

IN THE MATTER

of an appeal under section 120 and
an appeal under section 174 of the
Resource Management Act 1991

BETWEEN

FOODSTUFFS NORTH ISLAND
LIMITED

(ENV-2013-AKL-000189)

Appellant

AND

AUCKLAND COUNCIL

WATERCARE SERVICES
LIMITED

Respondents

AND

WATERCARE SERVICES
LIMITED

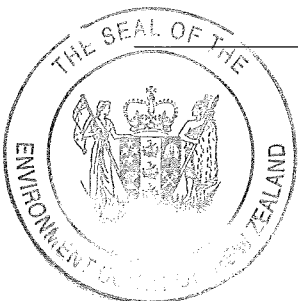
Applicant

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith sitting alone under Section 279 of the Act

IN CHAMBERS at Auckland

CONSENT ORDER



- A. Under Section 279(1)(b) of the Act, the Environment Court by consent, orders that:
1. The appeals are allowed subject to the amendments set out in Schedule A and Schedule B this order.
 2. The appeals are otherwise dismissed.
- B. Under Section 285 of the Act, there is no order as to costs.

REASONS

Introduction

1. This order relates to the complete resolution of two appeals lodged by Foodstuffs North Island Limited ("**Foodstuffs**")¹ on two separate decisions made in respect of the resource consents and notices of requirement ("**NoRs**") required for the construction, operation and maintenance of the Central Interceptor Main Project Works ("**Project**").
2. One of the appeals relates to Auckland Council's ("**Council**") decision to grant resource consents to Watercare Services Limited ("**Watercare**") for the Project. The other appeal relates to Watercare's decision on the NoRs for the designation of land for the Project. Together, these will be referred to as the ("**Appeals**").
3. The Court has read and considered the appeals and the memorandum of the parties dated 19 September 2014.

⁴ The following parties joined the appeal on the *resource consents* under section 274 of the Resource Management Act 1991 ("**RMA**"):

ENV-2013-AKL-000189 and ENV-2014-AKL-000030.



- (a) St Lukes Gardens Apartments Progressive Society Incorporated; and
- (b) Body Corporate 346086 - St Lukes Gardens Apartments.

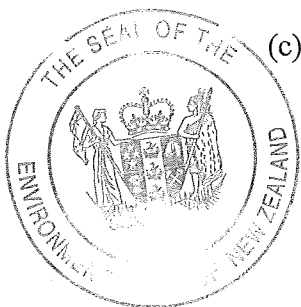
5. The following parties joined the appeal on the *NoRs* under section 274 of the RMA:

- (a) St Lukes Gardens Apartments Progressive Society Incorporated;
- (b) Body Corporate 346086 - St Lukes Gardens Apartments;
- (c) St Lukes Environmental Protection Society Incorporated; and
- (d) Auckland Council.

6. The Court is making this order under section 279(1)(b) of the RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297.

7. The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order.
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction and conform to relevant requirements and objectives of the RMA, including in particular Part 2.
- (c) All parties are aware that the consent order is in full settlement of the Appeals.



Order

8. Therefore the Court orders, by consent of the parties, that the Appeals are fully resolved, on the basis that the resource consent conditions are amended as agreed between the parties and set out in **Schedule A (attached)**, and that the designation conditions are amended as agreed between the parties and as set out in **Schedule B (attached)**.
9. There is no order as to costs.

DATED at Auckland this

26th

day of

September

2014

J A Smith

Environment Judge



SCHEDULE A

WATERCARE SERVICES LIMITED – CENTRAL INTERCEPTOR MAIN WORKS

Resource Consent Conditions

[Amendments to conditions are shown in bold and underline or ~~strikethrough~~]

...

Pursuant to Section 108 of the RMA, the consents and permits described above shall, except as specified, be subject to the following conditions:

1. General Conditions

Plans and Information

- 1.1 Except as modified by the conditions below and subject to final design, the project shall be undertaken in general accordance with the evidence provided at the hearing and the plans and information submitted with the application and documented as consent numbers R/LUC/2012/2846, R/LUC/2012/2846/1, PRC40962, PRC40963, 40834, 40835, 40836, 40837, 40838, 40839, 40840, 40841, 40842, 40843, 40844, 40845, 40846, 40848, 40849 and 40850 by the Council. The plans and information include:

...

- (j) The diagram titled "Foodstuffs Pre-Condition Survey Recommendation" dated 11 August 2014 and submitted to the Environment Court on 22 September 2014.**

...

Construction Management

Note: "Project stage" means a separable part of the Project, e.g. by Contract area or by geographical extent and may include one or more designated sites enabling the preparation of site-specific plans ~~where appropriate~~ **for each of the surface construction sites.**

- 1.8 ...

The CMP(s) required by this condition shall include specific details relating to the management of all construction activities associated with the relevant Project stage to which they relate, including:

...

- (f) Procedures for controlling sediment run-off, dust and the immediate removal of soil, debris, demolition and construction materials (if any) from public roads **and / or other** places adjacent to the work site;



Construction Noise and Vibration

- 1.11 A Construction Noise and Vibration Management Plan shall be prepared for each site, **either for Council approval** as part of the CMP, ~~or as a standalone plan,~~ **and** shall be prepared by a suitably qualified person, and shall be submitted to Council with the OPW to which it relates.
- ...

Traffic Management

- 1.22 A detailed Traffic Management Plan (TMP) or plans shall be prepared for the Project or relevant Project stage **for Council approval as part of the CMP, and shall be prepared** by a suitably qualified person.
- ...

Lapse and commencement

- 1.33 For construction related, or construction and operation related consents (i.e. consents R/LUC/2012/2846, PRC40962, R/LUC/2012/2846/1, PRC40963, 40834, 40836, 40835, 40837, 40838, 40839, 40840, 40841, 40843, 40844, 40845, 40846, 40848, and 40849):

This consent shall lapse on the expiry of a period of **15 10** years after the date on which the last of any appeals on all consents and notices of requirement associated with the Central Interceptor main project works is withdrawn or determined, or, if no appeals are lodged, the date on which the notices of requirement are included in the District Plan(s) in accordance with section 184(1)(c) of the RMA, unless:

...



1A Site specific conditions for the May Road primary construction site

1A.1 Notwithstanding any other condition of consent that may apply to the May Road site, the following conditions are specific to the May Road site. In the event that there is a conflict with another condition of this consent, the more onerous standard shall apply.

Construction management

1A.2 A site specific CMP shall be prepared for the May Road site, in accordance with Condition 1.8, in consultation with Foodstuffs and other potentially affected adjacent landowners. In addition to the matters listed in Condition 1.8, the site specific CMP for the May Road site shall include procedures for ensuring that residents, road users and businesses in the immediate vicinity of construction areas are given 5 working days prior notice of the commencement of construction activities, including any particularly noisy works, and are informed about the expected duration and effects of the works.

1A.3 The May Road CMP must be submitted to the Council's Manager for approval prior to the commencement of construction activities at the May Road site.

1A.4 The CMPs and associated management plans for the May Road site shall be prepared in a manner which sets out the specific design and construction methods at the May Road site; acknowledges the unique site characteristics, adjacent land use and sensitivity of surrounding neighbours at the May Road site; and allows Foodstuffs and other potentially affected adjacent landowners to be involved in the development of the measures to be taken at the May Road site to avoid, remedy or mitigate adverse effects on the environment.

Construction noise and vibration

1A.5 A CNVMP shall be prepared for the May Road site, in accordance with Conditions 1.11 to 1.21.

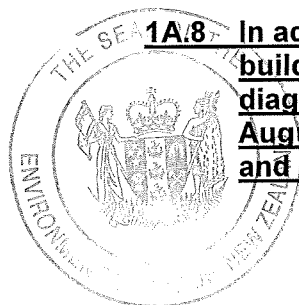
1A.6 Any Activity Specific Construction Noise Management Plan ("ASCNMP") for the May Road site shall be endorsed with the written consent of Foodstuffs and any other adjacent landowners affected by the exceedance, and shall be submitted to the Council for review and approval at least 7 working days prior to the proposed works commencing.

1A.7 In accordance with Conditions 1.18 to 1.20, the Guideline vibration limits set out in DIN 4150-3: 1999 must not be exceeded, except where the Consent Holder can demonstrate to the prior satisfaction of the Council:

(a) that the receiving building(s) at the Foodstuffs site and any other potentially affected building(s) are capable of withstanding higher levels of vibration and what the new vibration limit is. The investigation required to demonstrate this must include an assessment of the building(s) by a suitably experienced and qualified structural engineer and a full pre-condition survey; and

(b) that the Consent Holder has obtained the written agreement of the building owner(s), that a higher limit may be applied.

1A.8 In accordance with Conditions 4.10 to 4.18 of this consent, internal and external building condition surveys shall be prepared for the buildings identified on the diagram titled "Foodstuffs Pre-Condition Survey Recommendation" dated 11 August 2014 and submitted to the Environment Court on 22 September 2014, and any other building(s) identified as 'at risk'. The purpose of the building



condition survey is to identify and quantify any adverse effects on those buildings in respect of vibration, dewatering, ground settlement, and consequential damage to structures. An additional building condition survey shall be undertaken during the construction phase, no later than 24 months from the commencement of construction activities at the site. The timing for the during-construction building condition survey shall take into account the programme and duration of shaft sinking and tunnelling activities and shall be agreed with the building owner. The during-construction building condition survey shall incorporate all of the applicable requirements of Conditions 4.15 to 4.18.

The Consent Holder shall ensure that a copy of the during-construction building condition survey report is forwarded to the building owner and the Manager (unless the building owner has instructed the Consent Holder not to do so) within 15 working days of completing the reports.

Earthworks

1A.9 All earthworks shall be managed to avoid any discharge of dust, debris, soil, silt, sediment or sediment-laden water beyond the boundary of the May Road site to either land, air, stormwater drainage systems, watercourses or receiving waters. In the event that a discharge occurs, the activity which resulted in the discharge shall cease immediately and the discharge shall be mitigated and/or rectified to the satisfaction of the Manager.

1A.10 The Construction Discharges Management Plan ("CDMP") for the May Road site required by Condition 3.2 shall be prepared with the involvement of Foodstuffs and other potentially affected adjacent landowners.

Stormwater

1A.11 A Stormwater Management Plan ("SMP") shall be developed for the May Road site in consultation with Foodstuffs and other potentially affected adjacent landowners. The SMP shall be developed in accordance with Conditions 6.2 and 6.3 to ensure that there will be no increase in stormwater flows or adverse stormwater effects (including changes to overland flows and flooding) experienced offsite as a result of the Central Interceptor Project.

In particular, the SMP for the May Road site shall set out the measures which the Consent Holder will avoid, remedy or mitigate the potential adverse effects on the adjacent properties, and shall include:

- (a) a description of how the 100 Year ARI attenuation to pre-development levels objective at the May Road site shall be met; and
- (b) an assessment of the potential effects of site development on existing flooding and overland flow paths at the May Road site and the proposed measures to ensure that the properties owned by Foodstuffs' and other potentially affected adjacent sites are not adversely affected by the construction or permanent works.

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3. Earthworks
(applies to consents 40834 and 40835 only)

- 3.2 The Consent Holder shall ensure that all discharges from tunnel dewatering activities, wheel washes and other occasional construction site related discharges are treated to an appropriate standard prior to discharge to either land or stormwater drainage systems, watercourses or other receiving waters.

...

- 3.13 All sediment laden runoff ~~from a site~~ shall be treated on site by sediment control measures, as described in the consent application or modified under condition 3.6. These measures are to be constructed or installed in accordance with best practice, be operational before commencement of works and be maintained to perform at full operational capacity until the site has been adequately secured against erosion.

...

7. Discharges to Air (applies to consent 40842 only)

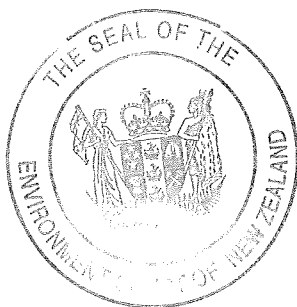
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- 7.8 The Consent Holder shall undertake on-going monitoring and reporting to Auckland Council of odour discharges from sites containing access shafts, drop shafts, air vents or air treatment facilities along the alignment of the Central Interceptor tunnel. In the event that there are ongoing elevated levels of odour at any of these sites ~~containing access shafts, drop shafts, air vents or air treatment facilities along the alignment of the Central Interceptor tunnel,~~ remedial action shall be taken by the Consent Holder to reduce those discharges so that there are no objectionable or offensive effects beyond the site boundary, in the opinion of an enforcement officer.

...

- 7.12 Should persistent objectionable or offensive odour discharges occur at any air treatment facility referred to in Condition 7.9, the Consent Holder shall amend the design and / or operation of the facility to avoid, remedy, or mitigate the effects in this regard to the satisfaction of Auckland Council.

...



SCHEDULE B

WATERCARE SERVICES LIMITED – CENTRAL INTERCEPTOR MAIN WORKS

Designation Conditions

[Amendments to conditions are shown in bold and underline or ~~strikethrough~~]

1.0 General Conditions

- 1.1 Except as modified by the conditions below and subject to final design, the works shall be undertaken in general accordance with the evidence provided at the hearing, the information provided by the Requiring Authority in Notices of Requirement 1 and 2 dated August 2012, and supporting documents being:

...

- (i) The diagram titled "Foodstuffs Pre-Condition Survey Recommendation" dated 11 August 2014 and submitted to the Environment Court on 22 September 2014.

...

- 1.5 The designation shall lapse on the expiry of a period of **15** 10 years after the date on which the last of any appeals on all consents and notices of requirement associated with the Central Interceptor main project works is withdrawn or determined, or, if no appeals are lodged, the date on which the notices of requirement are included in the District Plan(s) in accordance with section 184(1)(c) of the RMA, unless:

...

- 1.6 Except as provided for in Condition 1.7 below, the Requiring Authority shall submit an Outline Plan of Works (OPW) for the Project or for each Project stage in accordance with section 176A of the RMA.

Note: "Project stage" means a separable part of the Project, e.g. by Contract area or by geographical extent and may include one or more designated sites enabling the preparation of site-specific plans for each of the designated surface construction sites.

...

1A Site specific conditions for the May Road primary construction site

- 1A.1 Notwithstanding any other condition of this designation that may apply to the May Road site, the following conditions are specific to the May Road site. In the event that there is a conflict with another condition of this designation, the more onerous standard shall apply.

Construction management

- 1A.2 A site specific CMP shall be prepared for the May Road site, in accordance with Conditions 2.1 - 2.3, in consultation with Foodstuffs and other potentially affected adjacent landowners. In addition to the matters listed in Condition 2.2, the site specific CMP for the May Road site shall include procedures for ensuring that residents, road users and businesses in the immediate vicinity of



construction areas are given 5 working days prior notice of the commencement of construction activities, including any particularly noisy works, and are informed about the expected duration and effects of the works.

1A.3 The CMP for the May Road site must be submitted to the Council's Manager prior to the commencement of construction activities at the May Road site.

1A.4 The CMPs and associated management plans for the May Road site shall be prepared in a manner which sets out the specific design and construction methods at the May Road site; acknowledges the unique site characteristics, adjacent land use and sensitivity of surrounding neighbours at the May Road site; and allows Foodstuffs and other potentially affected adjacent landowners to be involved in the development of the measures to be taken at the May Road site to avoid, remedy or mitigate adverse effects on the environment.

Construction noise and vibration

1A.5 A CNVMP shall be prepared for the May Road site, in accordance with Conditions 3.1 - 3.11.

1A.6 Any Activity Specific Construction Noise Management Plan ("ASCNMP") for the May Road site shall be endorsed with the written consent of Foodstuffs and any other adjacent landowners affected by the exceedance, and shall be submitted to the Council for review and approval at least 7 working days prior to the proposed works commencing.

1A.7 In accordance with Conditions 3.8 to 3.10, the Guideline vibration limits set out in DIN 4150-3: 1999 must not be exceeded, except where the Requiring Authority can demonstrate to the satisfaction of the Council:

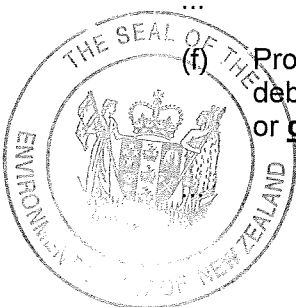
- (a) that the receiving building(s) at the Foodstuffs site and any other potentially affected building(s) are capable of withstanding higher levels of vibration and what the new vibration limit is. The investigation required to demonstrate this must include an assessment of the building(s) by a suitably experienced and qualified structural engineer and a full pre-condition survey; and
- (b) that the Requiring Authority has obtained the written agreement of the building owner(s), that a higher limit may be applied.

2.0 Construction Management

...

2.2 The CMP(s) required by Condition 2.1 above shall include specific details relating to the management of all construction activities associated with the relevant Project stage, including:

- (f) Procedures for controlling sediment run-off, dust and the removal of soil, debris, demolition and construction materials (if any) from public roads and / or other places adjacent to the work site;



- 2.3 The CMP shall be implemented and maintained throughout the entire construction period for the Project or relevant Project stage to manage potential adverse effects arising from construction activities ~~to the greatest practicable extent~~. The CMP or any specific component of the CMP shall be updated as necessary and provided to the Council in accordance with 2.1.

3.0 Construction Noise and Vibration

...

- 3.6 Each CNVMP shall also describe measures adopted to meet the requirements of German Standard DIN4150-3:1999, and as a minimum shall address the following aspects with regard to construction vibration:

...

- (b) preparation of building condition reports on 'at risk' buildings prior to, during and after completion of works, where for the purposes of this condition an 'at risk' building is one at which the levels in the German Standard DIN4150-3: 1999 are likely to be approached or exceeded;

Note: For the May Road site, internal and external building condition reports shall be prepared for the buildings identified on the diagram titled "Foodstuffs Pre-Condition Survey Recommendation" dated 11 August 2014, and submitted to the Environment Court on 22 September 2014, and any other building(s) identified as 'at risk' to identify and quantify any adverse effects in respect of vibration, dewatering, ground settlement, and consequential damage to structures.

...

5.0 Traffic Management

- 5.1 A detailed Traffic Management Plan (TMP) or plans shall be prepared for the Project or relevant Project stage by a suitably qualified person **and submitted as part of the CMP.**

...

May Road

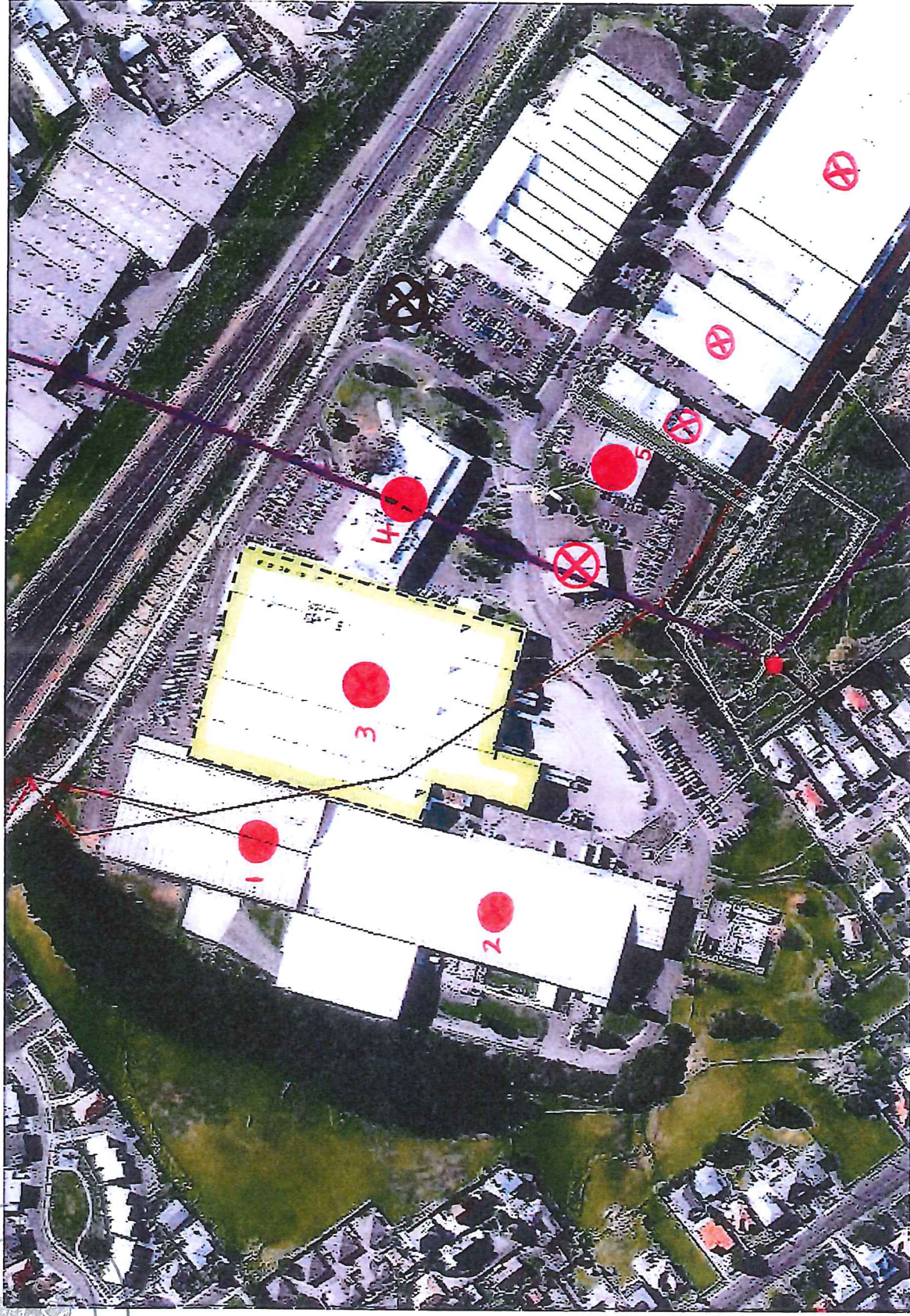
- 5.9 Access for all vehicles to the May Road site during construction shall be via a one way system entering from the Roma Road access and exiting from an additional access directly to May Road via land at 105 and 105A – 109A May Road legally described as Lot 2 DP 116924 and Lot 1 DP 58697. The design of the access roads and vehicle crossings shall be set out in the TMP and Outline Plan of Works for the site submitted in accordance with Conditions 1.6, 1.8, 5.1 and 5.2.

- 5.9A During the hours of 0730-0900 and 1500-1630 Monday to Friday, heavy vehicle movements that are associated with construction activities at the May Road site, and accessing the site via the Roma Road access shall not exceed 7 movements per 90 minute period.**





Foodstuffs Pre-Condition Survey Recommendation



- ⊗ external survey only
- internal and external survey