

Before Independent Hearing Commissioners at Whangarei

Under the Resource Management Act 1991 (the Act)

In the matter of Resource Consent Applications by Northport Ltd - Port Expansion project at Marsden Point.
Application numbers: Whangarei District Council: LU2200107
Northland Regional Council: APP.040976.01.01

And in the matter of 21 Ralph Trimmer Drive Marsden Point (Northport)

Legal submissions on behalf of Waka Kotahi, the New Zealand Transport Agency

Dated: 11 October 2023

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Introduction

- 1 Waka Kotahi, the NZ Transport Agency (**‘Waka Kotahi’**) lodged submissions on Northport’s applications for the port expansion project at Marsden Point. The Waka Kotahi submission supported the applications, but sought some changes to the proposed conditions to address traffic effects.
- 2 Waka Kotahi recognises the positive impacts of port expansion insofar as it promotes national and regional economic growth. However, the key concern of Waka Kotahi is that the expansion project will increase traffic volumes and generate adverse effects on the safety and capacity of State Highway 15. Following Waka Kotahi raising those concerns in its submission, extensive discussions have occurred between Waka Kotahi and Northport to work out the best way to address these issues. Expert conferencing has also occurred.
- 3 The purpose of these submissions is to summarise the areas of agreement and disagreement and comment on the proposed conditions.

Scope of Submissions

- 4 These submissions address the following matters:
 - a Waka Kotahi statutory objectives and functions;
 - b The policy context;
 - c The proposed conditions;
 - d Waka Kotahi witnesses; and
 - e Concluding comments.

The statutory objectives and functions of Waka Kotahi

- 5 The statutory functions of Waka Kotahi are outlined in Mr Mutton’s evidence and I will not repeat them here. The following matters are particularly relevant to the Northport applications:
 - a As a Crown entity Waka Kotahi is constrained by its statutory powers and functions in terms of how it can operate;
 - b Waka Kotahi is required to contribute to an effective, efficient and safe land transport system in the public interest;

- c In achieving that outcome, Waka Kotahi can only use prescribed funding processes; and
 - d Waka Kotahi must apply its funding in accordance with the directions in the Government Policy Statement on Land Transport ('GPS').
- 6 As Mr Mutton explains in his evidence, there is a limited pool of funding available to Waka Kotahi and competing priorities need to be balanced using investment prioritisation methods. Waka Kotahi is under significant financial pressure to fund, or partially fund, roading upgrades for commercial, industrial and housing developments across the country. Given the need to balance the competing priorities set out in the GPS, including those relating to recent weather events, there is uncertainty around the timing for funding to undertake any necessary upgrading works in the vicinity of the port.

Policy context

- 7 As set out in the joint statement of evidence prepared by Ms Heppelthwaite and Ms Crafer,¹ the Northland Regional Policy Statement and the Whangarei District Plan both contain strong policy frameworks that seek land use and transport provision integration with development. Relevantly, that framework requires the Hearing Panel to consider the extent to which the Port Expansion Project:
- a Addresses the **cumulative effects** of the development on infrastructure;
 - b Achieves the **integration** of development with the **funding, implementation, and operation** of transport infrastructure;
 - c **Avoids the adverse effects** on the operation of regionally significant infrastructure.

Transportation effects

- 8 There appears to be little disagreement between the experts about the nature and scale of the adverse effects of the Port Expansion Project on the transport network. Similarly, Ms Crafer and Ms Harrison broadly agree² on the appropriate vehicle movement triggers that would result in adverse effects that would necessitate the upgrading of the intersections. It is noted that the intersection upgrades would not be required within the foreseeable future should the Port Expansion Project not proceed.

¹ Joint statement of primary evidence prepared by Ms Heppelthwaite and Ms Crafer.

² The experts disagree about the PM inbound flow at SH15/One Tree Point intersection as set out in Table 2 of condition 64.

- 9 There is, however, disagreement about how to manage those effects once they arise.
- 10 The joint supplementary statement prepared by Ms Heppelthwaite and Ms Crafer outlines their residual issues relating to the transportation conditions.

Transportation conditions

- 11 The key change sought in the joint supplementary statement is the inclusion of a traffic volume limitation condition requiring Northport to manage its traffic volumes in the event that the requirement for safety and/or capacity improvements are identified by the monitoring, and improvements are not implemented. These limits would only apply if there is a time delay between the triggers being reached before the improvements are able to be implemented (for example, due to funding constraints). The limits also only apply during peak hours.
- 12 As noted by Ms Heppelthwaite, Northport's management techniques (explained by Mr Moore) include a truck booking system (presently excluding logging trucks), port operational hours, ship bookings, staffing levels (which dictate the level of cargo able to be moved) and direct control over other port activities (eg. Fumigation). Without such mitigation in place, Ms Crafer considers that the potential adverse effects of the port expansion project will be significant both in terms of increased safety risks at the intersections and significant impacts on their capacity.
- 13 The alternative proposed by Northport is that provided that at the point the triggers are breached, it pays its share of the intersection upgrades associated with the Port Expansion Project to Waka Kotahi, then it can continue to operate in a way that exceeds the trigger levels. This approach to mitigation will be completely ineffective if there is a time delay between the triggers being reached, and Waka Kotahi is unable to secure the additional funding required to implement the upgrades. Any delay in implementing the upgrades will also adversely affect Northport's operations in terms of road traffic trying to access the site. Ms Crafer considers that if mitigation is not implemented the transportation effects will be significant.
- 14 For these reasons, Northport and Waka Kotahi have been in discussions since Waka Kotahi lodged its submission in order to agree a way forward. I am advised that a relationship agreement is currently being discussed between the parties that will set out Northport's obligation to contribute its share of the cost of the

intersection upgrades, and the commitment of the parties to work together to work together to manage the future upgrade of the intersections.

- 15 Accordingly, the financial contributions conditions are unnecessary and should be deleted. The use of a relationship agreement or a side agreement provides the parties with much more flexibility to work collaboratively to ensure that the upgrades are implemented to manage the effects. In the meantime, there can be confidence that the adverse effects will be appropriately managed by the mitigation measures requiring Northport to manage its traffic volumes.
- 16 This approach is consistent with Policy 5.1.1 (and the Explanation) of the NRPS which requires the adverse effects of development on regionally significant infrastructure to be avoided. Allowing the payment of a financial contribution that allows the adverse effects to continue until some point in the future when the remaining funding can be secured is not consistent with an approach which requires those adverse effects to be avoided.
- 17 If the financial contributions provisions are retained, then the requirement to repay the contribution should the upgrades not be implemented within five years, should be deleted.

Witnesses

- 18 Waka Kotahi has lodged the following evidence in support of its submission:
- a Mr Mutton (corporate);
 - b Joint primary statement of evidence of Ms Heppelthwaite and Ms Crafer (transport and planning); and
 - c Supplementary statement of evidence of Ms Heppelthwaite and Ms Crafer.

Concluding comments

- 19 As noted by Mr Mutton, Waka Kotahi supports the Northport expansion insofar as it promotes economic growth in Te Tai Tokerau, the role of coastal shipping and multimodal freight connections. Waka Kotahi has a statutory obligation to contribute to an effective, efficient and safe land transport system in the public interest and must give effect to the GPS and support other national and regional policy/strategy direction.
- 20 Accordingly, Waka Kotahi supports Northport's expansion application subject to appropriate conditions being imposed to ensure that the adverse effects of that

expansion are appropriately remedied or managed prior to the implementation of any upgrades required to the three identified intersections.

11 October 2023

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