

IN THE MATTER OF the Resource Management Act 1991 (the RMA)

AND

IN THE MATTER OF Thirteen Notices of Requirement (NoRs) for the North Project by Te Tupu Ngātahi Supporting Growth Alliance (SGA), a partnership between Auckland Transport (AT) and Waka Kotahi NZ Transport Agency (NZTA)

DIRECTION #9 OF THE HEARING PANEL

1. Pursuant to sections 34 and 34A of the RMA, Auckland Council (the Council) has appointed a Hearing Panel consisting of three independent hearing commissioners – Richard Blakey (Chairperson), Mark Farnsworth and Vaughan Smith. The Hearing Panel’s function is to hear the applications and submissions and make recommendations to the Requiring Authorities on the 13 Notices of Requirement (NoRs). It is also to deal with any procedural matters.
2. A summary of the 13 NoRs were included in the Hearing Panel’s Direction #1 dated 20 February 2024.
3. The NoRs were the subject of a hearing that was held from 17 June to 3 July 2024. Following receipt of the Requiring Authorities’ written reply and subsequent memorandum, the hearing was closed on 28 August 2024.
4. Subsequent to its more recent Directions # 7 and 8 (and decision to re-open the hearing for a short period), the Panel has received a request (email dated 18 September 2024) by Kester Ko, Managing Director of Fairview Estate Investments Ltd (**Fairview**), to lodge a late submission and statement in respect to NoR 4 and Fairview’s property interests at 17, 19, 21 and 23 McMenamin Place, Fairview Heights.
5. The Panel received a Memorandum of Counsel (**Memorandum**) on behalf of the Requiring Authority (**NZTA**) on 23 September 2024 opposing receipt of a submission or statement from Fairview. We subsequently received comment from Fairview in response on 24 September 2024.
6. The Panel has reviewed the background regarding notification and previous engagement by NZTA with Fairview to assist in its consideration of this matter and this is set out below.

7. As a starting point, the Panel notes that submissions on the NoRs were due on 14 December 2023. Four late submissions have been received and accepted through decisions of the Council and the Panel.¹
8. The Panel is able to accept a late submission at a period that is more than double the timeframes set out in the RMA subject to consideration of requirements of section 34A of the RMA. While our consideration of this matter is determined by reference to section 34A (as set out later in this direction), we set out the relevant position of the parties below as they have been presented to us.
9. The Panel has been advised by the Council (19 September 2024) that Fairview, as owner of the parent site (6 McMenamin Place) for the lots in question was notified by way of a letter sent by the Council on 13 November 2023 (of which a copy has been provided to the Panel). The letter was sent to Fairview at their address of 4 Glenoaks Rise, Mellons Bay, Auckland 2014. The Council further advises that 6 McMenamin Place was the parcel of land in existence when the Council extracted the landowner data in October 2023 for notification purposes. The land was then subdivided, and the LINZ data updated to show the new subdivided lots in the period between when the Council extracted the data for notification in October 2023 and the actual notification of the NoRs in November 2023. However, the Council notes that while the land was subdivided, immediately post-subdivision and at the time of notification all land remained owned by Fairview. It is therefore the Council's view that the landowner would have been aware of NoR 4.
10. The Memorandum advises that NZTA opposes Fairview's request given the circumstances, including that Fairview has known about NoR 4 for at least seven months so has had the opportunity to provide a tabled statement earlier in the process. NZTA therefore consider that the request by Fairview misrepresents the situation, for a number of reasons that are summarised as follows:
 - (a) NZTA has record of five letters being sent to Fairview between July 2022 and October 2023.
 - (b) Engagement has occurred with Fairview since 22 February 2024 (including contact by Mr Ko on behalf of Fairview on that date).
 - (c) A meeting occurred between Fairview and NZTA on 29 February 2024 which included discussions in respect of obligations relating to section 178 of the RMA and Public Works Act processes to address the concerns raised by Fairview.
 - (d) NZTA became aware in June 2024 of construction work at 23 McMenamin Place (being a lot directly affected by NoR 4), which it then made clear should cease as it was subject to section 178. Confirmation was received that these works had ceased on 14 August 2024.

¹ See Council Hearing Agenda at p.68 and the Panel's Directions #2 and #4

- (e) NZTA accepts that initial engagement with Fairview was after the submission period had ended. However, it notes that given the record of Fairview being aware of NoR 4 and its impacts since at least 22 February 2024, NZTA considers Fairview has had ample opportunity to lodge a late submission prior to the commencement of the hearing on 17 June 2024. It also records that it has been supportive of receipt of other late submissions (including up to June 2024) as they created no undue prejudice to NZTA or any other submitter.
 - (f) In this instance, NZTA considers the request to file a statement to have been made too late and is not in good faith.
11. NZTA therefore seek that the Panel decline Fairview's request.
12. The response from Fairview of 24 September 2024 expressed disagreement with the Memorandum, and included the following points of rebuttal in support of its request to participate:
- (a) During the meeting with NZTA on 29 February 2024, Fairview were informed that it was too late to make a submission or participate in the NoR 4 hearing process, and but for that advice, Fairview "*would have made our submission at that time*".
 - (b) Fairview became aware of the opportunity to submit to the hearing process only upon reviewing the Panel's Direction #7 of 10 September 2024. As a result, Fairview submitted its response on 18 September 2024, a week after receiving the Direction.
 - (c) The NZTA Memorandum does not acknowledge that an omission or error occurred, which was recognised during the same meeting, regarding the consideration of this subdivision.
13. In respect of the points raised by Fairview, the Panel comments as follows:
- (a) Irrespective of the advice that Fairview says it received from NZTA, Fairview would have been able to lodge a late submission (albeit that it may have needed to seek independent advice in this regard). Nevertheless, Fairview have not refuted that they have received advice from NZTA with respect to section 178 requirements and PWA processes. Noting that Fairview has reviewed Direction #7 (per 12(b) above), it appears likely to the Panel that they would have also been able to view the Panel's previous Directions #2 and #4 in respect of other late submissions.
 - (b) The Panel notes that it's Direction #7 was in respect of the specific circumstances applicable to the submission of Enviro NZ Services Ltd arising from the re-notification of part of NoR 4. That direction did not, nor was intended to, provide an opportunity for further submissions or statements from other parties.

- (c) The Panel is unclear as to what omission or error is alleged to have occurred.
14. In respect of the prior point at paragraph 13(c), the Panel is satisfied that Fairview received notification of NoR 4 by way of the Council's letter of 13 November 2023, even if that property address cited in the letter had been superceded by that time. This was in addition to the five letters that NZTA says it has sent to Fairview over the previous year.
 15. The Panel accepts the advice of NZTA that engagement has occurred with Fairview since February 2024, and we understand that issues have arisen in respect of Fairview not having obtained the necessary section 178 approvals in respect of its development at McMenamain Place.
 16. The Panel considers that the outcome of this matter must be determined by reference to section 37A(2)(b) of the RMA, whereby we may only extend a timeframe of more than double the timeframes under section 37 if "*the applicant or requiring authority requests or agrees*". As set out in the Memorandum, it is clear that the Requiring Authority does not agree, and so pursuant to section 37A(2)(b), we do not have jurisdiction to agree to Fairview's request.
 17. The Panel therefore directs, under section 37A of the RMA, that it will not receive a late submission or statement from Fairview, as this would not be in accordance with section 37A(2)(b).
 18. This Direction is to be circulated to all the parties to the hearing by the Hearings Advisor, Ms Chayla Walker.



Richard Blakey (Chairperson)
for the Hearing Panel

26 September 2024