

Decision following the hearing of an application for resource consent under the Resource Management Act 1991

Proposal

To upgrade the Ngapipi Road and Tamaki Drive intersection, with the provision of reconfigured traffic lanes, a traffic signal controlled intersection, on-road cycle lanes & cycle boxes, bus stops, footpaths, lighting, signage, public seating, pedestrian crossings & stormwater upgrades, involving an area of reclamation.

These resource consents are **GRANTED**. The reasons are set out below.

Application number(s):	R/LUC/2016/3297, R/LUC/2016/3298, R/LUC/2016/3299, R/LUC/2016/3307, R/LUC/2016/3493
Site address:	Ngapipi Road and Tamaki Drive Intersection, Orakei
Applicant:	Auckland Transport
Hearing commenced:	Wednesday 14 December 2016, 9.30am
Hearing panel:	Ms Rebecca Macky Dr Lee Beattie Ms Juliane Chetham
Appearances:	<p>For the Applicant: Christina Sheard – Legal Ross Holland - Auckland Transport Ken Lee-Jones - Auckland Transport Hester Leung - Auckland Transport Aaron Hutching - Auckland Transport Andrew Lawson – Traffic and transportation Derek Todd – Coastal processes David Compton-Moen – Landscape and visual Karyn Sinclair – Planning Megan Howard – Planning</p> <p>For the Submitters: Barbara Cuthbert – Chair of Bike Auckland (Max Robitzsch) Stephen Goodman Don Stock for Mission Bay Kohimarama Residents Association Kenneth Palmer for Tamaki Drive Protection Society</p> <p>For Council: Andrew Gysberts, Team Manager Tim Hegarty, Reporting Planner Gavin Donaldson, Arborist Sam Shumane, Traffic Engineer</p>

	Kala Sivaguru, Coastal Specialist Rob Pryor, Landscape Architect Sarah Pinkerton, Contamination Specialist (Regional Plan) Rob Burden, Contamination Specialist (NES) Trent Sunich, Stormwater Specialist Sanjana France, Hearings Advisor
Hearing adjourned	14 December 2016
Commissioners' site visit	Each Commissioner undertook an independent site visit prior to the hearing
Hearing Closed:	19 December 2016

Introduction

1. This decision is made on behalf of the Auckland Council ("**the Council**") by Independent Hearing Commissioners Ms Rebecca Macky, Dr Lee Beattie and Ms Juliane Chetham, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("**the RMA**").
2. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.

Summary of proposal, site and locality

3. The applicant proposes to upgrade the Tamaki Drive / Ngapipi Road intersection, with the provision of the following:¹
 - Reconfiguring of traffic lanes on both Tamaki Drive and Ngapipi Road to improve vehicle flows;
 - A new traffic signal controlled intersection;
 - The provision of on-road cycle lanes along Tamaki Drive;
 - Cycle boxes at the intersection;
 - Upgrading and moving of bus stops on Tamaki Drive;
 - Improved footpaths, lighting, signage and public seating;
 - Provision of pedestrian crossings; and
 - Stormwater network upgrades.
4. In order to provide for these improvements, up to 1750m² of reclamation along both Tamaki Drive and Ngapipi Road is proposed, to enable these improvements whilst avoiding the need for works to occur in close proximity to coastal cliffs or requiring removal of any significant Pohutukawa trees. The reclamation will be finished with a basalt seawall to match the existing coastal edge.
5. Construction of the upgraded intersection will require approximately 6000m³ of earthworks for the reclamation, while tree works will include the removal of two Houpara trees, works within the dripline of 34 trees and the trimming of 12 trees.

¹ Refer to the applicant's AEE and the section 42A report for a more detailed description of the proposal, the site and the locality and for other background information.

6. The applicant also proposes to install and upgrade stormwater infrastructure, with Stormwater 360 Storm Filters, new stormwater lines and relocated outfalls.

The Site and its Locality

7. In summary, the 1.25ha site is located within the Coastal Marine Area (CMA) and above Mean High Water Spring (MHWS). To the west is the Ngapipi Bridge and Hobson Bay, an important bird habitat, and to the east, Tamaki Drive continues to Mission Bay and beyond. Historic boatsheds are located in the CMA along Ngapipi Road and the coastal cliffs opposite are included in Paratai Reserve.
8. To the north is the Waitemata Harbour, which is defined in the immediate vicinity of the site by a rocky shelf with a low to moderate variety in marine species.
9. The Maori Value and Cultural Impact Assessments provided by mana whenua highlight the importance of the coastal environment to mana whenua given its use as a food source, an historic mode of transportation, spiritual values and source of mana.

Background

10. AT is a Council Controlled Organisation (CCO) with responsibility for the planning, development, operation and maintenance of Auckland's roads, cycleways, walkways and public transport services.
11. The current proposal has been developed in recognition of a number of safety and operational issues raised in relation to the intersection, a critical part of Tamaki Drive which carries 30,000 vehicles per day at the Ngapipi Bridge. These issues include a complete lack of pedestrian crossing facilities; unsafe vehicle and cyclist interactions; and difficulties in turning right into and out of Ngapipi Road.
12. A number of alternatives for the upgrade have been explored, including a roundabout, but for a number of reasons, AT concluded that the traffic light option best responded to the project brief.

Reasons for and status of application

13. Resource consent is required for the following reasons:

Land use consents (s9) – R/LUC/2016/3297

Auckland Council District Plan (Isthmus Section)

- Works within the dripline of generally protected vegetation located within the road reserve: Rule 5C.7.3.3(B)(b) – RC²
- Works within the dripline of generally protected trees located outside the road reserve: Rule 5C.7.3.3(C)(ii) – RD

² The abbreviations stand for restricted controlled, restricted discretionary, discretionary and non-complying activities respectively.

Proposed Auckland Unitary Plan (Decision Version)

- Alteration and removal of vegetation that does not comply with Standards E26.3.5.1 to E26.3.5.4: Rule E26.3.3.1(A77) RD
- Earthworks greater than 2,500m² within the Sediment Control Protection Area: Rule E 26.5.3.2 (A107) RD
- Earthworks of up to 2500m²/2500m³ within a significant ecology area: Rule E26.6.3.1(A117) RD
- Works within the root zone of trees, which is not otherwise provided for: Rule E26.4.3(A88) RD

Discharge permits (s15) – R/REG/2016/3307

Proposed Auckland Unitary Plan (Decision Version)

- Disturbance of potentially contaminated land which does not meet the requirements of Rule E30.5.2.1: Rule E30.4.1 - D

Coastal permits (s12) – R/REG/2016/3299 & R/REG/2016/3493

Auckland Council Regional Plan: Coastal

- Occupation of the common marine and coastal area by temporary and permanent structures: Rule 10.5.9 - D
- Use of the common marine and coastal area with temporary and permanent structures: Rule 11.5.5 – D
- Erection of temporary and permanent structures: Rule 12.5.8 – D
- Removal of mangroves within the general coastal area: Rule 16.5.17 – RD
- Removal of mangroves in the CPA-2 area: Rule 16.5.18 – D
- Diversion of coastal water for reclamation: Rule 19.5.5 - D
- Reclamation: Rule 13.5.3 – NC

Proposed Auckland Unitary Plan (Decision Version)

- Reclamation and drainage within the General Coastal Marine Zone for the safe and efficient provision of infrastructure: Rule F2.19.1(A4) – D
- Reclamation and drainage within the SEA-M2 overlay for the safe and efficient provision of infrastructure: Rule F2.19.1(A4) – NC
- Removal of mangroves within the SEA-M2 overlay: Rule F2.19.5(A50) – D
- Damming or impounding of coastal water in the General Coastal Marine Zone and SEA-M2 overlay: Rule F2.19.5(A56) – D
- Infrastructure coastal marine area structures not otherwise provided for within the General Coastal Marine Zone and SEA-M2 overlay: Rule F2.19.10(A133) – D

14. The Commissioners note that the matters quoted above differ from the notified application in part because the PAUP has now become operative in part.³
15. The Commissioners also note that the notified application included a stormwater permit for discharges to the CMA. However, it was confirmed at the hearing that the activity is permitted under the PAUP as the area of new impervious surface is less than the trigger for consent.
16. The Commissioners agree that the consents should be bundled and that the overall status of the application is as a non-complying activity.

Submissions

17. The application was publicly notified on 18 August 2016 at the request of the applicant and served on those persons and customary or marine title groups identified as being potentially adversely affected by the proposal.
18. At the close of the submission period on a total of 99 submissions were received, 74 in support, 5 neutral and 20 in opposition to the proposal.
19. The key issues raised in submissions related to congestion and traffic flow, safety and pedestrian and cyclist issues, traffic lights v. roundabout, the reclamation, the Tamaki Drive Master Plan, the impact of the cycleway on the Outboard Boating Club, sea level rise and works under and around the pohutukawa trees.
20. The Commissioners note that in relation to the submissions lodged by or on behalf of the Outboard Boating Club, most did not appear to be opposed to the current proposal, but were more concerned with the future Stage 4 of the Glen Innes to Tamaki Drive Shared Path. That is a matter which is outside the scope of this application.
21. No written approvals were received.
22. We have considered the matter of late submissions, having regard to sections 37 and 37A of the RMA. On the basis of the statutory criteria and noting that neither the Council nor the applicant had any objection to the waiver of the time limit for Peter Alison, the Commissioners accepted this late submission.

Relevant statutory provisions considered

23. Pursuant to section 104 of the RMA and the requirements for a non-complying activity, we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and sections 104, 104B, 104D, 105, 107 and 108.
24. In terms of section 104(1), we have had regard (subject to Part 2), the following:

³ Given the nature and number of appeals against the PAUP, a range of rules, objectives and policies are considered Operative under both the Legacy and PAUP frameworks.

- any actual and potential effects on the environment of allowing the activity;
 - any relevant provisions of national policy statements, New Zealand coastal policy statement; a regional policy statement or proposed regional policy statement; a plan or proposed plan, a National Environmental Standard (NES), or any other regulations; and
 - any other matter considered relevant and reasonably necessary to determine the application.
25. As a non-complying activity, we have considered the ‘threshold test’ under s104D, in terms of the adverse effects on the environment being minor or that the activity will not be contrary to the objectives and policies of the relevant plans or proposed plans.
26. Sections 105 and 107 address additional matters relating to discharge permits and coastal permits where the proposal would otherwise contravene sections 15, 15A or 15B.
27. Section 108 provides for consent to be granted subject to conditions.

Summary of evidence heard

28. The Council planning officer’s section 42A report was circulated prior to the hearing and taken as read. The recommendation was to grant the consents sought, with a suite of conditions.
29. The evidence presented at the hearing responded to the issues and concerns identified in the Council planning officer’s recommendation report, the application itself and the submissions made on the application.

Applicant’s evidence

30. Christina Sheard presented legal submissions for the applicant addressing the evidence, the project background, consents sought, the statutory framework including Part 2, conditions of consent and submissions. Ms Sheard also addressed sections 105 and 107 of the RMA and provided an updated set of conditions.
31. The Commissioners note that there would be an overall improvement in the discharge of stormwater into the CMA with the three new stormwater 360 cartridge filter chambers proposed to be installed.
32. The Commissioners agree that an esplanade reserve is not necessary and that the proposal meets the section 107 test regarding discharges. We also agree that the Tamaki Drive Masterplan and the Auckland Plan are relevant in the consideration of this application.
33. The following witnesses then appeared at the hearing, summarised their evidence and responded to questions:

- Ken Lee-Jones, Road Development Manager – Central, Auckland Transport noted the poor safety record at the intersection and identified the installation of traffic lights as proposed as being the preferred option of a number considered (including a roundabout).

In response to questions about Ngapipi Bridge (which is outside the project area), Mr Lee-Jones advised that it has been recognised as a narrow point and that the intersection project would not preclude future options for the Bridge.

- Hester Leung, Principal Road Development Engineer – Central, Auckland Transport advised that the intersection improvements were essential to address safety and operational issues, and that following Bike Auckland’s submission, a number of changes were made to the proposal as notified.

Although most of the Outboard Boating Club’s submissions were outside the scope of the project, Ms Leung commented on its integration with walking and cycling routes along Tamaki Drive and with the Glen Innes to Tamaki Drive Shared Path. Ngapipi Bridge has been identified as sound and one option would be to widen it to accommodate improved walking and cycling amenities.

Ms Leung also confirmed that the height of the project’s finished road level was determined by the key tie-in points of the Bridge abutment and approach roads.

- Aaron Hutching, Stakeholder Relationship Manager – Auckland Transport described the communication and engagement that had been undertaken including the Orakei Local Board, Mana Whenua and the wider community. This would continue during the construction process through the Construction Environmental Management Plan.
- Andrew Lawson, traffic and transportation, summarised the objective of the project: to improve safety for pedestrians, cyclists and motorists. The careful consideration of options has resulted in the traffic signal design proposed, with the roundabout option not being preferred because “... *roundabouts carrying high traffic flows typically do not provide well for vulnerable road users (ie pedestrians and cyclists).*”⁴

Mr Lawson addressed the need for the project, his methodology for the assessment, the operational and construction traffic effects, submissions, the section 42A report and conditions. As part of his evidence, Mr Lawson also tabled an updated set of plans for the intersection with the incorporation of amendments made in response to Bike Auckland’s submissions.

⁴ Paragraph 8

- Derek Todd, coastal processes, described the proposed reclamation and confirmed that the magnitude and frequency of existing flood events on Tamaki Drive would not be exacerbated by the proposed works. At the hearing, Mr Todd tabled two maps which helpfully showed the coastal inundation 100 year return period (involving tide, surge and wave setup) and the coastal inundation 100 year return period plus 1m sea level rise, demonstrating the point.
- Gary Cassidy, stormwater design, noted the proposed stormwater management system and the improvements which would follow its installation. He confirmed that the proposed rain garden was not required for stormwater management but that it had been requested by mana whenua. He had some concerns with it relating to its design and agreed with Mr Sunich for Council that it had been included for aesthetic reasons.
- David Compton-Moen, urban design and landscape, provided evidence on the likely urban design, landscape and visual effects of the intersection upgrade, noting that the elements which provide the natural character (the large pohutukawa trees and the basalt stone walls) will be largely unaffected.

The installation of traffic signs, while changing the visual character of the intersection, would not, in Mr Compton-Moen's opinion, have an adverse effect and are 'expected on busy transport corridors'. Mr Compton-Moen advised that from a landscape point of view, the proposed rain garden location was not critical and could be relocated if need be, for example, to the Ngapipi Road frontage.

- Karyn Sinclair and Megan Howard, planning, provided detailed evidence describing the consents sought, the existing environment, the environmental effects, the strategic planning instruments, Part 2, the issues raised in submissions, the section 42A report and proposed conditions of consent.

In summary, the planners found that effects could be mitigated or managed by conditions of consent, and that the project would deliver significant safety improvements, particularly for pedestrians and cyclists. They concluded that the adverse effects of the project would be no more than minor and that the proposal was consistent with the relevant statutory planning documents.

34. The evidence of the following witnesses was tabled and taken as read:

- Dr Gareth Taylor, marine ecology, concluding that the site has a low level of effects from the proposed works and that controls will prevent effects outside the works area.

- Alan Hockey, erosion and sediment control, gave his opinion that the proposed controls would protect the project area and the coastal marine environment from adverse erosion and sediment effects.
- David Jewell, construction, confirmed that the physical works would be straight-forward, but temporary traffic management would need to be carefully planned and executed.

35. The evidence presented by the submitters is summarised as follows:

- Don Stock, for Mission Bay Kohimarama Residents' Association spoke to his submission, noting his concern that this is 'not the right project', that it is being considered in isolation. Although the project is not inconsistent with the Tamaki Drive Master Plan, there is nothing to indicate that it has been considered in conjunction with the wider area, particularly the area west of the Bridge which is prone to flooding.
- Stephen Goodman spoke to his submission, noting his membership of the Outboard Boating Club and his concern about maintaining its functionality. He also commented on the potential increases in traffic if the Orakei Point development goes ahead.
- Dr Kenneth Palmer, Tamaki Drive Protection Society, took us through his submission, noting that he was a lawyer and qualified town planner, and confirming that the Society wholly supported the Tamaki Drive Master Plan, strongly supported the proposed intersection upgrade and the traffic light solution, the reconstruction of the seawall and construction of a pedestrian boardwalk on the northern side of the Ngapipi Bridge.
- Barbara Cuthbert, Bike Auckland noted the significant increase in the numbers of cyclists in Auckland before commending Auckland Transport on their response to the issues raised by her organisation, and confirmed support for the traffic light option in terms of the amended design. She also raised the narrowness of the Ngapipi Bridge whilst accepting that that concern could not be addressed through this application.
- A letter from Angus Rogers dated 28 November 2016 was tabled at the hearing. Mr Rogers supported the proposed works but was concerned at the piecemeal approach to a bigger problem along Tamaki Drive. Issues involving Ngapipi Bridge needed to be addressed.

36. Prior to the applicant's right of reply, Mr Hegarty, Council planner confirmed his recommendation to grant the consents sought and noted that utility upgrades in the road reserve are a permitted activity. He suggested that in order to reduce the visual impact of the traffic lights, the poles could be grey rather than yellow.

37. Mr Donaldson advised through questioning that the amended conditions of consent, while potentially “watered down” were in his view, appropriate and would ensure that the works within the dripline and root zones of the significant vegetation, in particular the large Pohutukawa (*Metrosideros excelsa*) would not adversely affect their health. Mr Donaldson also advised that the Council’s Park Arborist should be involved in the certification process of the works.

38. The applicant’s right of reply addressed the following matters:

- The applicant was satisfied that the rain garden in its proposed location would work although it doesn’t need to perform to the relevant standard. This would open up a wider range of planting, which under the proposed conditions, would need to be certified by Council. A maintenance condition was proposed to be added and flexibility regarding its location.
- The conditions (19 – methodology and 20 – works implementation) were sufficient to avoid adverse effects on trees, and the time frame of 5 working days for certification were appropriate.
- Regarding the colour of the traffic light poles, AT was under some constraints as a standard referred to either yellow or galvanised steel. Having them yellow was needed for conspicuousness and is a specification, but could have a grey finish, or just the lower 3m section yellow and the top plain grey.
- The proposal had had a long gestation, with wide consultation. Bike Auckland supported the upgrade and the redesign avoided the Tamaki Drive pohutukawa trees. The wider context was acknowledged, and a note made of other projects going on, consistent with the Tamaki Drive Master Plan.
- The proposed conditions of consent were discussed and some changes promoted.

39. The hearing was then adjourned, pending the provision of an updated set of conditions. Following receipt of these conditions, the hearing was closed on 19 December 2016.

Relevant standards, policy statements and plan provisions

40. The Commissioners have had regard to the relevant policy statements and plan provisions, as follows:

National Environmental Standards and National Policy Statements

41. There are no relevant National Environmental Standards⁵ or National Policy Statements.

New Zealand Coastal Policy Statement (NZCPS)

42. The relevant objectives and policies of the NZCPS have been identified in the AEE, the section 42A report and in evidence presented at the hearing.⁶ In particular –

- The receiving environment has already been modified along Tamaki Drive, with identified results;
- Measures will be taken to ensure construction-related effects are managed and avoided or mitigated;
- The project will avoid disturbing the native vegetation and pohutukawa trees under the coastal cliffs along Tamaki Drive;
- The applicant has worked with iwi to incorporate mitigation including stormwater treatment and an accidental discovery protocol during construction.
- The proposal will maintain and enhance public access to the coastal environment, through improved pedestrian and cycling linkages along Tamaki Drive and Hobson Bay.
- The proposal has been designed to accommodate the risks associated with storm events and sea level rise;
- The reclamation will be compatible with the existing coastal environment; and
- In terms of Part 2, the proposal provides for the social, economic and cultural wellbeing of the community, allowing the safe movement of pedestrians, cyclists and motorists.

Hauraki Gulf Marine Park Act 2000 (HGMPA)

43. The Commissioners accept that the adverse effects of the project – which is limited in scale – on the Hauraki Gulf environment will be no more than minor, and the applicant has worked in consultation with mana whenua to ensure that cultural values are recognised and provided for. We agree that the proposal is consistent with the HGMPA.

Auckland Council Regional Policy Statement (ACRPS)

44. The Commissioners agree with the applicant that this document now has less weight, given the operative provisions of the AUP; and, in any event, the project demonstrates consistency with its provisions because:

⁵ As consent is not required under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES CS)

⁶ Refer the joint statement of Karyn Sinclair and Megan Howard, paragraphs 50-64

- the proposal seeks to improve the functioning and safety of the intersection of two roads identified in the ACRPS as regional arterial roads, providing important transport links;
- The intersection upgrade will promote active transport, and provide for safer environment for all road users.
- The use of reclamation enables the avoidance of the adjacent coastal cliffs and the significant pohutukawa trees and other vegetation, as well as the historic Hobson Bay boat sheds.

Part 1 of the Proposed Auckland Unitary Plan (Decisions Version) (PAUP)

45. Part 1, Chapter B of the PAUP sets out the strategic RMA framework for issues of significance, and their priorities and outcomes. In terms of urban growth and form, infrastructure and transport, mana whenua, the coastal environment and other relevant provisions, the Commissioners agree with the Council planner and the applicant's planning consultants that the proposal is consistent with Part B of the PAUP.

Auckland Council District Plan (Isthmus Section)

46. With consent required for work under and around the pohutukawa trees, the design of the project and the management of construction will ensure consistency with these objectives and policies.
47. Further, the visual character and unique identity of Tamaki Drive will be maintained due to the consistency of materials for the sea wall and the use of the reclaimed area on the seaward side of Tamaki Drive and Ngapiipi Road.

Auckland Council Regional Plan: Coastal (ACRP:C)

48. Given the area's location and urban modification, in general terms, the proposal has been appropriately designed to address the coastal character and the locality's features. With limited ecological values and the proposed conditions of consent, construction and long term effects will be minimised. Heritage and cultural issues have been addressed.
49. Access to the CMA will be improved through the enhanced provision made for pedestrians and cyclists without impacting on the Outdoor Boating Club.
50. Coastal hazards caused by storm events and sea level rise have been taken into consideration to the extent possible with the limited nature of the project. The Commissioners note that a comprehensive approach to coastal hazards will be undertaken through a "whole of Tamaki Drive corridor" approach when appropriate and that future works are not precluded by the current proposal.
51. Overall, the Commissioners agree that the proposal is consistent with the ACRP:C.

Proposed Auckland Unitary Plan (Decisions Version) (PAUP)

52. In relation to the consents sought relating to the trees, earthworks, contaminated land, work within the General Coastal Marine Zone, reclamation and drainage, and other matters, relevant objectives and policies have been identified.
53. The Commissioners agree with the assessment, noting that the applicant's proposed construction methodology and conditions of consent should address both temporary and long term effects, ensuring consistency with the PAUP.

Summary

54. In summary, the Commissioners find that the proposal is not contrary to the objectives and policies of the relevant plans, and that it passes the test for non-complying activities set out in section 104D(1)(b).

Effects on the Environment

55. The Commissioners accept that there is a permitted baseline, on the basis that the relevant planning instruments provide for the maintenance and upgrading of road infrastructure.
56. The Commissioners also accept the description of the receiving environment set out in the section 42A report and in the applicant's planning evidence.⁷
57. The positive effects of this proposal relate in the main to pedestrian and cyclist safety, as well as the efficient management of an important and very busy intersection for the motorists. The provision of pedestrian crossings where at present there are none is seen by the Commissioners as a significant positive outcome; and with the increasing number of cyclists, the present intersection and its high accident rates are agreed to be unacceptable.
58. Invoking the information set out in the AEE, the section 42A report and in evidence before the hearing, the Commissioners find as follows:

Landscape and urban design effects

59. The proposal will change the existing environment, with the reclamation enabling a wider road corridor and a modified coastal edge whilst ensuring the retention of the coastal cliff environment with its mature pohutukawa trees and other vegetation which do much to give Tamaki Drive its character.
60. Mr Compton-Moen noted that the installation of traffic signals would change the visual character of the Tamaki Drive / Ngapipi Road intersection, but were not considered to have an adverse effect and are expected on busy transport corridors.⁸ The Commissioners referred to the photo illustrations attached to his evidence⁹ and asked about the design of the traffic lights, particularly the overhanging lights and their necessity in this sensitive coastal environment.

⁷ Refer paragraphs 26-29

⁸ Paragraph 4

⁹ See Appendix A, particularly photo 8 showing Tamaki Drive west towards intersection and photo 9 Tamaki Drive east towards intersection

61. AT offered an additional condition relating to the traffic signals (refer condition 30A) but advised that the overhanging lights were necessary for safety reasons.
62. The other aspect of the design about which the Commissioners were sceptical were the two areas shown as green hatched corners in the new footpath area on the north side of Tamaki Drive.¹⁰ In answer to a question about the treatment of these areas, the hearing was advised that they were to be planted, possibly in kikuyu grass. This did not appear to be a particularly well-thought out detail and accordingly, the conditions of consent have been amended (refer condition 24).
63. Other than these elements, we generally agree with that the proposed design will enable the retention and enhancement of the site's important landscape features and that the proposal will have no more than minor landscape and urban design effects.

Coastal processes effects

64. Construction and long term effects on coastal processes will be limited, given the site's characteristics, the small area of reclamation involved, and the proposed construction methodology.
65. The main concerns revolved around flooding and sea level rise, given the extent of flooding currently experienced along parts of Tamaki Drive west of Ngapiipi Bridge. However, it was confirmed at the hearing that there will be no additional flooding risk and the project will not result in the redirection of floodwaters elsewhere. It was also confirmed that the road will be at an adequate height to address sea level rise.
66. The Commissioners agree that the proposal will have no more than minor effects on coastal processes.

Coastal ecology effects

67. The evidence identified the features of the site and the surrounding environment, the temporary construction effects on coastal ecology (including loss of habitat and increased sedimentation) and the applicant's mitigation measures, with an Erosion and Sediment Control Plan to form part of those measures.
68. Operational effects will be limited by the site's low to moderate coastal ecological values. The discharge of stormwater from the new intersection, a matter of concern to iwi, will be improved with the new stormwater infrastructure proposed.
69. Having regard to all the evidence, the Commissioners agree that whilst the proposal will result in some sediment disturbance and some temporary and permanent habitat loss due to construction and the reclamation, the proposal will have no more than minor adverse effects on coastal ecology.

Traffic effects

¹⁰ See for example drawing no ZB01489-ECC-SK-0203

70. The applicant has undertaken a thorough assessment of the options available for this intersection upgrade and concluded that the traffic signal design proposed is optimal for all road users. As a result of the traffic signals, there will be some delays for motorists compared with the present situation, but these delays will be minimal, will not affect the wider road network and are preferred to the present uncontrolled intersection (which means that right turns, particularly out of Ngapipi Road, are virtually impossible at certain times of the day).
71. The Commissioners accept the reasons why traffic signals have been preferred to a roundabout design, and note the reasons why a roundabout would not be appropriate at this location. Other options (such as a flyover and/or underpass) have also been considered and dismissed.
72. In terms of the detailed design, changes have been made in response to Bike Auckland's submission and that submitter expressed satisfaction both with AT's consultative approach and with the outcome which would provide vastly improved cycling and pedestrian facilities.
73. Public transport will also be provided for, with bus stops on either side of Tamaki Drive.
74. Construction traffic effects are proposed to be addressed through conditions which include a Traffic Management Plan.
75. The Commissioners find that the proposal will deliver significant safety and operational benefits, particularly for pedestrians (who currently have no facilities safely to cross Tamaki Drive or Ngapipi Road) and cyclists (with the current intersection design providing alarming crash statistics). Any delay experienced by motorists compared with the current situation will be more than offset by the benefits produced (including an assurance to motorists that both right turns through the intersection will be provided for in the traffic light sequence).
76. Given the above, we agree that the proposal will have no more than minor traffic effects.

Vegetation and terrestrial ecology effects

77. The proposed intersection layout and its reclamation will largely avoid the significant ecological area and cliff line on Ngapipi Road and Tamaki Drive, as well as the mature Pohutukawa.
78. The removal of the two Houpara on the western side of Ngapipi Road will be offset by proposed planting, and pruning and rootzone works to pohutukawa on Tamaki Drive and Ngapipi Road will be managed through conditions of consent which include
- a methodology for the proposed arboricultural works; and
 - for the avoidance of effects on avifauna and the terrestrial ecology values of the site, a survey of relevant trees to determine whether any are in use by nesting birds.

79. The Commissioners agree that the vegetation and terrestrial ecology effects of the proposal will be no more than minor.

Water Quality

80. The creation of new impervious surfaces and the redevelopment of an existing road corridor gives rise to the potential for localised water quality degradation from surface runoff, particularly given the proximity of the site to the CMA.

81. The proposal to install filters on upgraded stormwater outfalls will be an improvement on the existing situation because the existing road corridor does not have any stormwater treatment devices, with surface runoff directed to catchpits and discharging directly into the CMA.

82. During the hearing, it was confirmed that the proposed raingarden, shown on the northern side of Tamaki Drive, and provided following feedback from Mana Whenua, is not required for technical reasons, but has been included for cultural reasons. The Commissioners were not convinced that its location between the traffic lights was the most appropriate and have accordingly provided in condition 24 for confirmation of the rain garden's location.

83. The Council and the applicant have agreed that the proposal will meet the permitted activity standards of the PAUP.

Erosion and sediment effects

84. Up to 1.25 ha of earthworks will be carried out across the site, including 6000m³ of fill for the new reclamation. Given the proximity of the works to the CMA, the applicant has offered a broad range of measures to avoid sediment discharges into the environment, and an Erosion and Sediment Control Plan (ESCP) will be required as a condition of consent.

85. Given these conditions, the Commissioners are of the view that the proposal will have less than minor effects from the earthworks and fill activity.

Heritage effects

86. Because Tamaki Drive was constructed after World War One over the historical foreshore, any archaeological material would have been destroyed or buried, and there are no recorded historic sites within the area of construction and reclamation. However, as a precaution, the applicant has proposed an accidental discovery protocol and cultural monitoring.

87. We note that the scheduled Hobson Bay boatsheds are outside the project area and the proposal will not detract from their historic values.

88. In the circumstances, the Commissioners agree the proposed conditions are appropriate and that any effects on heritage will be less than minor.

Cultural values effects

89. The cultural significance of the Waitemata Harbour generally and Hobson Bay in particular have been confirmed by the Maori Value Assessments (MVAs) and Cultural Impact Assessment (CIA) provided by the applicant, which also note the Nohonga Pa, located immediately above the site, and the importance of protecting and enhancing water quality as well as minimising the loss of native vegetation.
90. The Commissioners consider that the proposal, with its reclamation and stormwater management, and the avoidance of effects on the established vegetation, recognises and provides for cultural values, so that the effects on them will be less than minor.

Contamination effects

91. Although the risk of finding contaminated material is low, the applicant has proposed a Site Management Plan (SMP) which sets out a range of measures to address any contaminated soils.
92. As a consequence, the Commissioners find that any adverse effects will be less than minor.

Noise effects

93. Works will be undertaken in accordance with New Zealand Standard NZS6803:1999, which is the accepted standard for construction noise generation, and noise controls will be addressed through a Construction Effects Management Plan (CEMP) offered by the applicant.
94. Given this management of noise effects, the Commissioners are of the view that they will be less than minor.

Summary

95. In summary, the Commissioners find that the adverse effects of the activity on the environment will be minor and that the proposal passes the test for non-complying activities set out in section 104D(1)(a).

Other matters

96. We also considered the following other matters to be relevant and reasonably necessary to determine the application in accordance with section 104(1)(c) of the RMA:
- The Tamaki Drive Master Plan, a non-statutory document prepared by the Orakei Local Board, identifies the future vision for Tamaki Drive, priority projects and the key moves to achieve the Master Plan. Whilst concern has been expressed by some submitters¹¹ that this project represents a 'piecemeal approach' without having regard to the whole, the Commissioners find that it is in fact an important component in the overall upgrade of Tamaki Drive without

¹¹ For example, Mission Bay and Kohimarama Residents Association (Submission 81)

compromising future proposals for Ngapipi Bridge or other section of the waterfront. This proposal is in fact consistent with the Tamaki Drive Master Plan.

- The Auckland Plan was adopted by Auckland Council in 2012 after a consultative process in terms of the Local Government (Auckland Council) Act 2009, which requires the preparation of a spatial plan for Auckland. The Plan has a number of relevant strategic directives with which this project is consistent, given its integration of multiple transport modes, the provision of resilience infrastructure and the recognition of urban design.
- Orakei Local Board sought that the application be declined, due to a number of issues raised in relation to the project's design. However, given that some of the Board's comments are outside the scope of this proposal, and that others – such as flooding issues – have been addressed, the Commissioners do not consider that these comments should result in a declined application.
- Submissions have been carefully considered and where they are within scope, the grounds raised have been assessed. However, many of the submissions raised issues which are outside the scope of this application, which should not be seen as a reflection of the 'standalone' nature of this proposal: rather, that the issues raised can be addressed in a later forum (for stage 4 of the Glen Innes to Tamaki Drive shared pathway).
- Under section 105, regard must be had to additional matters for any application for a discharge or a coastal permit that would contravene sections 15 or 15B. The Commissioners are satisfied that the provisions of this section have been met¹² subject to the proposed conditions of consent to ensure there is no significant adverse effect on the receiving environment. There are no applicable alternative methods of discharge.
- Under section 107, regard must be had to the restriction on granting certain discharge permits that would contravene sections 15 or 15A. The Commissioners are satisfied that the provisions of this section have been met¹³ subject to the proposed conditions of consent to ensure that there is no significant adverse effect on the receiving environment.
- Duration period – the Commissioners agree with the applicant and reporting planner that a 5 year duration period is appropriate for consents as it will allow for any unforeseen delays in the commencement of the works; and that a 35 year duration period is appropriate for the coastal occupation and stormwater discharge because the nature of the activities are unlikely to alter during this period, and the ongoing maintenance under the conditions of consent will ensure that the required standards will be met through the consent duration.

¹² Noting the careful analysis in the applicant's legal submissions, paragraphs 31-37

¹³ The applicant has also provided submissions on this section, paragraphs 38-41 of the legal submissions.

- Sections 87B and 89(2) set out the requirement for consent for activities on a proposed reclamation. The matters required to be addressed have been covered elsewhere in this decision (less than minor effects and consistency with relevant planning documents).

Part 2

97. The Commissioners agree with the applicant's assessment that this proposal will result in significant benefits to Auckland, in terms of a safe and efficient intersection which is an important part of the City's transport network. In particular, the encouragement of pedestrian and cycling modes will enable people and the community to provide for their social, economic and cultural well-being and for their health and safety, whilst sustaining and enhancing the physical resource of Tamaki Drive and avoiding or mitigating any adverse environmental effects.
98. Public access to the coast and discharges into the CMA will be improved, there will be no adverse effects on historic heritage or the significant trees in their coastal cliff setting, and cultural values have been recognised and provided for.
99. The Commissioners conclude that the Tamaki Drive / Ngapipi Road intersection upgrade will achieve the sustainable management of natural and physical resources.

Principal issues in contention and main findings

100. After an analysis of the application and evidence (including proposed mitigation measures), undertaking a site visit, reviewing the Council planning officer's section 42A report, reviewing submissions and evidence, and concluding the hearing process, the Commissioners note that the principal issues in contention and our main findings are:
- The design of the intersection - the alternatives (including a roundabout) were carefully considered and the Commissioners endorse the chosen traffic signal controlled intersection as best able to deliver the project's objectives.
 - The provision of cycling and pedestrian facilities – Bike Auckland lodged a detailed submission on the design and confirmed at the hearing that the organisation had been very pleased with the response from AT, which had either taken the suggestions on board, or explained why they had not. The Commissioners are satisfied that the outcome as shown in the plans attached to Mr Lawson's evidence is optimal in terms of the project's objectives.
 - Flooding and sea level rise – Mr Todd was able to explain at the hearing to the Commissioners' satisfaction that the proposal would not exacerbate flooding, nor would the area of reclamation be subject to the level of flooding currently experienced or predicted as a result of sea level rise along other parts of Tamaki Drive.

- Stormwater – the Commissioners accepted the evidence that the proposed stormwater management system would improve the current situation of untreated discharges to the CMA. Experts for both Council and the applicant confirmed that while the rain garden was not necessary for stormwater quality, it had been included for cultural and aesthetic reasons.
- Conditions of consent – as offered by the applicant, and amended during the resource consent and hearing process, will address the effects of this proposal on the environment and provide assurance that both construction effects and operational effects will be appropriately managed.

Decision, reasons and conditions

101. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 104D, 105 and 107, and Part 2 of the RMA, we determine that resource consent is granted for the reasons and subject to the conditions set out below.

102. The reasons for our decision have been set out in the sections above.

103. The conditions of consent are attached as Attachment A.



Rebecca Macky
Chairperson

18 January 2017