

**BEFORE THE INDEPENDENT COMMISSIONER**

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**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of a Notice of Requirement from the  
Palmerston North City Council for a designation of a new  
road connection between Abby Road and Johnstone  
Drive, Palmerston North

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**SUBMISSIONS FOR THE REQUIRING AUTHORITY**

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Dated: 31 March 2021



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## SUBMISSIONS FOR THE REQUIRING AUTHORITY

### MAY IT PLEASE THE COMMISSIONER:

#### *Introduction*

- [1] The Palmerston North City Council ("**the Council**") in its capacity as a requiring authority seeks a designation in the District Plan in respect of a road project, comprising of a link road between Abby Road and Johnstone Drive in Palmerston North.
- [2] The proposed works involves a road that is approximately 180 m in length and would extend the unformed end of Abby Road to connect it at a T-intersection with Johnstone Drive. The road will pass by the south eastern corner of the Adderstone Reserve, before proceeding to curve and dip into the Abby Road gully. Following the natural contouring of the gully, the road will again pass by a Council reserve, this time the Manga o Tane Reserve before proceeding back up the side of the gully to connect to Johnstone Drive.

#### *Why are we here?*

- [3] The Council has set for itself a purpose that responds to a set of circumstances and fraught history in relation to the delivery of a sought-after roading connection in this location, which has been recognised as a road desirable by both the Council and the current landowner Aokautere Land Holdings Ltd ("**ALHL**"). It is still seen as desirable by the Council, which has the connection identified in a draft structure plan for the Aokautere area. The Council is presently advancing a plan change that will seek to cement the desired location and configuration of the roading network.
- [4] The Purpose of the NoR is stated as follows:

The NoR will secure the potential to extend Abby Road so that it joins up with Johnstone Drive for the purpose of:

- Preserving and providing an efficient and logical connection between Abby Road and Johnstone Drive.
- Preserving and providing an efficient and logical access to the eastern side of the Adderstone Reserve from Abby Road, to enable recreational opportunities.

- [5] Framed in this way, there are two distinct purposes, each with two elements to *preserve and provide*. The framing of the purpose is deliberate because a key consideration of its framers was not only to ensure the provision of the linkage deemed essential by the requiring authority, but to ensure that the connectivity options were preserved in relation to the balance between the proposed connection and SH 57.
- [6] This brings to the fore the function of the NOR to achieve its purpose, within the broader scheme of land development in Aokautere and the specific locality of the proposed road. It is the preservation of the proposed road and the connectivity options it provides that will be lost to private residential subdivision development if the designation is not included in the District Plan. Indeed, were it not for the NoR, it is more than likely that the land at the end of Abby Road would already be foreclosed to the opportunity through subdivision consenting processes, in particular an application which was not granted because of the NoR process.
- [7] It is respectfully submitted that by further reference to the documents filed by ALHL in this proceeding that there could not be a clearer case as to the necessity of the NoR to achieve the stated purposes.

*Update on progress with Section 42A reporting officers*

- [8] In this project, the NoR team is grateful to the reporting officers for their thorough assessment of the project and detailed evidence. There are no major outstanding issues as between the experts for the Council NoR team and the reporting officers. Notably, the requiring authority and

the NoR reporting team agree that the NoR satisfies the requirements of s 168A; see, paragraph 4.84 and 4.85 of Mr O'Leary's evidence.

- [9] To the extent legally possible and appropriate, all recommendations from the reporting officers have been included within an agreed set of conditions.
- [10] Full agreement has now been reached on conditions to attach to the designation, as between the Council and Mr O'Leary, which will be handed up separately and spoken to in the first instance by Mr O'Leary for the Reporting officers.

*Update on progress with Submitters*

- [11] The NoR team has previously engaged in conversation with Ms Bishop about the proposed NoR in the context of a pre-hearing meeting in the previous iteration of this NoR. Her concerns in that context were well understood and these concerns followed through to her submissions.
- [12] Essentially, it was and is understood by the Council that Ms Bishop's primary concern is that the project would inevitably lead to the filling in or otherwise further residential development in the head of the gully between the proposed road and her property. Ms Bishop is clear in her evidence that when she purchased the property the land was identified as a reserve by the person who sold it to her, and that is how she wishes it to remain.
- [13] Unfortunately, Ms Bishop appears to be of the misapprehension that this NoR project is a delivery mechanism for further fill and/or development at the head of the Abby Road gully by the current landowner. Ms Bishop says "it is frustrating to read that my concerns are correct, that already a subdivision proposal has been submitted". It is not, however, clear what Ms Bishop is referring to. Council has no knowledge of any current resource consent applications to subdivide or

otherwise develop at the head of the Johnstone Drive gully and while it does see the roading connection as a delivery mechanism for residential development to the north, that is not the case in respect of the existing gully system which Ms Bishop is referring to.

- [14] To the contrary, the Council's existing District Plan includes controls which make development and fill within the gully difficult, and this is unlikely to become easier through the upcoming plan change process. To the extent that the Aokautere plan change process will include review of controls in respect of the gully system, Ms Bishop would be well advised to make her views clearly known through consultation and submissions on that process.
- [15] Ultimately, however, the Council does not own that land at present and this Project has no bearing on the existing landowner's rights, whatever they may be to develop land that does not fall within the scope of the NoR. This NoR can only be judged in relation to the Project extent, because that is all that the Council is in control of in project delivery.
- [16] In that regard, the Council has developed a proposal that is sensitive to the environment in which it sits. It will follow, so much as possible, the existing contours of the land, include extensive mitigation planting to the extent of associated fill works, and connect the road at its northern edge to an existing council reserve, providing additional mitigation. Further, the detailed design and implementation of the project will be undertaken in accordance with detailed and comprehensive management plans in order to manage and control its effects.
- [17] The Council agrees with the conclusion of Mr O'Leary that while the proposal will generate both positive and adverse effects, the adverse

effects will be no more than minor, and that the project “fits” within the relevant provisions of the planning documents.<sup>1</sup>

*The Landowner*

[18] Aokautere Landholdings Limited (**ALHL**) opposed the NoR. The reasons for the opposition are set out at length in its submission and an affidavit of Mr Les Fugle, although the precise grounds of the opposition remain somewhat unclear in terms of their relationships with statutory tests.

[19] Counsel interprets key concerns arising from ALHL’s documents. Interpretations of those concerns are listed below, followed by the Council’s position as to those concerns):

(a) *That the NoR is inessential.*

The requirement under s 168A(3)(c) is whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority. This is an enquiry as to necessity in relation to the Project purpose. It is submitted that the NoR achieves this standard, particularly when one considers the background to the Project, including the subdivision consent application that led to the NoR Project and the consequences that would have on delivery of the road connection.

(b) *That the Council does not have funding to build the road within the NoR corridor.*

The ability of the Council to finance the Project is, quite simply, a matter for the Council. It is not a relevant consideration when having regard to the statutory tests under s 168A. The Council’s commitment to the project is evidenced by its prior (albeit failed) negotiations with the landowner and by the very

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<sup>1</sup> Section 42A report of Mr O’Leary, at [4.84] – [4.85].

existence of the NoR. The Council will have 5 years to deliver on the project or the designation will lapse, and the landowner will also have the opportunity under s 185 to apply to the Environment Court to order the Council to take its land if agreement cannot be reached at market value. The Council, however, will be more than happy at any time to reignite negotiations with ALHL in relation to any potential dealings with the land at market rates.

- (c) *That it has previously proposed a better idea to fill the gully completely and build a road over the top of it. It has been suggested (or at least implied) that this option should have been adopted instead.*

The option that ALHL refers to as the better option is unviable. This has already been shown to be an unviable option when it failed to obtain a resource consent. Identified viable alternatives have been considered as part of this Project, none of which include the filling of the gully except to the extent necessary for the road construction. The assessment of alternatives by the requiring authority was consistent with the requirements of s 168A(3)(b).

- (d) *That the Council should not have used this process to curtail the landowners development aspirations to close off the possibility of a potential link road.*

The Council makes no apologies for using the NoR process in the way it was designed under the RMA. NoR's generally serve dual functions, to preserve the opportunity for project by restricting incompatible uses of land, and to enable a project by allowing a requiring authority to ignore s 9(3) RMA. This purpose of this project achieves both NoR functions, and that is entirely typical

of road projects. This is not a misuse of the NoR project, it is the reason why it exists.

- (e) *The Council could have done it cheaper had it worked with or listened to the developer.*

This is not relevant to the Commissioner's considerations under s 168A.

- [20] It will be useful for the requiring authority to hear in more detail the legal submissions for ALHL as to how it says its evidence and submissions land in relation to the substantive enquiry. This will also be useful for the Commissioner in identifying issues for determination.
- [21] The Council notes the conclusion of ALHL's submission on the NOR which identifies that it would be open to exploring land swap options with Council. The Council as requiring authority would be very pleased to return to the negotiation table with the landowner in relation to the project and Council remains open to considering sensible land swaps for that purpose. With that said, such negotiations must be grounded in reality and based on market values.

**DATED** 31 March 2021

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**Nicholas Jessen**

Counsel for Palmerston North City Council