

IN THE ENVIRONMENT COURT  
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU

Decision [2022] NZEnvC 117

IN THE MATTER OF

an appeal under s 120 of the Resource  
Management Act 1991

BETWEEN

HIGH QUALITY LIMITED

(ENV-2021-AKL-66)

Appellant

AND

AUCKLAND COUNCIL

Respondent

Court: Judge J A Smith  
Commissioner K E Prime  
Commissioner S Myers

Hearing: 11 – 14 April 2022  
30 May 2022 (site visit)

Last case event: 30 May 2022

Appearances: P Fuller for High Quality Limited (**High Quality**)  
D Hartley & A Buchanan for Auckland Council (**Auckland Council**)  
M Savage for s 274 Parties (**the Residents**)

Date of Decision: 30 June 2022

Date of Issue: 30 June 2022

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DECISION OF THE ENVIRONMENT COURT

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A: The consent is granted in general accordance with the terms and conditions set out, subject to improvements agreed by experts and endorsed by this Court and final drafting between the parties.

B: The applicant is to prepare a final form of consent with conditions for

High Quality Limited v Auckland Council



circulation to the other parties within 15 working days. The parties are to respond to the applicant within 10 working days. If the parties disagree, they are to set out the basis of disagreement with those provisions. The applicant is then to file with the Court its preferred wording, the objections raised by the parties and the reasoning for its adopted wording. The Court will then finalise the consent and conditions.

- C: Any application for costs is not encouraged. If made, any application is to be filed within 25 working days, any reply within 10 working days, and a final reply, if any, five working days thereafter.

## **REASONS**

### **Introduction**

[1] The applicant High Quality sought consent to establish and operate a manufacturing activity assembling mobile cabins on an existing rural lifestyle lot within the mixed rural area of Drury zoned as Future Urban Zone (**FUZ**).

[2] The proposal requires consent under the Auckland Unitary Plan (**AUP**) in accordance with the Future Urban Zone requirements as a discretionary activity.

### **The Application**

[3] The proposal requires resource consent for the following reasons:

- (a) Future Urban Zone – resource consent is required for a discretionary activity to establish a light manufacturing/industry activity under Rule C1.7 to undertake an activity that is not provided for in H18.4;
- (b) Future Urban Zone – resource consent is required for a discretionary activity under Rule H18.4.1(A2) because the new building will have the same activity status as the activity it is designed to accommodate; and
- (c) Transportation – to establish a car parking area with 10 spaces or more

without lighting, as required by E27.6.3.7(1), is a restricted-discretionary activity pursuant to E27.4.1(A2).

[4] It is common ground that overall the proposal is to be considered as a discretionary activity. It was agreed in the planning joint witness statement that consent is not required under Rule E36.4.1(A36) because the site is located within a Flood Prone Area not within a 1% Annual Exceedance Probability (AEP) Floodplain, and that earthworks consent has been granted to enable construction of the shed and car parking area.

[5] This site is situated within the Future Urban Zone and is currently shown on the relevant structure plan as intended for future industrial activity. However, any rezoning of the area requires a plan change. There have been a number of plan changes already within the Drury area (of which this site is part). However, the area which includes this site has not been subject to any plan change application to date.

### **The Commissioner's decision**

[6] The Commissioner's decision declined to grant the discretionary consent on the basis:

- I. There will be adverse effects on the Rural Character and Amenity of Willow Lane currently enjoyed by residents in the existing rural environment. The proposal is contrary to Policy H18.3(3).
- II. The proposal will result in the urbanisation of land zoned 'Future Urban' before it has been rezoned for urban purposes and may compromise aspects of such future urbanisation. It is contrary to Objectives H18.2.(1), (3) and (4) and Policy 18.3.(6).
- III. The proposal is contrary to the Objective 6(a) of the National Policy Statement on Urban Development 2020 which states that Local Authority decisions on urban development that affect urban environments are integrated with infrastructure planning and funding decisions.
- IV. Overall, the rear site location in an enclave of properties with, in effect, a rural-residential character accessed by a shared private lane, is not suitable for the proposed activity under its current zoning, and the proposal may undermine the sustainable management of the area and compromise Council's obligation to robustly plan for future urban development in the Drury-Opāheke Structure Plan area.

[7] At paragraph 65 of their decision, the Commissioners considered the principle issues in contention were:

- (a) Permitted Baseline and Existing Environment;
- (b) Effects on character and amenity of Willow Lane;
- (c) Noise and effects on all amenities;
- (d) The Drury-Opāheke Structure Plan and consistency with the AUP Objectives and Policies for the Future Urban Zone (FUZ)
- (e) Traffic and Access;
- (f) Effects on Stormwater Management.

### **Position at Hearing**

[8] By the time of this hearing, several of these matters had been resolved by agreement between the relevant experts. Some common ground had been reached although this was not accepted by the residents.

### **Truck movements operational safety and parking**

[9] In relation to transportation issues, the transport experts agreed:

- (a) some modifications are necessary to mitigate safety concerns for Willow Lane, namely:
  - (i) a footpath for pedestrians to be constructed along the northern side of Willow Lane. The footpath to be 1.2m wide to accommodate prams, either constructed with crushed compacted gravel with a 75mm timber edge or, if built flush with the ground, with either concrete, asphalt with chip seal;
  - (ii) rubber judder bars to be constructed at four locations on Willow Lane: one at the entry point of Willow Lane at Great South Road; two along

the right of way of equal spacings; and one within the boundary at the entry point to the applicant's site.

- (b) that no parking space should be closer than 0.5m from the roller door where trucks will be manoeuvring. Parking space #10 should either be relocated to be at least 0.5m away to comply or have a kerb built beside it to protect parked cars from moving trucks. The experts agreed that a corrected plan could be prepared.
- (c) space #1 will have a triangle paint marking on its right hand side from the rear of the space to the vehicle crossing.
- (d) they also agreed on trip generations on the shared driveways: other trucks in and out one per day; cabins taken out by a light trailer, three in and three out per day; staff/visitors, 12 in and 12 out per day; total 34 movements per day, excluding house traffic; and
- (e) that conditions could formalise these matters of agreement.

[10] In relation to a road upgrading works, the experts consider the existing proposed conditions addressed this matter and that no further passing lanes or speed bumps were necessary beyond those already proposed.

[11] There was a suggestion for further improvements to conditions 6, 18, 20, 30(a) and 38 made by Mr Thambiah in his evidence. On this basis, these experts had reached full agreement.

[12] Changes to Condition 31 were also agreed in the planning joint witness statement that reduce the hours of operation during winter months so that the car parking area does not need to be illuminated and resource consent is not required under Rule E27.4.1(A2) for infringing E27.6.3.7(1).

## Stormwater

[13] Similarly, the experts agreed on matters of stormwater design and effects from the development, in particular:

- (a) that it is most appropriate to allow the flow to pass and avoid contributing to regional flood effect;
- (b) that the effects of stormwater runoff in the impervious areas are mitigated appropriately [in the proposed conditions]; and
- (c) if the land use were different, i.e. glasshouse, the same stormwater management would still be appropriate.

[14] In relation to stormwater in the AUP rural and urban zones, diversion is a permitted activity – Rule E8.4.1(A7). If it was undertaken in an urban area, it would be a controlled activity – Rule E8.4.1(A9). The proposed stormwater management would meet controlled activity criteria.

[15] In relation to future stormwater infrastructure, the experts agreed that the pre-mitigation proposal for the site is appropriate. In particular, the specific development is located in the catchment such that it is unlikely to constrain the location of future stormwater infrastructure such as network or management devices. Further to that, as there is no catchment upstream, the need for provision of infrastructure through the site in future is unlikely. Finally, the site would be able to be modified at the time of future urbanisation so that it can respond to and meet any future catchment-wide management requirements.

## Noise

[16] Similarly, in relation to noise, the experts agree that Chapter E25.6.3(1) is appropriate and that secondly, the following statement is a correct description of the site:

Mr Styles and I visited the site together on 20<sup>th</sup> December 2021. During the site visit, noise measurements were undertaken which identified representative noise levels for the Site and surrounds 49 - 53 dB  $L_{Aeq,15 \text{ min}}$ . The principal

sources of noise during the site visit were vehicle noise from traffic on Great South Road and State Highway 1, insect noise (principally cicadas) and occasional planes and helicopters passing overhead.

I would describe the measured noise levels as slightly lower than, but from a subjective perspective broadly comparable to, the daytime permitted activity noise limit of 55 dB  $L_{Aeq, 15 \text{ min}}$ .

[17] Furthermore, they agree that the equipment operated within the ‘acoustic room’ and the shed would be inaudible at the notional boundary except on quiet, calm days. Even with a special audible characteristic adjustment, the proactive rating levels would comply with a permitted activity noise limit.

[18] Finally, in relation to conditions of consent, they agree to the proposed conditions 23 to 27 included in Annexure 10 to Mr Powell’s evidence (which we understand to be in the proposed conditions of consent).

[19] The conditions in the original application included tonal reverse alarms on vehicles. The experts now agree they do not support this clause. They now seek a clause that trucks and forklifts controlled and operated by the consent holder must be fitted with broadband reversing alarms and tonal reversal alarms on these vehicles are prohibited.

### **Other experts**

[20] Although there were some limited matters of agreement between the planners and landscape architects, we take it that this was the major area of expert contention remaining. We will discuss this in more detail in due course.

### **Proposed conditions**

[21] The applicant provided draft conditions of consent at the commencement of the hearing that had been based on those attached to the evidence of Mr Powell and revised to take into account of the recommendations in the joint witness statements. These are annexed hereto and marked “**A**”. As the case developed, there was a suggestion that there might be some changes to these conditions to meet particular issues that arose which we will discuss in due course.

[22] In the end, we understood this case to turn on two principal points of difference between the planning and landscape experts:

- (a) the first was a planning matter as to whether or not development even within the terms of the proposed activity planning for the area, i.e., in this case industrial, is always contrary to the objectives and policies of the plan. If so, consent should not be granted until a plan change takes place; and
- (b) the second issue is whether or not the rural amenity and character in this area would change and if so, what degree of change was permissible in terms of the plan.

[23] We keep in mind that in considering this matter we are dealing with a discretionary activity rather than a non-complying activity. Thus, we avoid the temptation to utilise phrases such as contrary to the objectives and policies of the plan. Clearly as a discretionary activity that **may** be an outcome, but it is not a test in terms of the statute.

[24] We note, for example, that even non-complying activities contrary to the objectives and policies of the plan may pass the threshold test provided the effects are no more than minor. It would be a perverse outcome if all discretionary activities must achieve the objectives and policies.

### **By principle or discretion**

[25] Fundamentally, this case occupied so much time because of an argument turning on matters of principle rather than matters of discretion. With respect, we conclude this case raises **NO** matters of high principle but rather an assessment of the proposal against the Unitary Plan and in addition and in particular, an assessment of rural character in the context of any area undergoing significant change. We now explain our reasoning.

### **The Drury area**

[26] East and west Drury are divided by State Highway 1, the southern motorway.



Because of the access to the motorway at Drury and the crossing of the motorway at Quarry Road just to the north of the site, development has occurred in a way which may not seem obvious from reading the planning maps or the zone statements.

[27] The Stevenson Quarry lies to the east of the motorway. Various housing projects are starting to encroach around the Quarry periphery. The East Drury plan area is currently the subject of three decisions by the Commissioners granting plan changes to allow intensive housing development. It is intimated that the Council may appeal these decisions.

[28] To the west of the motorway, in the area to the north of this site, there have also been a number of Plan Change applications. Some have been granted. One change sought by Lomai Properties was refused by the Council and has now been the subject of a consent memorandum by the parties, with Judge Smith issuing the consent orders shortly after this matter was concluded. Nevertheless, that decision is not directly relevant to the current position except that it represents another of the number of changes that are occurring through the Drury area at the current time.

[29] It is clear that a major constraint in this area is the cost of infrastructure, particularly roading, wastewater and stormwater treatment. Figures discussed at the hearing indicated the cost for all of the Drury-Opāheke area as being between \$4 and \$5 billion.

### **Who pays for infrastructure?**

[30] Mr Fuller in his final submission discussed the Mexican standoff in this tension between the zoning and infrastructure. His position is that infrastructure availability should never be a reason to decline a rezoning. He suggested that otherwise entities, such as Watercare and I assume other roading and infrastructure providers such as Auckland Transport, become strategic planners of Auckland.

[31] We understand his concern is that the current impasse at Drury is due to the Council's inability or unwillingness to fund infrastructure development. This requires them to delay the rezoning of the land until funding becomes available or is supplied

by the developers.

[32] This is a situation not unfamiliar to the Court and it is clear that a number of the planning decisions and zones, including Future Urban Zoning in Auckland, are subject to this very constraint. While the ability to provide infrastructure to any area may properly justify it being rezoned, it is difficult to see inability to provide the infrastructure as a full and complete basis to refuse to rezone land which is identified as future urban land.

[33] It is clear that the National Policy Statement on Urban Development 2020 (**NPS-UD**) considers that land which is indicated for future urban use should be utilised and infrastructure is to be provided. In this case it was argued the NPS-UD means land cannot be developed until infrastructure can be provided. We take that issue no further as the Auckland Council is responsible for future compliance with that standard.

[34] The difficulty is, of course, that such statements stand in stark contrast to the cost of installing of such infrastructure and the concerns that arise if infrastructure is not undertaken in a planned way or has downstream impacts i.e., on wastewater treatment through the Mangere treatment plant.

[35] We also need to recognise, at the same time, that there is the issue of the interim considerations that arise in relation to this area which is currently zoned mixed rural with this overlay zoning. The AUP makes interim provision for this land which represent significant constraints on its use. The question in this case is whether this application offends against the provisions which currently seek to constrain the use of this site.

### **Character of the neighbourhood**

[36] The area of South Auckland, particularly within the rural area, is an eclectic mix of activities from residential housing through to various industries, businesses, to open pastoral farming and dairy farming.

[37] It is difficult to understand the planning demarcations between the different parts of Auckland particularly in such areas between Bombay and Drury. We have already noted the large Stevenson Quarry on the eastern side of the State Highway 1 motorway. On the eastern side, the current extensive urban housing does not go south of the Drury interchange, at least close to the motorway. Instead, over the past few decades, industrial activities have built up on these sites, often based around other uses such as concrete manufacture.

[38] Around Quarry Road on the eastern side close to the motorway is an industrial Area. South of Quarry Road between Great South Road and the motorway (western side of motorway) further business/industrial activity is occurring. There appears to be a cabin construction company just opposite the entry to this site and we noted truck storage, and various other business/industrial signage around the area close to the entrance of this property.

[39] Even further south, in generally more open pastoral areas, there are large buildings placed upon relatively small properties (one or two acres), some of which seem to have “home occupations” i.e., truck depot associated with them.

[40] Approaching this site from either the south or the north we concluded there was a predominance of business/industrial activities on the eastern side of Great South Road adjacent to the motorway, with a more rural aspect to the west. However, this is not uniform and there is quite a large church complex and parking area just to the north of the entry to Willow Lane and race dog training centre on the northern boundary to Willow Lane. Even the southern boundary to Willow Lane has a disused building close to the road, and further into the site there appears to be a former milking shed.

[41] Our overwhelming impression at the time of our site visit was that this neighbourhood is one in transition (or urban land in waiting). Overall, the neighbourhood appeared to be suitable for farming activities although there was a great deal of other development.

[42] We did notice the neighbourhood appeared to be somewhat lower lying than

the land to the north. We understand that it may be water prone in very high rainfalls. Nevertheless, there appears to be a relatively effective central drainage system (the Ngakoroa Stream).

[43] Great South Road itself, on our viewing, had a direct connection between the eastern and western side. We appreciate there has been a dispute as to whether or not Great South Road created a barrier to the activities on the eastern side. For our part, we were not able to draw that distinction so readily.

[44] At the time of our site visit, the industrial activities on the other side of the road appeared to be open and operating. There was a large moving truck with a very large piece of industrial equipment parked up (we assume to await travelling outside of peak hours). The road is particularly wide in this area with large metal formation on the eastern side. There is no doubt in our minds that the site locality includes Great South Road.

[45] The matter that was contentious before us, on which there was disagreement between the landscape witnesses, was whether the locality included the eastern side of Great South Road through to the motorway. We acknowledge that this area moves from the Great South Road to the west and in the centre of that area is the natural stream and lower point in the landscape. However, there was no physical access to this area, although at least one of the owners with property on Willow Lane adjoins this central area. Nevertheless, from the perspective of place Great South Road constitutes the only access point to these properties.

[46] We have concluded that this area is dominated by these two roads, Great South Road and the motorway (State Highway 1). The constant hum of traffic dominates the area not only adjacent to Great South Road but also further back and on this site. At the time of our visit, this was on a weekday after peak, the sound from Great South Road in particular was still clear and distinct. There was a more general hum also emanating from further away. The wind was virtually still with no evident wind direction from the west. At this time of the year during our visit at the end of May 2022, there was no cicada nor with the absence of wind any particular rustling of trees.

[47] Although this may mask the noise, our clear conclusion from this and many other site visits over years was that the noise environment in this area is dominated by the traffic. This is confirmed by the agreed statement of the noise consultants, which we quoted earlier. In particular, the existing noise environment is approaching the maximum expected within this zone.

[48] Overall, we do not believe we can ignore the influence of Great South Road or the motorway in this locality. Accordingly, the rural environment and the rural character amenity of this area is affected by the noise environment from the roads.

[49] Nevertheless, moving from a relatively industrial frontage with Great South Road looking directly at a number of business activities, the general impression of the area as walking along Willow Lane is eclectic. It could either be large lifestyle urban or rural, but it is certainly not devoid of human influence.

[50] There is a racetrack area and kennels immediately to the right, moving up Willow Lane with an old derelict house on the property to the left. Further up there is an early milk shed and then the replanting and landscaping associated with the subdivision buildings, one being the house owned by the applicant, and the house on the opposite side of the entry to the applicant's property which is well hidden by trees. The road then forks, with driveways approaching other houses, although one house at least appears to be further screened by trees.

[51] Even down this driveway the common view of the Court, having had experience over a number of these cases, is that the visual and auditory clues were such that one could have been in large scale residential or an urban area or in a densely developed rural area. The lifestyle nature of the properties tended to guide us away from the view of a rural environment and more to an urban residential environment. These clues included letterboxes at the driveway entrance, the gates to each property, and the driveways to each home including the forking of the road just beyond the applicant's property to the various properties.

[52] Our overall conclusion standing even further in the applicant's site is that this is an area in transition. The fact that the milking shed is not operating, that there is an

abandoned home, and the dog kennels all give clues that this is not a typical rural area. Although one can see paddocks with stock in places there are also other areas where the land appeared to be utilised for household landscaping and curtilage. The applicant's site itself is flat and has been metaled. It is partially hidden by trees to the lane but there is a driveway to the house at the rear of this site parallel along the western side of the site subject to the application.

[53] Assuming the absence of the metaled area, we would still be curious to understand what type of use could have been made of the front portion of the applicant's site given the house is set well back from the driveway on the site. We are tempted to the conclusion that these sites were developed in anticipation that in due course they may be further subdivided. Clues to this come from the width of the driveway. Although it is currently formed to only about 3.5 metres its overall width is sufficient to take a two-way private lane or possible minor road to service multiple houses. The use of a splayed finish at the end gives the impression that a cul-de-sac might have been anticipated in due course. We keep in mind that this subdivision was allowed by consent given that it was not provided for directly in the rural area. Overall, our conclusion is that the outcome has been to achieve a rural residential development as a transition to future zoning changes.

### **The AUP approach**

[54] The Auckland Council's opening submissions noted:<sup>1</sup>

The relevant objectives and policies of the AUP regional policy statement (RPS)<sup>2</sup> and FUZ have a clear policy direction that enables land to be used for a range of rural activities but not urban activities until the site is rezoned for urban purposes. The relevant policy framework in the FUZ seeks to ensure that future urban development is not compromised by premature use or development and to maintain rural character and amenity. The Proposal seeks to pre-empt the required plan change process and is inconsistent with those objectives and policies.

As the Proposal could easily be replicated in other FUZ locations, including on adjacent sites, and has no truly unique or distinguishing features it could set a precedent about the appropriateness of light industrial manufacturing activities establishing in the FUZ in advance of FUZ areas being rezoned for

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<sup>1</sup> Legal submissions on behalf of Auckland Council dated 11 April 2022 at [7] – [8].

<sup>2</sup> Chapter B2 Urban Growth and Form.

urban purposes. It could undermine public confidence in the administration of the AUP FUZ.

[55] We quote from the Council opening proposition because of its relevance to the issues that were advanced in evidence for the Council. With respect, it appears that this statement is inconsistent with the activity status of this area being discretionary and restricted discretionary (discretionary overall). The submission that a discretionary activity needs to have truly unique or distinguishing features appears to be a citation from decisions of the Court in relation to non-complying activities.

[56] Issues of consistency or otherwise with the objectives and policies are clearly relevant in the exercise of the discretion for an application for discretionary activity but cannot be determinative. They are not a threshold to consideration of granting of consent but rather a factor to be weighed with others under s 104 of the Act in considering the application for consent.

### **National Policy Statements**

[57] We are required to consider any national documents that are relevant including policy statements. The planners, Mr Shuker and Mr Powell, agree that there are two National Policy Statements that may be relevant mainly:

- (a) the National Policy Statement for Urban Development (NPS-UD);
- (b) the National Policy Statement for Freshwater Management 2020 (**NPS-FM**).

[58] The planners agree that the NPS-UD guides the development of Future Urban Zone land and affects the development standards and amenity plan for these areas. Overall, the Policy Statement requires that there be land available and development ready within a five-year period, then land in the medium term and then provisions in a longer term.

[59] As has been a consistent theme throughout this hearing, the AUP seems to on the one hand provide for future land development by future urban zonings, on the other hand, it is not development ready in terms of the NPS-UD given that the

infrastructure servicing is not available. Infrastructure seems to be addressed at the time of the plan change which has led to the issues, particularly in Drury, which are the subject of appeals to this Court currently. It is not the desire of this Court to enter into a debate about infrastructure funding and the need for development areas within Auckland. Those have been addressed at different levels and by requirements under the NPS and other documents.

[60] For current purposes suffice to say that we agree with the decision in *Eden-Epsom Residential Protection Society v Auckland Council* and *Drive Holdings Limited v Auckland Council* that the obligations are on the Council and require plan changes to implement the NPS-UD.<sup>3</sup> The elephant in the room that the Court discussed with parties is that the pressure is on for new development areas in Auckland now, while these changes may take some years to put in place.

[61] The Mexican standoff described by Mr Fuller is whether developers are prepared to pay the cost of installing this infrastructure when it has not planned to be provided for by the Council. As we understand it, the cost of infrastructure for the Drury area is noted to be between \$4 to \$5 billion.

[62] The issues under the NPS-FM relate to the potential effects on freshwater, ecosystems and resources. Given the agreement of expert witnesses, both planners agree that the proposal is consistent with the NPS-FM because the proposal will mitigate adverse effects on freshwater resources and freshwater ecosystems, in particular the Ngakoroa Stream.

[63] We do not consider the New Zealand Coastal Policy Statement is relevant in this case but any effects on the Manukau Harbour (which is some distance away from the site) would be avoided by the mitigation of effects on stormwater to the Ngakoroa Stream.

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<sup>3</sup> *Eden-Epsom Residential Protection Society v Auckland Council* [2021] NZEnvC 82; *Drive Holdings Limited v Auckland Council* [2021] NZEnvC 159.



## **The Regional Policy Statement Chapter 2 of the AUP**

[64] Chapter B2 Urban Growth and Form has objectives and policies. The objectives and policies recognise the need to meet demand from employment and businesses.

[65] Part B2.1. Issues sets out that growth needs to be provided for in a way that:

- (a) B2.1(2) supports integrated planning of land use, infrastructure and development;
- (b) B2.1(3) optimises the efficient use of the existing urban area;
- (c) B2.1(5) enables provision and use of infrastructure in a way that is efficient, effective and timely; and
- (d) B2.1(6) maintains and enhances the quality of the environment, both natural and built.

[66] There is nothing we have seen in the evidence that would show that this application would derogate from any of those relevant objectives and policies.

[67] Parts B2.3 to B2.8 are specific to growth and urban form issues. Mr Shuker emphasises objectives and policies B2.2.1(3), B2.2.2(1) and B2.5.1(1) relating to ensuring an adequate supply of industrial land to meet current and future demands. Mr Powell on the other hand emphasises the requirements to give effect to the resource management issues listed in B2.1. In particular, he considers there is a broad strategy of seeking quality compact urban form and avoiding urbanisation without appropriate structure planning.

### **Infrastructure**

[68] As we will discuss in due course, the argument cannot be that there has been no structure planning as, in fact, the parties all referred to the relevant structure plan showing this area as future industrial.

[69] Overall, we have some difficulty with Mr Powell's interpretation of B2.1(2) in

particular, discussing integrated planning of land use, infrastructure and development. In our understanding, it is not a question of what infrastructure or development should occur. This is shown in the structure plan. But rather the issue is who will pay the cost of that. In our view, that is not an issue covered by B2.1.

[70] On a wider basis, we raise the issue as to whether provision of infrastructure should be the ruling criterion for development. Mr Fuller in particular argues that infrastructure should follow land use rather than awaiting it. This is one of the fundamental issues with development in New Zealand and cannot be addressed by this Court directly.

[71] Mr Powell relies in particular on several policies, particularly B2.2.2(3):

Enable rezoning of future urban zoned land for urbanisation following structure planning and plan change processes in accordance with Appendix 1 Structure plan guidelines.

[72] B2.2.2(8) enables the use of land zoned future urban within the Rural Urban Boundary or other land zoned future urban for rural activities until urban zonings are applied, provided that the subdivision, use and development does not hinder or prevent the future urban use of the land.

[73] It is clear that the plan prefers that development occur following a structure planning and plan change process. In this case, the structure planning has occurred, but no plan change for this particular part of the Future Urban Zone has been adopted. The meaning of “plan change processes” is interesting and envisages some form of continuous or stepped change from one zone to another. This may mean that not only structure plans but applications for and grants of plan changes in respect of land within the same future urban zoning area (Drury) may be relevant to the consideration of an individual application.

[74] Notwithstanding this, it is clear from B2.2.2(8) that land use other than simple rural activities might be contemplated. It discusses in particular “subdivision, use and development [which] does not hinder or prevent future urban use of the land”. Given that the status of this activity is discretionary it cannot be said that it was not envisaged

that such an application could be made in the zone or even granted.

[75] The proposition that the proposal is inconsistent with B2.2.2(8) because they seek to establish an industrial activity on FUZ land does not appear to follow directly from B2.2.2(8). It is clearly not a rural industry or a rural activity but that does not explain why the activity is provided for as a discretionary activity. We have concluded that this application does not achieve B2.2.2(8). However, the meaning of that provision needs to be considered in light of the balance of the provision which does appear to provide for some development in the area provided it does not hinder or prevent “the future urban use of the land”.

[76] A similar position occurs in relation to Objective B2.5.1(3) which relates to industrial growth and activities being enabled in a manner that promotes the efficient use of land and infrastructure in industrial zones. That cannot be interpreted as a prohibition against industrial activities outside industrial lands. Particularly for future urban zones, the question needs to be addressed as to whether it can be undertaken in a way that does not hinder or prevent the future urban use of that land.

### **The rural environment**

[77] The key issue in this case, beyond whether or not the application hinders or prevents the future urban use of the land, are its particular effects given the rural activities permitted within the zone.

[78] Mr Powell acknowledges that the proposal is consistent with Policy B9.2.2(2) because he does not envisage it would give rise to any reverse sensitivity issues. B9.2.1(3) discusses rural production activities, and we agree that this is not a rural production activity. Nor it is an activity that would fit within of the rural industrial or other activities that would be permitted under the plan. The question then is whether it is inconsistent with Policy B9.2.2(1) which relates to the effects on rural amenity.

[79] Beyond this, Mr Powell also mentions Policy B7.4.2(1) (Integrated Management) suggesting that the proposal could undermine the delivery of stormwater infrastructure to mitigate effects on the downstream environment.

However, given the agreement of the relevant experts on stormwater, we discount this suggestion and note that it is agreed that it will have minimal, if any, impact upon such development.

[80] Our view is that overall, the policies do not encourage any form of industrial development within the rural zones, but they are not forbidden. The absence of provision cannot amount to prohibition.

[81] Overall, we see the policies stating that industrial activity should take place in appropriate zones and within FUZ areas where the land is rezoned. However, it does not prohibit such activity and each case needs to be considered on its merits.

[82] Overall, the question in our view in terms of the policy is whether the use would hinder or prevent future urban use of the land. Given the agreement of the stormwater experts on this matter it would not affect infrastructure for drainage. The land itself is likely to be utilised eventually in a similar manner to that now proposed if the land is rezoned. Accordingly, we could see no other evidence to suggest that the activity will prevent future urban zoning.

[83] Mr Powell also agrees with Mr Shuker that the proposal can be undertaken in a manner that is consistent with the objectives and policies of B10 of the AUP.

### **The AUP District Plan**

[84] This issue turns upon the Future Urban Zone H18. While there was some disagreement as to the extent to which the rural provisions apply within the Future Urban Zone, it is clear that the Future Urban Zone anticipates this area being retained as rural until such time as the necessary structure plans and plan changes take place.

[85] The planners agree on the following matters:

- (a) the proposal is consistent with H18.3.6(b) as it will not adversely affect the efficient and effective operation of the local and wider transportation network;

- (b) the proposal is consistent with H18.3.6(c) as the activity can be serviced onsite without upgrading or extending public infrastructure; and
- (c) the proposal is also consistent with H18.3.6(f) because the proposal does not give rise to reverse sensitivity effects in relation to existing rural activities and infrastructure.

[86] We also note that it has minimal, if any, impact upon stormwater issues according to the experts.

[87] Mr Powell's view, which we concur with, is that the purpose of the FUZ zone is to:

- (a) ensure that future urban development is not compromised by premature subdivision, use or development; and
- (b) maintain the amenity and ongoing rural use of the land until the land is rezoned for urban purposes.

**Policy H18.3(3) and Objective H18.2(1) via the objectives and policies of the rural production zone**

[88] Mr Powell's evidence is that while H18 contains rural provisions, the FUZ is not a rural zone. We also agree with the Council's primary submission that the FUZ is not an urban zone but is a TRANSITIONAL ZONE (emphasis added).

[89] This locality has features which are a prime example of a transitional area. There are influences and effects which are clearly non-rural including two major roads, and business activities located on the opposite side of the road. There are a range of activities that would not generally be described as rural including the residential enclave and the dog training facilities next door. But at the same time, it does not have any of the features that one would anticipate for urban, in particular developed footpaths, road lighting, wastewater and stormwater treatment. Wastewater is proposed to be disposed of on-site and rainwater harvested to service the development. A condition of consent requiring the existing wastewater system to be brought up to current standards was included in Mr Powell's evidence.

[90] We can do no better than the zone description H18.1 which states:

... The Future Urban Zone is transitional zone. Land may be used for a range of general rural activities but cannot be used for urban activities until the site is rezoned for urban purposes. ...

[91] The Council argument largely turns upon the use of “cannot”. As we have already noted, the word “cannot” in this context does not mean prohibited and there are a range of urban activities already occurring throughout this area including a church and number of businesses on the opposite side of the road. This highlights the problems in using the stark dichotomy of urban and rural.

[92] To this Court, most of the area described as rural within Auckland would not fit within the broader description used throughout the rest of New Zealand. This is because of the eclectic mix of activities and businesses which operate throughout the rural area. Nevertheless, the area does reflect rural character albeit somewhat different to the pastoral view of rural held by those not familiar with the area.

[93] Essentially Objective H18.2(4) again reflects the role of FUZ placed in giving effect to Chapter B2 of the AUP. H18.2 Objectives reads:

- (1) Land is used and developed to achieve the objectives of the Rural – Rural Production Zone until it has been rezoned for urban purposes.
- (2) Rural activities and services are provided for to support the rural community until the land is rezoned for urban purposes.
- (3) Future urban development is not compromised by premature subdivision, use or development.
- (4) Urbanisation on sites zoned Future Urban Zone is avoided until the sites have been rezoned for urban purposes.

[94] H18.3 then goes on to discuss the policies which apply and it is the policies, particularly (3), which hint at a broader range of activities than those which are encouraged. H18.3 Policies reads:

- (3) Require subdivision, use and development to maintain and complement rural character and amenity.
- (6) Avoid subdivision, use and development of land that may result in one or more of the following:

- (a) structures and buildings of a scale and form that will hinder or prevent future urban development;
- (b) compromise the efficient and effective operation of the local and wider transport network;
- (c) require significant upgrades, provisions or extension to the wastewater, water supply, or stormwater networks or other infrastructure;
- (d) inhibit the efficient provision of infrastructure;
- (e) give rise to reverse sensitivity effects when urban development occurs;
- (f) give rise to reverse sensitivity effects in relation to existing rural activities or infrastructure; or
- (g) undermine the form or nature of future urban development.

[95] We have concluded that the buildings and structures in this application are not of a scale that would hinder or prevent future development, particularly as the structure plan currently shows the area as industrial. Even if the area was not industrial, we saw a number of buildings throughout the immediate rural area which had buildings of a similar size to that envisaged in this case.

[96] It is agreed that the application will not compromise the transport network nor wastewater, water supply or stormwater networks. Nor will it inhibit the efficient provision of infrastructure.

[97] Overall, we cannot see what reverse sensitivity effects might arise when the urban development occurs, and the planners agreed with this proposition. The question then is whether it gives rise to sensitivity effects in relation to existing rural activities and this is also covered by H18.3(3).

[98] The mere fact that it may meet those requirements does not in itself mean that the activity must be granted consent. As we have noted, the degree of consistency or inconsistency with all of these provisions must be examined in exercising discretion whether to grant consent.

[99] The Council submits that the FUZ policy direction holds the line and seeks to

avoid the establishment of industrial activities prior to anticipated Schedule 1 Plan Change processes. They acknowledged there is also an issue around rural character and amenity.

[100] Putting aside rural character and amenity, the question is whether or not a discretionary activity can effectively be prohibited by the wording within policies or rules. Certainly that is not our understanding of the decision of *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*<sup>4</sup> although this was quoted to us by the Council. *Albert Road Investments v Auckland Council*<sup>5</sup> is quoted by the applicant relating to a two-lot subdivision containing one house within the Future Urban Zone at Warkworth.

### **The Drury – Opāheke Structure Plan**

[101] The 2019 Drury – Opāheke Structure Plan is prepared under the Local Government Act 2002. A separate plan change process is required to make that live, and the indicative zoning shown in the Drury Structure Plan can be subject to change. That can be noted from the applications that have already been granted by the Council in other parts of Drury.

[102] Nevertheless, this land has been identified for industrial use for some time prior to that Structure Plan given its low-lying nature. Council, however, suggests that little weight should be given to the Structure Plan. However, we have already noted this Structure Plan and the zoning application envisaged to change the zoning of this area.

[103] The Structure Plan is a precursor to an application for plan change. Clearly significant areas within the Drury – Opāheke Structure Plan area have already been the subject of plan changes and we suspect more will follow in the near future. Therefore, we cannot see the Structure Plan as irrelevant given it is given a purpose in terms of the description for the FUZ and the objectives and policies of the Plan.

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<sup>4</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZDC 38, (2014) 17 ELRNZ 442, [2014] 1 NZLR 593, [2014] NZRMA 195.

<sup>5</sup> *Albert Road Investments v Auckland Council* [2018] NZEnvC 102.



### **Precedent and plan integrity**

[104] As we noted earlier, we do not consider this case to be one of high principle. The activity is discretionary. The weight of the relevant objectives and policies and the zoning provisions are considered along with the evidence of actual effects. As it can be seen, most of the effects have been addressed.

[105] No subdivision of land is involved. We are satisfied that there is no compromise to any future urban zoning of this land. The activity will have minimal or no effects on matters including stormwater and other infrastructure installation. We acknowledge that the plan does not encourage, and seeks to actively discourage, changes of use within the FUZ zone prior to its rezoning for urban use.

[106] Nevertheless, the activity is provided for as a discretionary activity. We need to consider all the relevant provisions in reaching a conclusion. This particularly convoluted method gets us to the core issue in this case: is the rural character and amenity of this locality maintained?

### **Effects on rural character and amenity**

[107] There was a disagreement between the landscape architects as to the potential effect on the amenity and sense of place. It is clear that the Council witness considered the locality to be a particular position approximate to the entry to the site. We do not consider that the plan considers the locality on such a precise scale.

[108] For the purpose of this case, we include within the locality the area of approximately 400 to 500 m around the site. This encompasses both Great South Road and the area on the opposite side of that road to the motorway, and also areas to the north including the church and areas to the south. The site is dominated by the noise generated from the roading systems.

[109] Visually, the views are partially contained within the trees along the lane giving the impression to us of a rural residential enclave rather than a rural aspect. Even the area to the south which does consist of a farm has a derelict house and what looks to be a farm shed or a milking shed adjacent to the lane. The site to the north has fencing

and kennel buildings from near the entrance to the lane for the first portion.

[110] The applicants proposed shed may be visible from several points on the lane but is unlikely to be visible from the property on the opposite side of the lane. It was less clear as to whether the shed could be seen from any other home. At least the top part of the shed will be visible proximate to the entry through to the terminal point on the lane just beyond the property.

[111] The property opposite on the lane appears to have garaging closest to the driveway, and the house itself was set further back and screened by landscape trees. Although it would be possible to see from the house into Willow Lane, the occupants of the house would see the trees fronting the lane on the applicant's site. On the applicant's boundary there is an area slightly further to the west where the trees have either been removed or not planted and this needs to be screened. It appears to have some form of stock pen and we were unclear who this belonged to. Nevertheless, either fencing or planting or a combination of both could be installed to reduce views into the site, both in the short and long term.

[112] There was concern as to signage on the road giving a more industrial impression for the site. Again, a rural character could be maintained by forbidding any signage beyond the boundary of the site and requiring the biosecurity and other information to be displayed on the building itself. This is consistent with what we saw at High Quality's existing premises. Given that all the unloading and other activities would occur inside the building, we do not understand that this would create any particular difficulty.

[113] There is going to be a need for further screening, but this is proposed in the planting plan provided. Whether temporary screening should also be erected is a matter we have considered. The landscape experts agreed that the hedge along the eastern boundary is essential for screening the carparking and shed and that a condition of consent should be introduced that requires its replacement with suitable species if it should die. The planners in their joint witness statement agreed that this change would be included in Condition 4.

[114] Overall, we have concluded that the impacts on the rural character and amenity of this locality would be nil to minimal. While there will be some impacts from traffic along the driveway these can be appropriately mitigated by the roading improvement as envisaged by conditions and the joint witness statement. If improvements to Willow Lane for whatever reason are not able to be permitted, we consider that there are suitable pullover areas and there is no compromise to safety. We would have thought however that it was in the interest of all of the residents to at least install a pedestrian way along this area to separate traffic (and we have as many concerns about residential traffic as the applicants) and pedestrians.

[115] In short, we had considered prior to visiting the site that the rural character of this area would be clear and there would be little impact from the surrounding major roads. The outcome is very different, and we are satisfied that the existing rural character and amenity of this locality will be maintained by consent being granted subject to appropriate conditions.

### **Overall consideration**

[116] We have addressed all of the matters in detail, given the way in which the case was presented. We now come to the exercise of our discretion.

[117] We note the rezoning of this general area, and for Drury in particular, where large parts of the area have been subject to decisions by Commissioners already. There may be further plan changes to be filed and considered. The evidence of both the applicant and other parties is that there has been a great deal of developer interest in the area. The significant hold up to date appears to be with issues relating to payment for infrastructure. It is clear that applications for consent have been granted that do not readily fit within the current zoning requirements. This has changed the nature of the area to a clearly transitional area.

[118] Given there is no subdivision in this case and there are no reverse sensitivity effects, we consider that conditions can control this activity so there is no more than minimal impact on rural character and amenity pending rezoning.

[119] We are further satisfied that there would be no impact on the rezoning itself from the grant of this consent. We are satisfied that a resource consent can be issued for this discretionary activity. Many of the Commissioners original concerns relating to conflicts with rezoning are now resolved. As to rural amenity we conclude the locality and impacts are acceptable.

[120] We are satisfied that the discretionary consent should be granted having regard to s104 and the Commissioner's decision. The consent is however to be granted on terms and conditions to be finalised. Annexed hereto and marked "A" is a copy of conditions proposed by the applicant. We understand that this had incorporated within it the areas of agreement. We have not considered the actual wording.

[121] We wish to give the parties an opportunity to discuss the final wording of the consent and conditions. We note that the consent itself should commence with the actual consents granted. The conditions should be prepared in the Court authorised form and not according to the Council's traditional form of identifying the series of documents' relevant etc. Parties should refer to the relevant Court guidelines and the article in *Environmental Law on Effective Management Plans* if any of these methods are being adopted.

## **Outcome**

[122] The consent is granted in general accordance with the terms and conditions set out, subject to improvements agreed by experts and endorsed by this Court and final drafting between the parties.

[123] The applicant is to prepare a final form of conditions for circulation to the other parties within 15 working days. The parties are to respond to the applicant within 10 working days. If the parties disagree, they are to set out the basis of disagreement with those provisions. The applicant is then to file with the Court its preferred wording, the objections raised by the parties and the reasoning for its adopted wording. The Court will then finalise the consent and conditions.

[124] Any application for costs is not encouraged. If made, any application is to be filed within 25 working days, any reply within 10 working days, and a final reply, if any, five working days thereafter.

For the Court:



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**J A Smith**  
**Environment Judge**



# "A"

## PROPOSED CONSENT CONDITIONS

The conditions proposed by the Appellant are based on the original conditions previously contained in the Hearing Agenda Report and updated to take into account recently granted earthworks and building consent approvals (a renewal) and further technical recommendations.

### General conditions

1. The mobile cabin manufacturing activity must be as described in the application form and assessment of environmental effects prepared by Birch Surveyors Ltd, referenced 4602, dated November 2019 and must be carried out in accordance with the reports, plans and information detailed below, and all referenced by the council as resource consent number LUC60348816, subject to any updated plans, specifications and management plans, or as otherwise modified by these conditions of consent.

Report title and reference	Author	Rev	Dated
Stormwater Report titled: <i>"High Quality Sheds Ltd – 773 Great South Road, Drury,"</i> Referenced 4602	Birch Surveyors Ltd	A	November 2019
Geotechnical Report titled: <i>"Geotechnical Assessment for a Proposed Industrial Building,"</i> referenced: REF: R5356-1B	Ground Consulting Ltd		3 September 2020
Landscape/ Visual Assessment titled: <i>"Landscape and Visual Assessment for 773 Great South Road, Drury."</i>	Peake Design Ltd		13 February 2020
Acoustic Assessment titled: <i>"High Quality NZ Ltd – Factory Relocation"</i>	Styles Group Ltd		29 June 2020

Drawing title and reference	Author	Rev	Dated
Plan titled: “ <i>Site Plan</i> ,” Sheet: A01	Kiwi Sheds Ltd	D	October 2020
Plan titled: “ <i>Plan</i> ,” Sheet A10	Kiwi Sheds Ltd		13 November 2019
Plan titled: “ <i>Elevations</i> ,” Sheet A20	Kiwi Sheds Ltd		13 November 2019
Plan titled: “ <i>Schematic – SW Tank</i> ,” Sheet A40	Kiwi Sheds Ltd		13 November 2019
Plan titled: “ <i>Schematic – SW Tank</i> ,” Sheet A86	Kiwi Sheds Ltd		13 November 2019
Plan titled: “ <i>Investigation Location Plan</i> ,” Project reference: 5356; Drawing Number: 002	Ground Consulting Ltd	C	20/10/20
Plan titled: “ <i>Planting Plan</i> ”	Peake Design Ltd		December 2021
Plan titled: “ <i>NZTA Diagram D Entranceway at Great South Road Interface</i> ,” Project No. 4602	Birch Surveyors Ltd	E	February 2021
Plan titled: “ <i>Plan Showing Proposed Passing Bay and Access Road Widening Sheet 1</i> ,” Project No. 4602	Birch Surveyors Ltd	E	February 2021
Untitled plan showing internal floor layout			Received by e-mail on 5 February 2021
Plan titled: “ <i>Man TGS 26.480 6x4 BLS (D26) (LX) Efficient Line DD – Turning Circle</i> -	High Quality Ltd		12 February 2021

<i>Regulation,”</i> Sheets 1 through to 4			
Plan titled: “ <i>Man TGS 27.480 6x4 BLS (D26) (LX) Basic – Mass Distribution Estimate – Overview Summary,”</i> Sheets 1 through to 4	High Quality Ltd		12 February 2021
Plan titled: “ <i>Effluent, Stormwater and Flood Layout Plan,”</i> Project referenced: 4602; Sheet 4	Birch Surveyors Ltd	D	October 2020
Plan titled: “ <i>Large Rigid Tuck Manoeuvring: In Forwards and Backwards – LHS Opening,”</i> Project referenced: 4602; Sheet 2	Birch Surveyors Ltd	B	October 2020
Plan titled: “ <i>Large Rigid Tuck Manoeuvring: In Forwards – RHS Opening and Entrance from Great South Road,”</i> Project referenced: 4602; Sheet 3	Birch Surveyors Ltd	B	January 2020
Plan titled: “ <i>Plan Showing Proposed Passing Bay and Access Road Widening – Sheet 1,”</i> Project referenced: 4602; Sheet 5	Birch Surveyors Ltd	B	January 2020
Plan titled: “ <i>Plan Showing Proposed Passing Bay and Access Road Widening – Sheet 1,”</i> Project referenced: 4602; Sheet 6	Birch Surveyors Ltd	B	January 2020
Plan title: “Site Plan – Complete Proposal” Project reference: 4602; Sheet He1	Birch Surveyors Ltd	FHD	December 2021
Plan title: “Transport – On-site Manoeuvring and NZTA Diagram D Entranceway at Great South Road Interface showing Subdivision Required Formation” Project reference: 4602; Sheet He2	Birch Surveyors Ltd	FHD	December 2021



Plan title: "Plan showing Proposed Passing Bay and Access Road Widening Sheet 1 showing Subdivision Required Formation" Project reference: 4602; Sheet He3	Birch Surveyors Ltd	FHD	December 2021
Other additional information	Author	Rev	Dated
Letter titled: "Re: s92 request for information, 773 Great South Road, Drury"	Peake Design Ltd		
Letter titled: "High Quality NZ Limited"	Styles Group Ltd		5 February 2021
Construction Management Plan titled: "Construction Management Plan – High Quality Ltd, @ 773 Great South Road, Runciman."	Submitted by Birch Surveyors Ltd		
Letter titled: "Re: Response to Further Section 92 – High Quality Limited – 773 Great South Road, Drury, Ref. LUC60348816."	Birch Surveyors Ltd		Submitted by e-mail on 5 February 2021
Calculations: "Detention Tank Calculations" and "Level Spreader Calculations" and "TP108 Runoff Calculations."	Birch Surveyors Ltd		Attached to e-mail dated 12 February 2020

2. Under section 125 of the RMA, this consent lapses five years after the date it is granted unless:
  - a. The consent is given effect to; or
  - b. The council extends the period after which the consent lapses.
3. The consent holder shall pay the council an initial consent compliance monitoring charge of \$1,020 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent.

**Advice note:**

*The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent(s). In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent(s) have been met, will the council issue a letter confirming compliance on request of the consent holder.*

**Predevelopment Conditions****Finalised landscape design drawings, specifications and maintenance requirements**

4. Prior to the commencement of any work on site, the consent holder must provide to the Council for certification, a finalised set of detailed landscape design drawings and supporting written documentation which have been prepared by a landscape architect or suitably qualified professional. The submitted information shall be consistent with the consented landscape concept plan(s) prepared by Peake Design, dated December 2021 and, at a minimum, shall include landscape design drawings, specifications and maintenance requirements including:
  - An annotated planting plan(s) which communicates the proposed location and extent of all areas of planting, including any reinstatement planting and the additional planting listed below along the private laneway.
    - i) Three 150L specimen trees located between parking bays 2 and 3 (one to the north and two on the southern side of the lane).
  - A plant schedule based on the submitted planting plan(s) which details specific plant species, plant sourcing, the number of plants and grade (litre) / Pb size at time of planting. Planting within the swale will need to be tolerant of these conditions.
  - Details of draft specification documentation for any specific drainage, soil preparation, tree pits, staking, irrigation and mulching requirements.
  - An annotated pavement plan and related specifications, detailing proposed site levels and the materiality and colour of all proposed hard surfacing. The final colour / materiality of all hard surfacing shall be formed in exposed aggregate concrete, concrete with charcoal oxide (6.0kg/m<sup>3</sup>), asphalt with flush

concrete edge detail (concrete coloured as before), natural stone, gravel, timber or dark/earth toned unit pavers. There must not be any kerb and channel. The passing bays along the lane shall be consistent with the existing formed driveway materials. This is to ensure the private lane maintains a rural appearance.

- A landscape maintenance plan (report) covering for the first three years and related drawings and specifications for all aspects of the finalised landscape design, including in relation to the following requirements:
  - Irrigation for all trees and mixed native planting areas
  - Weed and pest control
  - Plant replacement
    - Provision for the macrocarpa hedge along Willow Lane to be replaced by a suitable species, should it die
  - Inspection and reporting timeframes
  - Contractor responsibilities
- The final landscape plan should ensure planting along the eastern boundary is allowed for i.e. sufficient space retained for hedging and specimen trees and for them to function as a screen, including ensuring the species is appropriate to the stormwater system in this location

#### Pavement Impact Assessment (PIA)

5. Prior to commencing upgrades on site, the consent holder must provide, to the satisfaction of Council's Team Leader – Regulatory Engineering (South), a Pavement Impact Assessment (PIA) to ensure that the section of the commonly owned access lane (COAL) from Great South Road and including the site's vehicle crossing, can carry loading from the proposed Heavy Commercial Vehicle (HCV) movements.

The PIA must have regard to the impact of HCV movements near the site's access from Willow Lane, which is likely to be more pronounced as a result of braking and turning movements associated with the proposed activity.

6. The PIA required by Condition 5 of this consent must make recommendations on the work that is needed to upgrade the carriageway of Willow Lane to a standard that is appropriate for Heavy Commercial Vehicle movements associated with the proposed activity

and in accordance with Austroads Pavement Technology Series: Pavement Design - A Guide to the Structural Design of Road Pavements, 2004. The recommended works if any must form part of the EPA approval process and be implemented to the satisfaction of the Council prior to the activity commencing on the site.

#### Building Floor Plan

- 6A Prior to the activity operating, the applicant shall provide a floor plan of the building that shows the truck area for all vehicles involved in delivery, cabin pick-ups and rubbish collection.

Manoeuvring and loading areas shall be delineated with yellow line markings as areas to always kept clear of workspaces and storage areas.

#### Building Materials

- 6B Exterior wall colours and roof materials shall be natural timber or be of a material that has a finish (or painted finish) within a natural range of browns, greens and greys with a reflectivity value of no more than 25%, unless otherwise approved by the Team leader Compliance Monitoring (South).

#### Engineering Plan Approval (EPA)

7. Prior to upgrades commencing on site, in accordance with this application, the consent holder shall provide design plans and specifications detailing the following works required in respect to this consent, to the satisfaction of the Team Leader– Regulatory Engineering (South).

The engineering plans to be submitted for approval shall detail all works associated with sealed widening (with all dimensions annotated) and in accordance with the Auckland Transport Code of Practice 2013 (ATCOP) Standards including but not limited to:

- a) Road widening of Great South Road as per Diagram D of NZTA and the ROW at the intersection.
- b) NSAAT road markings are to be shown.
- c) Detailed design of all road elements is to be provided (culvert and pavement).
- d) Provide cross section details at beginning, mid-block and end of proposed works section of Great South Road.
- e) Vehicle crossing detail layout as per GD020A of ATCOP Standards at Great South Road. All dimensions should be annotated.

- f) Detail vehicle crossing layout from commonly owned access (COAL) to the subject site with all dimensions annotated.
- g) Details of long section and cross section at 20m intervals & at proposed passing bays should be provided for the commonly owned access (COAL), along with details of the width and formation of a 1.2m wide footpath and the location of rubber humps/judder bars at four locations being: one at the entry point of Willow Lane at Great South Road; two along the COAL at equal spacings; and one within the boundary at the entry point to the site.

The footpath shall be either constructed with crushed compacted gravel with 75mm timber edge or, if built flush with the ground, with either concrete, asphalt or chip seal.

The drawings that are submitted for EPA should include tracking curves for vehicle movements for a 17.475m truck to demonstrate that the works will be 'fit for purpose.'

The application for EPA must be accompanied by:

- a) The Pavement Impact Assessment (PIA) required by Condition 5; and
- b) Details of how the passing lanes will tie in with the appearance/ materials of the existing paved areas of Willow Lane, including any areas of paving that will be retained in situ without widening or strengthening (e.g. west of the site's access from Willow Lane).

**Advice Note:**

*The engineering plan application forms including fees can be found at the following Auckland Council website:*

*[https://www.aucklandcouncil.govt.nz/building-and-consents/engineering\\_approvals/Pages/default.aspx](https://www.aucklandcouncil.govt.nz/building-and-consents/engineering_approvals/Pages/default.aspx)*

*Please note that a separate agreement from the co-owners of Willow Lane (or a court resolution) will be required to implement the works that are shown on the EPA drawings.*

*A vehicle crossing permit is required to be obtained from Auckland Transport prior to the construction of the vehicle crossing on existing public roads. See Auckland Transport's website*

*<https://at.govt.nz/about-us/working-on-the-road/vehicle-crossing-application/> for more information.*

Plan Showing Other Site Works

8. Prior to undertaking upgrades, the consent holder must provide Council's Team Leader – Compliance Monitoring South with a site plan of Willow Lane that shows the following:
- Location of the 20kmph speed limit sign required by Condition 15.
  - The dripline of trees larger than 4m in height or have a girth greater than 400mm, on the section of Willow Lane east of the vehicle crossing serving the site from Willow Lane to the boundary that Willow Lane shares with Great South Road.

Construction Traffic Management Plan (CTMP)

9. The consent holder shall, at least 10 working days prior to the commencement of works within the legal road corridor (boundary to boundary), prepare and submit a Construction Traffic Management Plan (CTMP) to Council's Team Leader Compliance Monitoring (South) for certification. The CTMP shall be prepared in accordance with New Zealand Transport Authority's Code of Practice for Temporary Traffic Management and shall address the surrounding environment including pedestrian and bicycles traffic.

The objective of the CTMP is to ensure that during construction the surrounding road network and Willow Lane operates safely and efficiently for all road users including existing residents and pedestrians.

The CTMP shall include specific details relating to avoiding, remedying, or mitigating adverse effects on the environment from construction and management of all works associated with this development, and setting out procedures to be followed which ensure compliance with the conditions of consent, as follows:

- Provide a parking management plan for construction traffic.
- Address the transportation and parking of oversize vehicles (if any).
- Provide appropriate loading / working areas to minimise disruption to traffic.
- Provide cleaning facilities within the site to thoroughly clean all vehicles prior to exit to prevent dust, metal and/or other material from being dropped on the road. If material is dropped on the road, resources should be on hand to clean-up as soon as possible.
- Provide traffic management plans in compliance with the latest edition of the NZTA "Code of Practice for Temporary Traffic Management" (COPTTM) document.

- Ensure the site access point must be clearly signposted.
- Include measures that are to be adopted to ensure that pedestrian access along the commonly owned access (COAL) of the site is safe during construction works.
- Identify proposed numbers and timing of heavy vehicle movements throughout the day.
- Identify the location of vehicle and construction machinery access during the period of site works.
- Identify the storage and loading areas for materials and vehicles; and
- Identify the relevant Auckland Transport approvals.

The approved CTMP shall be implemented and maintained throughout the entire period of construction activity on site and legal road to the satisfaction of the Council.

***Advice Note:***

*A CAR is required for open cut trenching and trenchless techniques for utility installations and all road works. The application for a CAR is to be made online to [www.beforeudig.co.nz](http://www.beforeudig.co.nz). The application form requires relevant background information including resource consent details, traffic management plans, and the locations and nature of the works. Please note that a CAR may take up to 15 days to process and construction hours may be restricted on Level 2 or 3 roads, as defined in the Code of Practice for Temporary Traffic Management (COPTTM) of NZTA. Application for a CAR is made online to [www.beforeudig.co.nz](http://www.beforeudig.co.nz). A charge may apply.*

**Development in progress conditions**

**Pruning of trees within Willow Lane**

10. All tree work required to facilitate the movement of construction equipment and goods, and the clearance that is needed to accommodate Heavy Commercial Vehicle movements associated with the activity, must be carried out in accordance with accepted arboricultural standards and practice, by a suitably qualified and experienced arborist, trained in natural target pruning and approved tree climbing techniques.

#### Works within the dripline of trees on Willow Lane

11. All excavations carried out within the root zone of trees on Willow Lane must be carried out under the supervision of a suitably qualified and experienced arborist.

Roots with a diameter of less than 35mm encountered during the excavation which cannot be retained must be cleanly cut back to the excavation face. Any roots larger than 35mm must not be removed without an on-site assessment of effects having been undertaken by the consent holder's suitably qualified and experienced arborist.

#### Construction Noise

12. Construction works shall be restricted to between 7.30am and 6.00pm, Monday to Saturday. No construction works are permitted on Sundays or public holidays.

#### ***Advice Note:***

*This restriction shall not apply to low noise creating activities such as site set up, painting, electrical works or planting, which may occur outside of these hours Monday to Saturday only.*

13. Construction works on the site shall be designed and conducted to ensure that noise from the site does not exceed limits of 70 dB LAeq and 85 dB LAm<sub>ax</sub> when measured at 1m from the façade of any occupied dwelling. All construction noise shall be measured and assessed in accordance with the Standard NZS 6803:1999 Acoustics – Construction Noise.

#### Road works:

14. Prior to construction works on the site commencing, the following shall be formed, sealed, and constructed with stormwater control in accordance with the Auckland Transport Code of Practice 2013 (ATCOP) and the approved engineering plans in Condition 7.
  - (a) The vehicle crossing for the commonly owned access (COAL) at the intersection with Great South Road as per drawing GD020B.

#### ***Advice Note:***

*A vehicle crossing permit is required to be obtained from Auckland Transport prior to the construction of the vehicle crossing on existing public roads. See Auckland Transport's website <https://at.govt.nz/about-us/working-on-the-road/vehicle-crossing-application/> for more information.*



- (b) The four passing lanes shown, and any carriageway re-surfacing works approved by the EPA.
- (c) The seal widening of Great South Road and commonly owned access (COAL) at the intersection in accordance with NZTA Planning Policy Manual, Appendix 5B, Diagram D to facilitate safe turning movements.
- (d) No stopping at all times (NSAAT) yellow line markings must be provided with the proposed shoulder widening.
- (e) The four humps/judder bars in the locations specified.
- (f) The 1.2m wide footpath along the commonly owned access (COAL).

**Advice note:**

*The consent holder, at his / her costs, will need to engage a qualified traffic engineer to carry out the consultation with the affected landowners (if any) and prepare the resolution report for the Traffic Control Committee (TCC) approval to legalise the proposed traffic control devices and road markings. The applicant will need to contact Auckland Transport to initiate the process at least 8 weeks prior to the installation of the broken yellow lines. No installation of any road markings will be allowed before the resolution is approved by the Auckland Transport Traffic Control Committee (TCC).*

Septic Tank

- 14A The existing septic tank must be fitted with an outlet filter.

**Advice note:**

*To qualify as a permitted activity under Part E5 of the AUP(OP), the existing wastewater system must be brought up to current standards when establishing a new system on the same site.*

**Prior to the operation of the activity**

Speed Limit Sign

15. The consent holder must install permanent 20km/hr speed limit sign for the commonly owned access (COAL) prior to any works commencing on the site, to ensure that safety and stability of the driveway is not compromised for use by all modes of transport.

Bicycle Parking

16. A minimum of one bike parking stand shall be provided on site. Design shall be in accordance with New Zealand Standards AS/NZS 2890.3-1993, Parking Facilities Part 3 – Bicycle Parking Facilities.

#### Truck turning Area

17. The truck turning area within the building must always be delineated and hatched with yellow lines and kept clear as per the plan approved in Condition 7.

#### Willow Lane

18. The consent holder must upgrade the carriageway of the commonly owned access lane (Willow Lane) in accordance with the approved EPA drawings and to the satisfaction of Council's Team Leader – Regulatory Engineering (South).

#### Vehicle Crossing to the site (from Willow Lane)

19. The new vehicle crossing to the subject site must be constructed in accordance with the Council's current engineering standards and approved engineering plans in Condition 9.

#### Disabled Parking Space

20. Prior to the operation of the activity, one (1) accessible parking space must be identified and marked as per New Zealand Standards NZS4121-2001.

#### Implementation and maintenance of approved landscape design

21. Prior to the development being first occupied and within an appropriate planting season, the consent holder shall implement the landscape design which has been approved by the council under Condition 4 and thereafter retain and maintain this landscape (hard and soft landscape treatment) in perpetuity to the satisfaction of Council in accordance with the maintenance plan which has been approved under Condition 4.

#### Noise limits

22. The noise rating level and maximum noise level arising from activities on the site including vehicle movements authorised by this consent on the right of way must not exceed the following levels when measured within any notional boundary on another site in the Future Urban zone:

<i>Time</i>	<i>Noise Level</i>
<i>Monday to Saturday 7am – 10pm</i>	<i>55 dB LAeq</i>
<i>Sunday 9am – 6pm</i>	
<i>All other times</i>	<i>45 dB LAeq</i> <i>75 dB LAfmax</i>

Noise levels shall be measured in accordance with the provisions of NZS 6801:2008 Acoustics – Measurement of environmental sound and shall be assessed in accordance with NZS 6802:2008 Acoustics – Environmental noise.

***Advice Note:***

*The consent holder is reminded of their general obligation under section 16 of the Resource Management Act 1991 to adopt the best practicable option to ensure that the emission of noise does not exceed a reasonable level.*

Acoustic room

23. An acoustic room shall be constructed within the proposed building with materials that will achieve a minimum Apparent Sound Transmission Class of 35 assessed from outside the building to the inside of the room. Any external openings for ventilation purposes shall be acoustically treated.
24. Prior to the activity commencing the consent holder shall provide written certification from a suitably qualified and experienced acoustic professional that the acoustic room has been designed and constructed to ensure the consented noise limits are not exceeded including cumulative noise levels when combined with other noise sources on the site.

Noise mitigation

25. To ensure the above consented noise limits are met at all times the consent holder must ensure:
  - a) Noisy machinery (e.g. table saw, mitre saw, grinder) shall only be operated within the acoustic room with the room doors closed.
  - b) The door in the southern facade of the building is kept closed at all times when noisy machinery is operating inside the building;
  - c) The air compressor must be located inside the building or, if located outside, it shall be acoustically screened from the notional boundary on 793 Great South Road;
  - d) All loading and unloading of containers, bulk materials and finished cabins is carried out inside the building; and
  - e) Mechanical ventilation equipment shall be selected, designed and installed to ensure the consented noise limits are not exceeded including cumulative noise levels when combined with other noise sources on the site; and

- f) Trucks and forklifts controlled by the consent holder must be fitted with broadband reversing alarms; tonal reverse alarms on these vehicles are prohibited.

#### Noise monitoring & report

26. Within 30 working days of the commencement of the activity, a suitably qualified and experienced acoustic professional engaged by the consent holder must provide to the Council, a report that:
- a) measures and assesses noise emitted from the activity;
  - b) undertakes measurements at times to represent typical cumulative noise levels arising from the site (e.g. noisy tools operated in the acoustic room, truck delivery and unloading);
  - c) determines the extent of any compliance or exceedance of the noise limits specified in Condition 22; and
  - d) recommends specific actions, in the event of an exceedance, that will ensure compliance with the noise limits specified in Condition 22.

In the event of an exceedance, all specific actions outlined in the report provided by the suitably qualified acoustic professional in accordance with Condition 22 shall be implemented, to the satisfaction of Council, within 20 working days from the provision of that report.

In the event that the specific actions referred to above are not implemented within the period specified in this condition, the activity directly associated with the source of the noise shall cease until such time that the specific actions are implemented.

### **Operation of Activity**

#### Maintenance of Willow Lane

27. From the date of commencement of the activity on the site, the consent holder shall repair the commonly owned accessway at least every two years and/or on a more regular and ongoing basis to ensure that the accessway is free from potholes (surface damage with depressions), edge failure and undulations by upgrading the said works.

#### Rubbish Storage

28. Rubbish must always be stored inside the building-

### Management of Car Parking Area

29. Car parking must always be reasonably managed to address the following:
- a) All staff/customers must always park within the parking area.
  - b) The parking spaces must not be used for storage (for example of rubbish bins or containers and cabins ready for transport) and/or for any other purpose, as per Rule E27.6.3.1(c) of the AUP (OP).

### Hours of Operation

30. The cabin manufacturing activity located at 773 Great South Road, must be restricted to between the hours of 8.00am and 5:00pm from May to August (Monday to Friday inclusive); and 8.00am and 6.00pm from September to April (Monday to Friday inclusive).

The activity may only operate for cleaning and customer visits between 8:00am and 12:30pm Saturdays. No power tools may be used on Saturdays. No cabins may be assembled on Saturdays. No deliveries may be undertaken on Saturdays. No cabins may be collected on Saturdays.

The activity shall not operate on Sunday and all public holidays (and any following Monday on which that public holiday is observed).

### Persons on site

31. A maximum on ten (10) employees can be on site at any one time, on weekdays between Monday and Friday (inclusive).

A maximum of two (2) employees can be on site at any one time on a Saturday.

32. The maximum number of visitors to site on weekdays is three (3) (or three groups of people).

The maximum number of visitors to site on Saturday is four (4) (or four groups of people).

All visitors/ customers must visit the site by prior appointment.

### Heavy Commercial Vehicle Movements

33. The consent holder must ensure that the site is visited by no more than one visit (two movements) from a 17.475m truck per week.
34. All loading and unloading activities must be undertaken within the building.

35. The truck turning area within the building must always be delineated and hatched with yellow lines and kept clear as per the plan approved.
36. Trucks will not be permitted to reverse onto or off Willow Lane.
37. The turning area for trucks entering and leaving the site must be kept clear of obstructions.

#### Storage

38. All equipment, materials and completed cabins must be stored inside the building.

#### Second floor/ mezzanine floor

39. No second floor or mezzanine floor shall be established within the building.

#### Section 128 Review Condition

40. The conditions of this consent may be reviewed by the Team Leader – Compliance Monitoring (South) pursuant to Section 128 of the RMA, by giving of notice pursuant to Section 129 of the RMA, during the month of April 2023 and every April thereafter in order to:
  - a) Vary the operating and monitoring requirements, and mitigation measures to take into account information, including the results of monitoring and changed environmental knowledge, on:
    - (i) Operational noise; and
    - (ii) Noise arising from traffic movements.
  - b) Deal with any adverse effect on the environment arising or potentially arising from the exercise of this consent.

## **Advice notes**

1. *Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.*
2. *For the purpose of compliance with the conditions of consent, “the council” refers to the council’s monitoring officer unless otherwise specified. Please email [monitoring@aucklandcouncil.govt.nz](mailto:monitoring@aucklandcouncil.govt.nz) to identify your allocated officer.*
3. *For more information on the resource consent process with Auckland Council see the council’s website: [www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz). General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment’s website: [www.mfe.govt.nz](http://www.mfe.govt.nz).*

4. *If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).*
5. *The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.*
6. *The wastewater treatment systems must be maintained by a suitably qualified on-site wastewater service provider.*
7. *The existing septic tank should be inspected for maintenance no less frequently than every three years and where necessary pumped out by a suitably qualified on-site wastewater service provider when sludge levels occupy half of the tank volume.*
8. *In accordance with Auckland Council's adopted development contributions policy you have been assessed for development contributions. An assessment summary and invoice will be forwarded to you shortly.*