

City Planning
Auckland City Council
Private Bag 92516 Wellesley Street
AUCKLAND

18 March 2010

Attention: Megan Tyler

Dear Megan

Notice of Requirement – Proposed Auckland City Council designation for Community Facilities – Korora Road and Ocean View Road, Oneroa, Waiheke Island

On behalf of Auckland City Council, please find attached a Notice of Requirement (NoR) and associated assessment of environmental effects (AEE) prepared in accordance with the provisions of the Resource Management Act 1991 (RMA or the Act).

The NOR is to designate land for *community facilities* on the corner of Korora Road and Ocean View Road within Oneroa Township, Waiheke Island. The designation is to apply to the land at the existing Artworks site at 2 Korora Road and 127 and 129 Ocean View Road in addition to the adjoining sites located at 4 Korora Road and 131, 133 Ocean View Road (as further described in the Land Requirement Plan and schedule of properties attached as Appendix A to the AEE). All of these properties are owned by Auckland City Council.

Designating this site to expand and enhance the provision of community facilities will have positive effects for both the local community and the wider residents of Waiheke Island.

Documentation

The submitted documentation comprises the following:

- NOR form (as per Form 20 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with a Land Requirement Plan showing the location and boundaries of the area to be designated and a schedule listing parcel ID numbers, street and owner addresses and legal descriptions of affected land; and
- An Assessment of Environmental Effects and supporting technical reports

Notification Assessment

As part of the Resource Management (Simplifying and Streamlining) Amendment Act 2009, amendments in relation to the notification of NoR's have been introduced under section 168(1)(A) for a NOR issued by a territorial authority. Under this section the territorial authority must decide whether to publicly notify the notice under sections 95 to 95F of the Act. In our view, the NoR does not require either full or limited notification for following reasons.

Assessment against the requirements for full notification of a NOR

Section 95A outlines that a consent authority must publicly notify a NoR if:

- (2) (a) *it decides (under section 95D) that the activity will have or is likely to have adverse effects on the environment that are more than minor; or*

(b) the applicant requests public notification of the application; or

(c) a rule or national environmental standard requires public notification of the application.

(3) Despite subsections (1) and (2)(a), a consent authority must not publicly notify the application if—

(a) a rule or national environmental standard precludes public notification of the application; and

(b) subsection (2)(b) does not apply.

(4) Despite subsection (3), a consent authority may publicly notify an application if it decides that special circumstances exist in relation to the application.

Where a consent authority is deciding, for the purpose of section 95A(2)(a), whether an activity will have or is likely to have adverse effects on the environment that are more than minor—

(a) must disregard any effects on persons who own or occupy—

(i) the land in, on, or over which the activity will occur; or

(ii) any land adjacent to that land; and

(b) may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and

(c) in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion; and

(d) must disregard trade competition and the effects of trade competition; and

(e) must disregard any effect on a person who has given written approval to the relevant application.

As such, in making a decision about whether full notification is required, a consent authority must disregard effects on persons who own or occupy land on which the activity will occur and any adjacent land.

In considering the effects on persons beyond the site and adjacent land the effects of the activity are not considered to be more than minor under section 95(2)(A).

In addition, the requiring authority has not requested that this NoR be publicly notified nor is there a relevant rule or environmental standard that requires public notification of the NoR. Therefore the notice is not required to be notified under section 95A(2)(b) and (2)(c). Section 95A(3) is not considered to be relevant to this NoR.

Subsection (4) allows for the notification of a NoR if the consent authority decides that there are special circumstances that exist in relation to the application. Special circumstances to notify an application are circumstances that are unusual, exceptional and are "out of the ordinary", however may be less than extraordinary or unique (*Peninsula Watchdog Group (Inc) v Minister of Energy* [1996] 2 NZLR 529 (CA)).¹

¹ Furthermore, if what is proposed is specifically envisaged by the district plan, it cannot be described as being out of the ordinary and giving rise to special circumstances; nor the fact that a proposal is contrary to the objectives and policies in the plan (*Re an Application by Trollove C074/94 (PT)*).

The fact that a consent authority is aware of persons wishing to make a submission² or is aware of public interest in a controversial project, does not give rise in itself to special circumstances.³

As such, based on the guidance in case law, we do not consider that there are any special circumstances that are relevant to this NoR. The direction of the District Plan and the anticipated use of the land to be designated is for commercial purposes. This use is reflected by the site's underlying commercial zoning. Given this direction, the NOR is not considered to be 'out of the ordinary' or giving rise to special circumstances that would justify the need for the NoR to be notified. Further, any anticipated public interest is in of itself not enough to give rise to special circumstances. Therefore it is not considered that notification is warranted under section 95A(4).

Assessment against the requirements for limited notification of a NOR

Section 95B provides for limited notification of a NoR.

(1) If a consent authority does not publicly notify an application for a resource consent for an activity, it must decide (under sections 95E and 95F) if there are any affected persons or affected order holders in relation to the activity.

(2) The consent authority must give limited notification of the application to any affected person unless a rule or national environmental standard precludes limited notification of the application.

(3) The consent authority must give limited notification of the application to any affected order holder even if a rule or national environmental standard precludes public or limited notification of the application.

For the purpose of limited notification, the first test is to establish if there are any affected persons. Section 95E provides the consent authority with guidance in relation to affected parties. The consent authority must decide that a person is an affected person, in relation to an activity, if the activity's adverse effects on the person are minor or more than minor (but are not less than minor).

As discussed in section 6 of the attached AEE, activities provided for by the NOR will generate character, visual, traffic and noise effects that are no more than minor on the environment.

With regard to affected persons, in particular the following is noted:

- The property located at 6 Korora Road is separated from the subject site with permeable fencing and mature vegetation. The site that is the subject of this designation is already occupied by an existing car parking area associated with an existing community facility (being Artworks, the existing library and art galleries). In addition, given the proposed conditions of this designation relating to provision of side and rear yards it is considered that the effects of the NOR on this property will be less than minor;

² *Trolove (Re an application)* C074/94

³ *Murray v Whakatane District Council* (1997) 3 ELRNZ 308

- The dwellings on residentially zoned land to the north of the subject site are located below the ridgeline and oriented to the north (to overlook Oneroa Bay). Given the topography, boundary fencing and outlook from these dwellings towards the subject any views to the site will be oblique. Built form will in any case be consistent with the proposed Commercial 1 zoning. These combined with the proposed conditions of this designation (relating to provision of a rear yard) will result in effects that are less than minor;
- The adjoining property to the east of the subject site, located at 135 Ocean View Road is zoned commercial under both ACDP:HGI (Proposed 2006) and ACDP:HGI (Decision version 2009). Accordingly, similar commercial activities are anticipated at this site in the future. Given the activities anticipated at this site in the future and the proposed conditions of this designation the effects on this property are considered to be less than minor; and
- The residential zoned properties of 3, 5, 7 and 9 Korora Road have an outlook to the subject site. Having regard to the nature of the activities currently fronting Korora Road (being existing community facilities) there will be no change to the activity that is currently adjacent to these properties. Consequently, the effects on these properties will be less than minor.

The conditions proposed on the designation ensure that any actual or potential effects are acceptable, and avoided, remedied or mitigated as appropriate. These conditions include requirement for development to be in general accordance with development controls of the proposed commercial 1 zone including building height in relation to boundary, building height and noise restrictions.

Community facilities are permitted activities in the commercial 1 zone, the underlying zone for the designated area, as proposed under the ACDP:HGI (decision version 2009). Therefore the resulting effects of community facilities are anticipated at this location. As part of this plan review process (described in section 2 of the attached report) it has been demonstrated that the effects of this activity will be consistent with the context of the surrounding environment, therefore this activity will be appropriate for the anticipated character of the area. This expected character is also supported by the rezoning of both the eastern adjoining site and the remaining Ocean View Road properties to commercial. These changes will generally connect this area with the Oneroa township and its commercial activities.

Overall, having regard to the existing environment, the Council's future direction (zoning) for this land and the designation conditions, the effects on neighbouring properties are considered to be less than minor. As such there are no adversely affected parties in terms of section 95B(1).

Therefore, the NOR is not required to be limited notified under Section 95B(2).

Please contact Jamie Swan as the address for service via the below details with regards to the processing of this Notice of Requirement.

Yours faithfully

Jamie Swan

Senior Planner



on behalf of

Beca Carter Hollings & Ferner Ltd

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Justine Haves (Auckland City Council)



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City Planning
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31 May 2010

Attention: Deborah Kissick / Joao Machado

Dear Deborah and Joao,

Designation of land for Community Facilities, Oneroa, Waiheke Island

Thank you for the opportunity to meet with you both last week to bring to our attention the striking out of the remaining whole of plan appeals on the District Plan.

I appreciate you were both looking to provide open advice about the potential merits of a resource consent process in light of this outcome. We have considered your comments and sought legal advice and can confirm that Property Services wish to continue with the designation of the site.

The reasons for this decision are as follows:

- o A designation will provide for the long term integrated development of the site (including the future realisation of the master plan being developed for the site);
- o A designation will establish the planned use of the site for community facilities including the Council's service centre and gives a clear indication to the community of the Council's intended use of the land;
- o A designation provides flexibility for staged development and finalisation of the building design at the appropriate juncture (this is particularly important given our planned longer term design process and upcoming changes in the Auckland governance structure);
- o While community facilities may be a permitted use the library/service centre development would still require resource consent for
 - o a large technical shortfall against the District Plan for parking (although the effects are no more than minor);
 - o for a new building; and
 - o the innovative centrally located natural ventilation shaft being considered for the library (ventilation shafts are not excluded from the maximum building height provisions in the District Plan).

The designation will establish these development parameters on the site; and

- o Given the proposed Master Plan design process for the site a designation, followed by the Outline Plan process, will better serve the objectives of the project and, in particular, provide the long term flexibility the project requires.

Processing delays

Our team is concerned about the length of time City Planning has had the Notice of Requirement (NOR) with little progress being made. The NOR was hand delivered on 28 April 2010 and is yet to formally be lodged in the system or fully assessed. Despite email communication and phone messages the first we heard from City Planning was the invitation to Wednesdays meeting (19 May).

Justine Haves (Project Manager) has highlighted the importance of moving this project forward quickly several times and, while you may have been waiting for the plan appeals to resolve, this had lead to a one month delay and the NOR has not even been formally accepted.

Points of clarification

I would also like to clarify some of the concerns/points you have raised at the two meetings we have had and the time delays thus far. I would like to highlight that:

- Designations identify land for a particular use and are essentially a "spot zoning" and do not require plans of buildings on the site. This is provided for by the Outline Plan process - s176A of the Act sets out what is required for subsequent outline plan process which includes, by way of example, the location, shape, bulk of any proposed buildings and associated landscaping. Conditions or advice notes relating to expectations for information to be submitted with an outline plan could also be recommended however, as we discussed.
- Designations are an appropriate planning tool for public works such as community facilities and are not only appropriate for linear infrastructure. As you may know the Auckland Art Gallery and certain Council owned parks, car parks and sports fields are all examples of public works approved by way of designation. Many schools are also designated.
- The changes to RMA in October last year have made significant changes to the notification provisions (now covered by s95-95F). There is no longer a requirement to notify all designations. A NOR no longer needs to be notified unless one of the triggers in these sections cannot be met or notification is requested. When considering full public notification the effects of the activity on the site and those adjacent must be disregarded. These matters are addressed in the notification letter attached to the NOR.
- The purpose of the designation is set out in the AEE (s2.2). It does not cover other activities such as the existing cafes or restaurants which have been lawfully established. Any future activity (e.g. other cafes) not covered by the designation would require the Requiring Authority approval under section 176, and would need to be assessed against the District Plan (this is set out in the AEE). The underlying zoning remains and would apply for these activities.

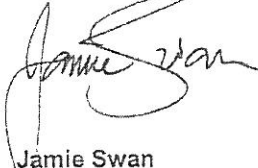
To this end could you please:

- Provide written confirmation that the NOR has been lodged;
- Advise as soon as possible if there are any matters that require clarification; and

- o Provide a timeframe for making a notification decision.

Please contact me if you require any further clarification on the above matters.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jamie Swan', written over a light blue horizontal line.

Jamie Swan
Senior Planner

on behalf of

Beca Carter Hollings & Ferner Ltd

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Justine Haves (Auckland City Council – Property Services), Vanessa Evitt (Buddle Findlay), Fiona Blight (Beca)



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1 July 2010

Attention: Joao Machado

Dear Joao

Notice of Requirement for Community Facilities - Oneroa, Waiheke Island

Thank you for the opportunity to meet with yourself and Andrew Wilkinson yesterday (30 June 2010) to review Council's request for further information in relation to the above Notice of Requirement (NOR).

Further to our discussions regarding the potential effects of height, demand for parking and the need for other development controls please find the following information to assist you with making a decision in terms of sections 95-95F of the RMA.

Building Height

As discussed, it is expected that the first new building on the site (to be designated for community facilities) will be a new library and service centre. Preliminary designs incorporate a number of energy saving Environmentally Sustainable Design (ESD) features including two centrally located ventilation shafts (one for the library and one for the service centre) to naturally heat and cool the building.

In terms of providing flexibility for such sustainability initiatives whilst addressing the effects of building height suggested condition 2 restricts building height to 8m (which is consistent with the permitted building height for the Commercial 1 Zone). It departs from the District Plan provisions by excluding ventilation shafts from the height limits.

Further to our discussion, to address the potential visual effects of the ventilation shafts the following additional conditions are recommended:

2 (a) Any ventilation shafts included in new buildings shall be centrally located and extend no more than 3m above the maximum building height on the site. Where practicable, they should be constructed of visually permeable materials.

Being located centrally views of the shafts are likely to be oblique from street level. The actual appearance of the new building will be considered at the Outline Plan stage. As part of the Outline Plan details of the consultation with the Urban Design Panel will be provided.

As the purpose of the designation is to provide for the use of the land for community facilities the final design of any future buildings is not available at this stage. Plans will be submitted with an Outline Plan, in accordance with the conditions which will be established under this designation and the requirements of section 176A of the Act.

The only additional activity on the site is a new service centre. The service centre currently has 14 spaces provided (Ostend service centre). It is proposed to provide up to an additional 17 parking spaces on the Oneroa site when development occurs;

- o In addition, to better manage the effects of parking demand it is proposed (by way of condition) to:
 - o Provide up to 17 additional parking spaces on site and two additional on street spaces on Ocean View Road;
 - o Limit the number of staff parking spaces to a maximum of 12;
 - o Provide time limited on-site and on-street parking to ensure visitors can park close to the facility (a positive effect improving the existing situation);
 - o Monitor the level of parking required for 2 years following the opening of the new library and service centre to determine whether additional on site parking is required (due to demonstrable effects from the library and service centre, ie. Not from any other subsequent development or change in the area) as well as avoid over-provision of unnecessary parking spaces/impervious surfaces;
- o The site is not being developed to be a depot for service centre vehicles;
- o The TIA predicts additional demand for on-street parking to be 9 spaces;
- o The parking survey indicates a minimum (i.e. at the busiest period of the day) of 30 free parking spaces within 300m of the site.

Given the low level of additional on-street parking demand (9 spaces), the current availability of on-street parking and the proposed monitoring of parking we consider that adjacent properties will not be adversely affected by the proposed designating of the site for community purposes.

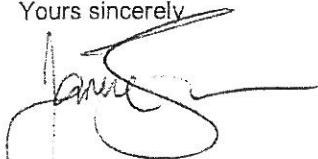
Other development controls

As discussed at our meeting it may be appropriate for Council to recommend additional development controls relating to matters such as boundary screening, earthworks and impervious surfaces. It is suggested that condition 1 could be amended to include following additional requirements (shown in underline):

1. An Outline Plan shall be submitted to Auckland City Council in accordance with section 176A of the RMA for development undertaken under this designation. The Outline Plan shall include information on those matters listed under section 176A and provide confirmation of how the development has met the conditions (where applicable) of this designation. The Outline Plan shall also include details of:
 - a. Erosion and sediment control measures for undertaking earthworks
 - b. Treatment of stormwater from impervious surfaces
 - c. Screening of any outdoor storage, refuse disposal area, service or parking area

I trust this information is of assistance in completing your assessment. Please let me know if you require any further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jamie Swan', with a long horizontal flourish extending to the right.

Jamie Swan
Senior Planner

on behalf of

Beca Carter Hollings & Ferner Ltd

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Justine Haves, (Auckland City Council), Fiona Blight (Beca).

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17 August 2010

Attention: Andrew Wilkinson

Dear Andrew,

NOR for Community Facilities - further information

At our meeting last week (11 August 2010) we discussed matters relating to District Plan weighting, potentially affected parties, the draft peer review of Beca Transportation Assessment and the need for greater certainty around the draft conditions put forward by the Requiring Authority.

The following sets out our written response to the matters raised at the meeting.

District Plan weighting

As we understand it the underlying commercial zoning for this site in the proposed plan is not subject to any outstanding Environment Court appeals. Arguably in this context s86F of the Act will apply. This states that a proposed plan rule must be treated as operative (and any previous rule inoperative) where there are no outstanding appeals in relation to that rule and the appeal period has closed.

As discussed at the meeting it remains unclear as to the extent to which the remaining appeal on the strategic sections of the proposed plan touches on the commercial zoning of the site, if at all. If that appeal is unrelated then our view would be that the commercial zoning rules (and related objectives and policies) should be treated as operative in terms of s86F. If for some reason that appeal could impact on the commercial zoning rules then s86F may not apply and we need to reconsider the weight to be attributed to both plans. It seems unlikely, however, that the site and Oneroa Village will be anything other than a commercial area under the plan.

In any event, at the very least, we consider that the proposed plan should be given considerable weight in the assessment of this proposal given where it is at in the process, and certainly greater weight than the operative plan.

Off-site parking and amenity issues

We note your initial comments that Council are concerned about the adverse effects on particular properties of relying on some on-street parking (in terms of other people utilising road space adjacent to these properties).

It is particularly important to separate out the potential effects on properties (i.e. amenity) as opposed to the roading environment (capacity, safety and efficiency). In making a determination about potentially affected parties under s95 we note the following:

- The residential properties in question all abut or are located in proximity to the existing commercial village and the existing community facilities. The level of use or availability of on-street parking in such an area will be different to an exclusively residential zone;
- The reliance on up to 9 on street car parking spaces on weekdays, during peak times (that is the middle of the day) will not result in amenity impacts in terms of aural privacy such as those caused by late night parking in residential areas (door slam, voices etc). The reliance on some on-street parking spaces will generally be at peak times on weekdays only, as set out in the Transport Assessment;
- There is sufficient supply of on-street parks to meet the predicted demand (as concluded by both traffic engineers). The safety and efficiency of those streets will not therefore be impacted;
- Street side parking capacity is not owned or controlled by the individual property owners. It is a public resource provided for the very purpose of allowing vehicles to be parked where they will not compromise the capacity and safety of the road. This position has been endorsed by the Environment Court (as such written approval cannot be required from property owners to rely on on-street parking as this is a public resource);
- Any activity that does not comply with the parking rules would be a restricted discretionary activity (if resource consent was being sought). Section 13.5 of the Proposed Plan states that applications for a resource consent for restricted discretionary activities are to be considered without public notification or the need to obtain written approval of or serve notice on affected persons;
- The designation conditions specifically provide for monitoring of the parking demand associated with the site. To the extent that there are any unanticipated adverse impacts on surrounding streets in the future there is a mechanism in the designation to rectify this.

Notwithstanding the above we note your comments about providing greater certainty regarding actions to be taken following the monitoring. The proposed amendments to the conditions below seek to amend the maximum parking number conditions so that if monitoring uncovers any significant unanticipated effects, the management of parking can be addressed further.

Our view has been, and continues to be, that (having regard to the assessments undertaken and conditions proposed) the effects on the roading environment from on street parking will be no more than minor, and that no parties are adversely affected by the designation of land for community facilities.

The designation provides for the long term protection of the site for community infrastructure, provides flexibility in terms of the design and layout of the site and allows for the works on site to be undertaken in a comprehensive and integrated manner.

Other considerations in terms of assessment

We also note that there is sufficient land being designated to provide for additional on site parking should this be required at a future date. The monitoring provision provides a mechanism to review the level of on site parking provision should unanticipated effects be identified.

Traffic Peer Review

In relation to the draft peer review of the Beca Transportation Report by T2 Traffic and Transportation Ltd I note that the following matters have not been taken into account:

- The positive effects of time limiting the car parking on site (which will prevent staff parking on site and improve accessibility for visitors);
- The addition of 17 parking spaces to the site to addresses the majority of the additional demand;
- That the assessment of demand for on-street parking is based on the weekday peak and for most of the day will be much lower;
- The service centre is only open Mon-Fri and during working hours - there will be no demand from staff parking in the evening or weekend;
- The positive effects of providing marked on site mobility spaces where none currently exist;
- The monitoring condition proposed by condition 7 (now amended to be more explicit about the implementation of changes);
- The need for an appropriate balance between adequate supply on site and avoiding oversupply (as set out in the District Plan);
- Changes taking place in the Oneroa town centre to improve parking (which are likely to reduce on street car parking demand in this area).

Additional Conditions

At the meeting we agreed to provide the following additional information:

- Advise Council on any changes to fleet vehicle post Nov 1 (Auckland Council amalgamation);
- Provide more certainty regarding the monitoring condition (c7) by suggesting additional wording;
- Add flexibility to change the maximum numbers of parking should monitoring identify an issue;
- Propose a Parking Management Plan condition; and
- Propose a walking and cycling condition.

The purpose of this additional information was to assist in determining the scale of potential adverse effects and any potentially affected parties.

Auckland Council

Justine Haves (Property) has advised that the number of staff and Service Centre fleet vehicles will not change after 1 November.

Monitoring condition

Proposed additional wording to condition 7 in underline

The requiring authority shall survey the usage of on-site and on-street car parking (being the sections of Korora Road, Ocean View Road and Mako Street surveyed as part of the Transportation submitted with the Notice of Requirement) every six months for up to 24 months after the start of operations of the new library and service centre to ensure that there is adequate car parking provided. At least one of the alternate six month parking surveys is to be undertaken in the 'summer season' (being December and January and during a period when the library and service centre are operational).

Should the monitoring identify any unanticipated adverse effects arising from the designated activities the requiring authority may, or if requested by Council shall, submit a report by a suitably qualified traffic engineer, outlining what measures (developed in Consultation with Council) will be implemented to avoid, remedy or mitigate the effect. These measures may include:

- i. Changes to the allocation of staff and visitor parking*
- ii. An updated Parking Management Plan*
- iii. Additional time limited on street parking*
- iv. Construction of additional on site parking spaces*

Proposed changes to condition 6

The level of car parking on the site shall comply with the following:

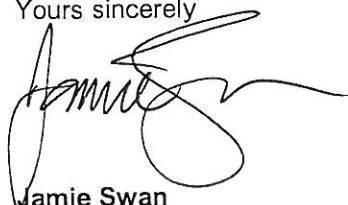
- a) A maximum of 34 on-site car parking spaces (including staff and mobility spaces) may be provided on site, unless the monitoring required under condition 7 identifies that additional visitor parking is required.*
- b) A maximum of 12 parking car parking spaces may be provided exclusively for staff use (where the total number of car parking spaces does not exceed 34), unless the monitoring required under condition 7 identifies that additional staff parking is required.*

New additional condition

The Requiring Authority shall submit a Parking Management Plan with any Outline Plan for new buildings on site. The Plan shall set out the number of staff, mobility and visitor car parking spaces to be provided on site, any on site or on-street time limitations on parking, how staff parking will be managed and details of on site provision for cyclists.

I trust this additional information addresses your concerns about potentially affected parties, the traffic peer review and that the additional conditions are useful in completing your assessment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jamie Swan', with a large, sweeping flourish at the end.

Jamie Swan

Manager- Auckland Planning (Acting)

on behalf of

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