EFFECTS OF THE CRL PROJECT ON 32 NORMANBY ROAD

6.1 It is my understanding that the Normanby Road Overbridge component of the CRL project involves the following features:

- (a) The existing NAL track is to be lowered 2m at the existing Normanby Road level crossing;
- (b) The likely minimum clearance of the overbridge will be a minimum of 2m above the current road level at the eastern road boundary corner of the site;
- (c) The overbridge comprises two traffic lanes and no right turn painted chevrons;
- (d) Vertical retaining walls on the boundary between the NAL and 32 Normanby Road; and
- (e) Designation of a strip of land of varying width alongside the NAL / 32 Normanby Road boundary resulting in a land take of 700m².

6.2 It appears that the 700m² land take is intended to allow for the construction of a ramp (whether this ramp is an earth structure or a bridge is not stated) coinciding with the wider part of the land take, while the balance is apparently to allow for ongoing maintenance of the vertical walls, although such a reason is not stated in the AT documentation.

6.3 In principle such purposes at first glance appear reasonable, but they are not, in my opinion, for the following reasons:

- (a) Firstly, the ramp configuration has not been adequately investigated or assessed because there appears to be no allowance for two transition zones of at least 7m in length to allow vehicles to stop on a level platform before leaving the site and to transition to a level surface within the site;

- (b) There is no indication as to what the ramp gradient is likely to be, at a minimum it should be no greater than the gradients shown on the TDG drawing attached as attachment 2 in order to adequately cater for a 12.5m long heavy rigid vehicle in accordance with accepted Australian standards. It is worth noting that a smaller 8.8m long truck would require the same ramp configuration. These requirements translate into an overall ramp length of 35m;
 - (c) When that ramp length is overlaid on the site, subtracting at least 3m of the transition that could be provided outside the property boundary the total length of ramping is at least 32m. By scaling, the length of the wider part of the land take appears to be 30m and hence not sufficient to accommodate the ramp; and
 - (d) The land take, if full effect is given to it, takes out 33 on-site carparks leaving just eight remaining to service the existing tenancies. Some reconfiguration of the remaining carpark area might be feasible, but has not been explored by AT. At best, around 16 spaces could be provided thereby meaning a net loss of up to 25 parking spaces (61%).
- 6.4 As explained by Mr Gunn, such a loss of carparking would severely affect lease income and any subsequent re-leasing opportunities. It would seem to me the only likely future land use would be warehousing, and even then 54 car parking spaces would be required to comply with the ODP parking requirements.
- 6.5 Overall, if AT and its advisers had undertaken a thorough assessment of effects on 32 Normanby Road they would / should have given consideration to alternative methods such as replacement carpark spaces within the vicinity of the site. By "vicinity" I mean easy walking distance of, say, up to 200m.
- 6.6 In my opinion, the overall adverse effect of the CRL designation on 32 Normanby Road should have resulted in the designation of the whole (leasehold) site for the duration of the construction phase, re-configuration / rejigging of the land uses on the site, purchase of additional land to provide replacement carparking, pulling back the

designation footprint and disposal of the balance of 32 Normanby Road surplus to CRL operational requirements.

- 6.7 Given that enlarging the current designation is not an option, AT should commit to buying the leasehold interest as part of the CRL project. Purchase of the leasehold interest is also necessary to provide certainty for the lessee and its tenants as their interests are directly affected both by the land take, and the commercial uncertainty arising from the 20-year lapse period.

7. EVIDENCE OF CRL WITNESSES

- 7.1 I have a few observations to make with respect to some briefs of evidence.

Evidence of Christopher Meale

- 7.2 At paragraph 27 Mr Meale states:

“Consultation will continue with iwi, stakeholders, directly affected landowners and landowners in proximity to the works . . . This phase will include preparation and lodgement of the regional resource consents . . .”

Tram Lease is quite clearly a directly affected landowner and, at a minimum AT should actively engage with Tram Lease during the preparation of the resource consent documentation.

Evidence of Ms Deborah Godinet

- 7.3 At paragraph 33 Ms Godinet states:

“. . . all property acquisition is scheduled for completion by June 2015.”

I consider such an objective to be a proactive response given the very long lapse period being sought. It would be constructive to have a condition of designation imposed along the following lines:

‘Auckland Transport shall use its best endeavours to complete all property acquisition by June 2015.’

Such a condition would provide affected landowners with a degree of certainty. This condition should be added to the “General Administration Conditions” section.

Evidence of Mr Bill Newns

- 7.4 Given the concerns I have expressed with respect to effects arising from the construction of the Normanby Road overbridge, Mr Newns should be invited by the Hearings Panel to respond.

Evidence of Mr Ian Clark

- 7.5 At paragraph 87 Mr Clark states that “a temporary level crossing (at Normanby Road) will not be possible” and, as I understand it, the road crossing will be closed for at least six months. There is no discussion by any AT witnesses as to how AT proposes to deal with compensation payments for business disruption as a result of this closure. This is a potentially significant adverse effect and should have been addressed by AT.
- 7.6 At paragraphs 112 – 122 Mr Clark sets out his views with regard to the submissions relating to Normanby Road. I have a number of concerns over what he claims. First, he claims the NAL is to be lowered by 4m (paragraph 116). Mr Newns at paragraph 170 states . . . “the NAL must be lowered by 2m.” Someone has to be correct, but the difference is significant.
- 7.7 Second, at paragraph 117 Mr Clark claims that:

“Once the grade separation of Normanby Road is completed, this will significantly improve the reliability of access between these submitters’ sites and the north and it will also significantly improve safety in the area . . .”

I have reservations regarding the veracity of such claims because the concept plans I have seen have no central chevron for right turning vehicles and visibility sight line standards have not been defined. This aspect is important particularly if right turning vehicles have to stop on the ramp in the main southbound traffic lane.

- 7.8 Third, at paragraph 119 Mr Clark claims:

“. . . the proposed designation extends across part of the existing carpark. This is in order to allow the existing

ramp down into the site from Normanby Road to be extended . . .”

That claim is not correct, the concept plans I have seen have the ramp located at the edge of the NAL boundary extending over the existing right angle carparks. If Mr Clark's ramp position was adopted the ramp would effectively block out the shop display windows in the Office Max tenancy, an even worse adverse effect.

- 7.9 Fourth, at paragraph 120 Mr Clark outlines the results of his parking occupancy survey at 32 Normanby Road. In my view such a survey is a relatively pointless exercise because it is a snapshot in time. It takes no account of the ODP carparking requirements or the possibility / implications of a change of land use. More importantly, even if 22 spaces is a realistic number (a proposition I do not accept) he has made no attempt to determine whether 22 spaces on the balance carpark area is an achievable proposition. In my view it is not.

Evidence of Mr Bryce Julyan

- 7.10 At paragraph 138 Mr Julyan states:

“ . . . Some of the submitters have raised the issue that the Outline Plan process will not necessarily allow for input from affected parties nor give them certainty that at the time the concerns will be met. As I have noted it is important to acknowledge the concerns of the affected parties that will be affected by the construction impacts and the management plan framework has been used in many large projects successfully to enable these effects to be managed. In my experience projects that would otherwise have the potential to cause significant disruption can be adequately managed, through the provision of conditions, in a way that respects the activities that continue to function along the route.”

In the normal course of events I would agree with this statement. However, for reasons I have given in the foregoing parts of my evidence, I do not consider that AT and its advisers have sufficiently and adequately assessed the adverse effects of the CRL in the first instance, and accordingly, the subsequent Outline Plan process cannot and should not be relied upon to subsequently attempt to resolve the current flaws, for natural justice reasons.

8. CONCLUSION

8.1 In my opinion the CRL project, insofar as it affects 32 Normanby Road, is flawed and any decision to confirm, in particular, Designation No.6 should be deferred until such time as these flaws are appropriately addressed.

8.2 A mechanism to address these flaws would be for AT to prepare a preliminary design set of drawings that would address the following key elements:

- Design of the overpass inclusive of addressing the length and gradient of ramps, and providing the methods to ensure safe right turning movements;
- Construction sequencing;
- Provisions for temporary property access;
- Provisions for permanent property access; and
- A methodology for assessing and determining, injurious affection, business disruption and compensation payments.

This approach will allow Tram Lease to further evaluate its position **before** Designation No.6 is confirmed by the Hearings Committee.

M J Foster

July 2013