

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

AND

IN THE MATTER OF Nine Notices of Requirement (NoR) for the Pukekohe Transport Network project by Te Tupu Ngātahi – Supporting Growth Alliance (Te Tupu Ngātahi)

DIRECTION #2 OF THE HEARING PANEL – LATE SUBMISSIONS

1. Pursuant to sections 34 and 34A of the RMA, Auckland Council and Waikato District Council (the Councils) have both appointed a Hearing Panel consisting of three independent hearing commissioners – Dave Serjeant (Chair), Nigel Mark-Brown and Basil Morrison. The Hearing Panel's function is to hear the applications and submissions and make recommendations to the Requiring Authority on the nine Notices of Requirement (NoR). It is also to deal with any procedural matters.
2. A summary of the 9 NoRs were included in the Hearing Panel's Direction #1 dated 30 November 2023.
3. The NoRs have been the subject of notification and submissions have been received. Submissions closed on 13 November 2023. The hearing is scheduled to commence on **Monday 11 March 2024**.
4. Since the close of submissions on the NoRs, one submission has been received within 20 working days of the close date and have been accepted by the Council under section 37(4) of the RMA.
5. Two additional late submissions have been received 20 working days or more after the submission period closed on 13 November 2023:
 - (a) The first late submission was received from the Haribhai Master (1975) Trust on 21 December 2023 and was lodged in respect of NoR 8; and
 - (b) The second late submission was received from Peter Howard Gorton and Louise Jean Ward on 22 December 2023 and was lodged in respect of NoR 2.
6. The Council has requested the Hearing Panel to either accept or reject these two late submissions. By way of a memorandum dated 9 January 2024, the Council has recommended that both late submissions be accepted. The Requiring Authority has also advised that it supports the Council's recommendation to accept the submissions.
7. The Hearing Panel has considered the request to waive the timeframes and accept or reject the late submission and has determined that:

- (a) No persons' interests will be adversely affected by the waiver as it does not result in any time delay or additional steps in the notices of requirement.
 - (b) The interests of the community in achieving adequate assessment of the effects of the notices of requirement will be achieved as the submitters raise valid concerns arising from the notices of requirement; and
 - (c) Accepting the submissions will not interfere with the Council's duty to avoid unreasonable delay, and the Hearing Panel is advised that the Requiring Authority does not oppose their inclusion.
8. The Hearing Panel therefore directs, under section 37A of the RMA, the following:
- (a) That the late submission from The Haribhai Master (1975) Trust that was lodged in respect of NoR 8 be accepted as a late submission in accordance with section 37A(b)(2).
 - (b) That the late submission from Peter Howard Gorton and Louise Jean Ward that was lodged in respect of NoR 2 be accepted as a late submission in accordance with section 37A(b)(2).
9. This Direction is to be circulated to all the parties to the hearing by the Hearings Advisor, Mr Bevan Donovan.
10. Any correspondence relating to this Direction and related matters should be sent to the Hearings Advisor, Mr Donovan via bevan.donovan@aucklandcouncil.govt.nz.



Dave Serjeant (Chair)
for the Hearing Panel

15 January 2024

**BEFORE A PANEL OF INDEPENDENT HEARINGS COMMISSIONERS
IN AUCKLAND**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE
TĀMAKI MAKĀURAU**

UNDER the Resource Management Act 1991 ("**Act**")

IN THE MATTER of a Notice of Requirement by NZ Transport Agency – Waka
Kotahi for the Mill Road and Pukekohe East Upgrade (NoR 8)

**APPLICATION BY THE HARIBHAI MASTER (1975) TRUST FOR A WAIVER TO ACCEPT
A LATE SUBMISSION ON NOR 8**

21 DECEMBER 2023

**ELLIS GOULD
LAWYERS
AUCKLAND**

**Level 31 Vero Centre
48 Shortland Street, Auckland
Tel: 09 307 2172
PO Box 1509, DX CP22003
AUCKLAND**

REF: A K Devine

adevine@ellisgould.co.nz

MAY IT PLEASE THE COMMISSIONERS

Introduction

1. The Haribhai Master (1975) Trust (“**The Trust**”), by its trustees, is the owner of the property legally described as Part Allotment 6 Parish Mangatawhiri District, Pt Allot 4 Parish Mangatawhiri District comprised in Record of Title NA1352/38 (North Auckland Registry) (“**Site**”) located immediately to the north-west of the intersection between SH1 and Mill Road, as shown on **Figure 1** below:



Figure 1 AUP Maps showing the Site outlined in blue

2. The Site is subject to the Notice of Requirement by NZ Transport Agency – Waka Kotahi for the Mill Road and Pukekohe East Upgrade (“**NoR 8**”), with NoR 8 extending over the Site’s entire Mill Road frontage which is also its only access (see **Figure 2** below):

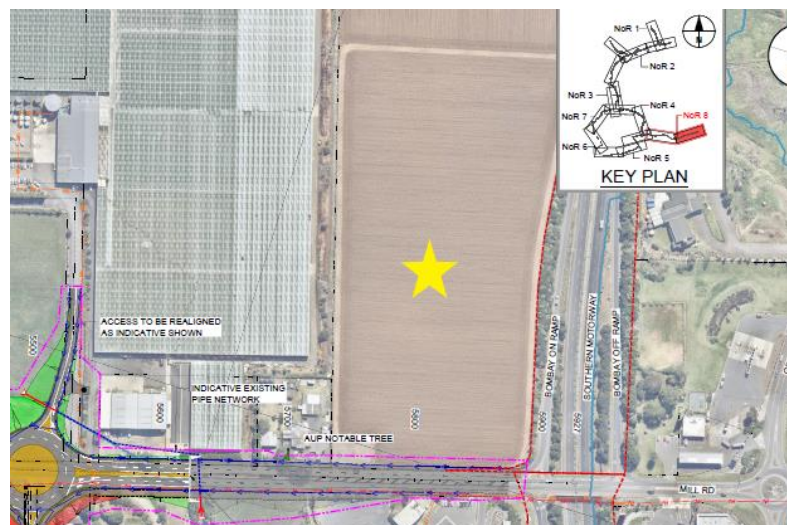


Figure 2 Designation Plan showing proposed designation boundary (in pink) across the frontage of the Site (identified by yellow star)

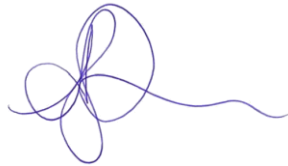
3. NoR 8 was notified on 13 October 2023 and submissions closed on 13 November 2023. The Trust did not lodge a submission within the notification period.
4. The Trust makes this application to the Independent Hearing Panel (“**IHP**”) seeking that the IHP:
 - a. Waive non-compliance with the time limit for lodging a submission on NoR 8; and
 - b. Accept the late submission on behalf of the Trust.

Waiver for Failure to Comply with a Time Limit under the RMA

5. This application is made pursuant to s 37(1) RMA which enables a local authority to waive a failure to comply with the time limit.
6. The requirements for waivers are set out at section 37A(1) RMA, which provides that a local authority must not waive compliance with a time limit unless it has taken into account:
 - a. the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
 - b. the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and
 - c. its duty under section 21 RMA to avoid unreasonable delay.
7. The Trust considers that it is appropriate for the IHP to grant its application for a waiver and accept its late submission because:
 - a. While the Trust is directly affected by NoR 8 (see paragraph 2 above), the Trust recently shifted offices and only become aware of the existence of NoR 8 on 19 December 2023 as a result of seeking advice from counsel on a related matter.
 - b. Accepting the Trust’s further submission will not unfairly prejudice any parties because its submission is focused on NoR 8 as it relates to the Site, and no process steps have occurred since close of submissions.

8. The Trust's submission will assist the IHP to appropriately assess NoR 8 because the Trust will be able to provide evidence on the impacts of the NoR on its property.
9. As there have been no further steps since close of submissions, there will be no unreasonable delay as a result of accepting the Trust's submission. That is, the Trust's submission will not impact the planning and scheduling of alternative dispute resolution sessions, evidence exchange or hearings and will not cause any delay to the resolution of NoR 8.

Dated this 21st day of December 2023



Alex Devine

Counsel for the Haribhai Master (1975) Trust

**SUBMISSION ON A NOTICE OF REQUIREMENT FOR DESIGNATION OF LAND BY NZ TRANSPORT
AGENCY – WAKA KOTAHI**

NOR 8 MILL ROAD AND PUKEKOHE EAST ROAD UPGRADE

Section 168(2) of the Resource Management Act 1991

To: Auckland Council, Plans and Places
unitaryplan@aucklandcouncil.govt.nz

Copy to: NZ Transport Agency – Waka Kotahi
submissions@supportinggrowth.nz

THE HARIBHAI MASTER (1975) TRUST at the address for service set out below (“**the Submitter**”) makes the following submission in relation to the notice of requirement by NZ Transport Agency – Waka Kotahi in respect of the Mill Road and Pukekohe East Road Upgrade (“**NoR 8**”).

1. The NoR comes within the broader Pukekohe Transport Network project under the Te Tupu Ngātahi Supporting Growth Programme.
2. The Submitter will be directly affected by NoR 8 as the Trust, by its trustees, is the owner of the property legally described as Part Allotment 6 Parish Mangatawhiri District, Pt Allot 4 Parish Mangatawhiri District, comprised in Record of Title NA1352/38 (North Auckland Registry (“**Site**”) located immediately to the north-west of the intersection between SH1 and Mill Road, as shown on **Figure 1** below.



Figure 1 AUP Maps showing the Site outlined in blue

3. The Submitter is not a trade competitor of the Requiring Authority and could not gain an advantage in trade competition through this submission. In any event, the Submitter will be directly affected by effects of NoR 8 that:
 - (a) Adversely affect the environment; and
 - (b) Do not relate to trade competition or the effects of trade competition.
4. The submission relates to NoR 8 in its entirety but the Submitter's interest is primarily focused on the aspects of NoR 8 which do, or have the potential to, generate adverse traffic, access, construction and other effects on the Site.
5. The Submitter opposes NoR 8 to the extent that it does not appropriately address the following matters:
 - (a) The avoidance of adverse effects on the Submitter during the construction of the Project (e.g.: in relation to access).
 - (b) The avoidance of any long-term (i.e.: post-construction) adverse effects on access to and egress from the Site or on activities that are undertaken on the Site.
 - (c) Any long term (i.e.: post construction) adverse effects including but not limited to access and integration with the site (e.g. levels).
 - (d) That the NoR does not require more land than is necessary and, to the extent it does, requires it for the minimum duration possible.
6. The reasons for the submission are as follows:
 - (a) Unless and until the concerns set out in this submission are appropriately addressed, NoR 8:
 - (i) Will generate significant and unwarranted adverse effects on the environment.
 - (ii) Will be contrary to the sustainable management of natural and physical resources;
 - (iii) Will not amount to or promote the efficient use and development of resources;

- (iv) Will be otherwise inconsistent with the purpose and principles in Part 2 RMA;
- (v) Be inconsistent with the objectives, policies and other provisions in the relevant planning instruments; and
- (vi) Does not warrant confirmation in terms of section 171 RMA.

In particular, but without derogating from the generality of the above:

7. As shown on **Figure 2** below the proposed designation applies across the entire southern frontage of the Site. The Site's only access is via this (Mill Rd) frontage.

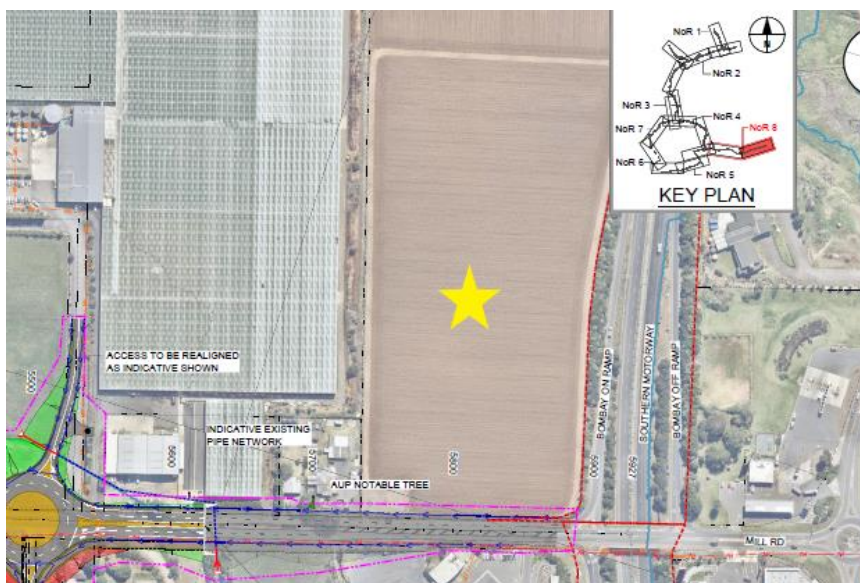


Figure 2 Designation Plan showing proposed designation boundary (in pink) across the frontage of the Site (identified by yellow star)

8. The General Arrangement Plan indicates that a proposed stormwater pipe will be located along the Site's frontage and a flush median located opposite the Site's access. Other than that there is very little detail provided for this part of the designation with the plan simply recording "Tie in with Papakura to Bombay SH1 Project (Design by Others)". This lack of detail contrasts with that provided for land to the west of the site.
9. The Submitter understands that property effects in relation to access driveways and private access roads have not been specifically considered as part of NoR 8 and will be subject to further design prior to implementation (proposed Condition 12).
10. In the absence of detail provided for this part of NoR 8, the Submitter is concerned that the designation has the potential to create unacceptable adverse effects on ingress and egress from the Site, particularly when combined with the related (but not yet lodged) Papakura to

Bombay SH1 Project. The Submitter is concerned that together these changes will significantly impact its ability to access and use the property.

11. It seeks certainty regarding the roading layout and form of access, as well as the imposition of conditions to ensure that the Submitter can continue to safely and efficiently access the Site for current or future uses. In the absence of further detail it is difficult for the Submitter to understand to what extent NoR 8 will affect its access, and whether the extent of designation is in fact necessary for the proposed works.
12. In addition, the Submitter is concerned that the NoRs are uncertain in terms of land requirements during the construction period relative to after completion of construction and commencement of operation of the works. It would be inappropriate and inconsistent with the purpose of the RMA if the Requiring Authority were to maintain a designation over land no longer required for the purpose of the designation. As noted above, in the absence of further detail it is unable to determine whether or not the land requirements (either temporary or permanent) are appropriate. In any event, the Submitter requests that the extent of the designation over its Site include only the areas necessary for the permanent operation and maintenance of the proposed work, or mitigation of effects generated by it.
13. The designation has a proposed lapse period of 20 years, well in excess of the default 5 year period. Given the length of time and the uncertainty this creates for the Submitter regarding the future use of the property, the Submitter seeks a reduced lapse date, or in the alternative, a condition which requires the Requiring Authority to regularly review the need for the designation, and the extent of areas to be used temporarily and permanently.

Relief Sought

14. The Submitter seeks the following relief with regard to the Application:
 - (a) The NoR be amended and conditions imposed on it to address the following issues:
 - (i) The access is clearly identified as being reinstated and retained, or, with the Submitter's agreement, relocated and reformed to enable the Submitter to more effectively and efficiently access the Site for current or future uses.
 - (ii) That there are no restrictions on ingress and egress or number of vehicle movements to the Site as a result of the designation.

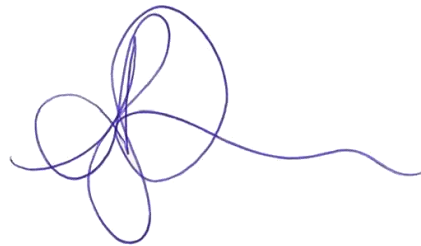
- (iii) The extent of the designation is reduced to the minimum extent possible.
 - (iv) The lapse date is reduced to be consistent with the statutory minimum.
- (b) That conditions are imposed on the designation to ensure that:
- (i) There will be no long-term (i.e.: post construction) effects on the vehicle access to and egress from the Site, with the access either being retained in its current form or relocated and reformed with the agreement of the Submitter.
 - (ii) Adverse effects on access to and egress from the Site are minimised as far as practicable during construction; with access from the Site being maintained at all times throughout the construction period.
 - (iii) Prior to the commencement of construction in the vicinity of the Site, a construction traffic management plan applying to the road network in the immediate vicinity of the Site is:
 - Prepared by the requiring authority in consultation with the Submitter;
 - Provided to Council, along with details of the Submitter's observations and comments on the plan, if any; and
 - Approved by the Council.
 - (iv) As it relates to the Site, the extent of the designation only those areas necessary for the permanent operation and maintenance of the proposed work, or mitigation of effects generated by it.
 - (v) That conditions be imposed to resolve any issues that arise when further detail regarding the roading layout is provided (e.g.: including but not limited to provision of finished levels that integrate appropriate with the Site).
- (c) In the event the above issues are not resolved, that the NoR be declined.

(d) Such alternative or other relief or consequential amendments as are considered appropriate or necessary to address the concerns set out in this submission.

15. The Submitter wishes to be heard in support of this submission. If other parties make a similar submission, the Submitter would consider presenting a joint case with them at the hearing.

DATED this 21st day of December 2023

THE HARIBHAI MASTER (1975) TRUST by its
solicitors and duly authorised agents, Ellis Gould



Alex Devine

ADDRESS FOR SERVICE: The offices of Ellis Gould, Solicitors, Level 31, Vero Centre, 48 Shortland Street, PO Box 1509. Auckland 1140, DX CP22003, Auckland. Telephone: (09) 306 1075 . **Attention:** Alex Devine, adevine@ellisgould.co.nz.

Peter Gorton, Louise Ward
319 D Sim Road
RD1 Pukekohe

20 December 2023

Attn: Planning Technician
Auckland Council
Level 16, 135 Albert Street
Private Bag 92300
Auckland 1142
Via email: unitaryplan@aucklandcouncil.govt.nz

Auckland Council
C/o Joe McDougall Planning South – Plans and Places Via
Via email: Joe.McDougall@aucklandcouncil.govt.nz

Via email: submissions@supportinggrowth.nz

Notice of Requirement 2 (NOR2) : 319 D Sim Road, RD 1, Pukekohe

Landowners: Peter Howard Gorton, Louise Jean Ward

We are writing to oppose the designation of our property (NOR2).

Please find attached Form 21, with some of the relevant information pertaining to our opposition of the proposed designation.

Please be aware that during the consultation period, the Lead Planner advised the submission period would be about 2 months, it has transpired it was 18 working days.

During the open submission period we were dealing with two traumatic family events, our ability to deal within the 18 working day submission period was not possible. We are now better able to understand our family events.

We present our opposition to NOR2 as outlined below including Form21 attached.

Oppose NOR2

Flooding

During high rain fall periods the stream floods several times each winter. This will have an impact on the area within NO2 as it relates to our property. Additional earthworks will be required having a negative financial cost impact on NOR2. Whilst the flooding impact has little effect on our farming operations as we are able to move stock into other paddocks during the winter season, this will have a significant impact on any proposed road construction works.

Overground flooding occurs each winter due to water flowing from 319C towards our home. This causes loss of metal in the private lane, loss of metal in our driveway and increased metal, materials and water in our pond causing further flooding across paddocks towards the stream. To combat this over the years, we have displaced water across paddocks that allows for less damage.

Anniversary Weekend 2023 and Gabrielle 2023 caused significant damage to our paddocks, private lane and driveway due to excessive overground flooding. During 2023 we have continued to repair damage, reseed grass, and redirect water. This will be a significant impediment for road construction works with an increase in impermeable surfaces, negatively impacting financial costs and will have prolonged financial costs to prevent the ongoing damage to the land and road construction areas.

Cultural: Flora and Fauna

Over the many years of living in this rural community, the population of native birds (e.g. kereru, tui, pukeko, grey heron, long tail bats) have increased with many more birds making our property their home and raising chicks. We oppose the destruction of our land for the construction of new roads that will have a negative impact on the wellbeing of native species, breeding and habitat.

With the introduction of more flowering native species there has been an increase in bees required for pollination including native bees. Any construction works in relation to NOR2 will have a negative impact taking pollinators away from this productive rural area.

Over many years living in Sim Road, we have planted native trees and plants. Many of these have naturally self-seeded bringing improved biodiversity. This has had a positive impact to bring birds back to our property; there has been a marked increase in native birds because of the establishment of native plants. Any construction of new roads will have a negative impact on the environment especially flora and fauna established on our property.

Biodiversity: Rural Environment

We enjoy, as have our children, the quiet rural living environment, teaching our children and their friends about animal care, growing food and being able to have their playground as the paddocks surrounding our home. Construction of new roads will have a detrimental impact on our land, living conditions, well being and the natural environment we have enjoyed for many years.

On the land surrounding our home we have a number of mature trees. Many birds nest and raise their chicks and return each year to breed. The proposal has not provided mitigations of this detrimental construction for the retention of mature trees on our property. Why has this not been part of the considerations of NOR2?

Ground Movement

The land is subject to slips, slipping and has multiple natural springs in many areas of the property. We have been fortunate to graze the paddocks to have little impact on natural springs, in fact this has been advantageous to growing grass during the hotter months. We have contained slips by limiting grazing during heavy rainfall. Construction of new roads and higher road use will cause increased vibrations and be detrimental to the natural environment and our rural living environment.

Services/Utilities

As a land owner we operate 3-phase power. This is critical for our farming operations and will need to remain operational at all times. Construction of new roads will have a detrimental effect on the location and effectiveness of our electric fencing.

Noise Mitigation

Reading the NOR2 documentation there has been no consideration of noise mitigation to our property. The present SH22 causes noise pollution at our boundary and within our property. The noise pollution is increasing each year. Please advise why this has not been considered?

Recommendations

Straighten Burt Road through realignment of land close to the new school up to Solitaire Lane from larger farm blocks. This is financially sensible as smaller blocks of land command higher prices, cows and stock are able to utilise underpasses for access to grazing when required

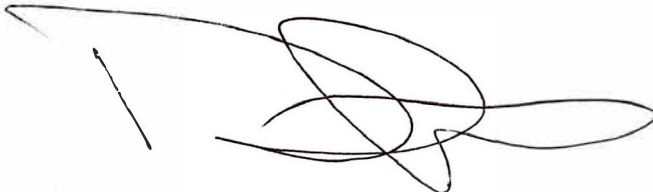
Retain native trees to improve the biodiversity of the area especially native birds, long tail bats as their populations have increased significantly in recent years.

Farm landowners produce food for their own consumption and share with relatives and friends and the wider community. Without these opportunities to grow meat, eggs, vegetables and fruit our cost of living will increase significantly due to the reduction in our productive land. Providing an alternative route that enables productive land to remain operational is advantageous to our community.

As stated on Form 21 attached, we wish to be heard in support of our submission.

Please advise next steps regarding the NOR2 process.

Yours sincerely



Pete Gorton and Louise Ward

Submission on a requirement for a designation or an alteration to a designation subject to full or limited notification

Sections 168A, 169, 181, 189A, 190, and 195A of the Resource Management Act 1991



FORM 21

Send your submission to unitaryplan@aucklandcouncil.govt.nz or post to :

Attn: Planning Technician
Auckland Council
Level 16, 135 Albert Street
Private Bag 92300
Auckland 1142

For office use only
Submission No:
Receipt Date:

Submitter details

Full Name or Name of Agent (if applicable)

Mr/Mrs/Miss/Ms(Full Name) Peter Howard Gorton and Louise Jean Ward

Organisation Name (if submission is made on behalf of Organisation)

Address for service of Submitter

319 D Sim Road, RD 1 Pukekohe

Telephone:

Email:

Contact Person: (Name and designation if applicable)

This is a submission on a notice of requirement:

By:: Name of Requiring Authority

<u>NETA</u>
<u>NOR2</u>

For: A new designation or alteration to an existing designation

The specific parts of the above notice of requirement that my submission relates to are: (give details including property address):

319 D Sim Road, RD1 Pukekohe

My submission is:

- I or we support of the Notice of Requirement I or we oppose to the Notice of Requirement
I or we are neutral to the Notice of Requirement

The reasons for my views are:

page 5 dot point 6 removal of mature trees is in direct conflict to the statement

page 5 dot point 8 requires specifics, a road through productive farm land does not enhance character

please refer to attached letter for further information and opposing NOR2

(continue on a separate sheet if necessary)

I seek the following recommendation or decision from the Council (give precise details including the general nature of any conditions sought).

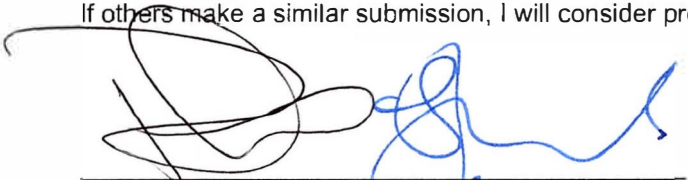
natural water springs will be severely impacted by contamination should NOR2 be progressed


please refer to attached letter for further recommendations

I wish to be heard in support of my submission

I do not wish to be heard in support of my submission

If others make a similar submission, I will consider presenting a joint case with them at a hearing


Signature of Submitter
(or person authorised to sign on behalf of submitter)


Date

Notes to person making submission:

If you are making a submission to the Environmental Protection Authority, you should use Form 16B.

You must serve a copy of your submission on the person who gave the notice of requirement as soon as reasonably practicable after you have served your submission on the Council (unless the Council itself, as requiring authority, gave the notice of requirement)

If your submission relates to a notice of requirement for a designation or alteration to a designation and you are a trade competitor of the requiring authority, you may make a submission only if you are directly affected by an effect of the activity to which the requirement relates that:

- (a) Adversely affects the environment, and
- (b) Does not relate to trade competition or the effects of trade competition.