

IN THE ENVIRONMENT COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE

ENV-2024-

UNDER	The Resource Management Act 1991 ("the Act")
IN THE MATTER	of a notice of appeal under section 174 of the Act
BETWEEN	STEVE AND SOFIA NUICH TRUSTEE LIMITED Appellant
AND	WAKA KOTAHI NZ TRANSPORT AGENCY Respondent

NOTICE OF APPEAL CONCERNING NOTICE OF REQUIREMENT FOR DESIGNATION

DATE: 12 JULY 2024



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TO: The Registrar of the Environment Court, Auckland

AND TO: Waka Kotahi NZ Transport Agency (the Respondent)

AND TO: Auckland Council (the relevant Territorial Authority)

1. INTRODUCTION

1.1 Steve and Sofia Nuich Trustee Limited (“Nuich” or the “Appellant”) appeal part of the decisions on notices of requirement (“NoRs”) for designations for North-West Strategic Project. The North West Strategic Project includes four new NoRs and one alteration to an existing designation (no. 6766), being:

- (a) NoR S1 – Alternative State Highway: A new dual carriageway motorway and the upgrade of Brigham Creek Interchange in Whenuapai;
- (b) NoR S2 – State Highway 16 (SH16) Main Road (Huapai): Upgrade of the existing SH16 designation 6766 to provide for the road corridor upgrade, including shared footpaths and cycle lanes (active mode facilities) and realignment of the Station Road intersection with SH16;
- (c) NoR S3 – Rapid Transit Corridor (Kumeū): New rapid transit corridor with shared footpath and cycle lane (active mode corridor).
- (d) NoR KS – Kumeū Rapid Transit Station: New rapid transit station, including transport interchange facilities and accessway; and
- (e) NoR HS – Huapai Rapid Transit Station: New rapid transit station, including transport interchange facilities, park and ride and accessway.

1.2 These five strategic NoRs are part of a wider package of 19 NoRs sought by the Te Tupu Ngatahi – Supporting Growth Alliance (“SGA”) on behalf of Waka Kotahi NZ Transport Agency (“NZTA”) and Auckland Transport (“AT”) for land in the North-West.

1.3 The main focus of the appeal is the Huapai Rapid Transit Station, also referred to in this Notice of Appeal as “Huapai Station”.

1.4 NZTA described the NoRs S3 and HS as follows:

(c) *NoR S3 – Rapid Transit Corridor*

NoR S3 is a new designation for a Rapid Transit Corridor (RTC) and active mode corridor. It has a total length of approximately 9.5km and is intended to operate in an uninterrupted free-flowing manner with all road crossings to be grade separated. The RTC is designed to enable bus rapid transit and is generally comprised of two sections, a rural section extending from the BCI (adjacent NoR S1) to

SH16 and an urban section from Waitakere Road to Matua Road, where it is alternately co-located with SH16 Main Road (NoR S2) and/or the existing North Auckland [Rail] Line (NAL), terminating at Matua Road. NoR S3 will affect the Huapai Tavern at 301 Main Road, a historic heritage building tracing its origins back to the 1870s and its associated Historic Heritage Overlay Extent of Place #482.

(d) NoR HS - Huapai Rapid Transit Station

NoR HS is a new designation, for a RTS including transport interchange facilities, park and ride and accessway. The Huapai RTS is proposed to be on the northern side of the NAL, south of Meryl Avenue, and will be an 'end of the line' station. NoR HS provides for a service interchange, walking and cycling, on-demand travel as well as park-and-ride. An active mode overbridge is proposed to connect station users to the land on the southern site of SH16, currently zoned Future Urban Zone (FUZ), where the Northwest Spatial Strategy shows an indicative new town centre.

- 1.5 On the basis of the above description, Nuich made a submission against NoR HS on 24 April 2023. The site or place to which NoR HS applies is 29 Meryl Avenue, Kumeu (Lot 2 Deposited Plan 105583) ("the Site") in its entirety.
- 1.6 However, the general arrangement plans are unclear and arguably show Huapai Station in both NoR HS and NoR S3.
- 1.7 To the extent the Huapai Station is in NoR S3 as well as NoR HS, this appeal is also against NoR S3.
- 1.8 Nuich received notice of the decision on 20 June 2024 ("Decision"). The Decision was made by NZTA, who accepted the Auckland Council Independent Hearing Commissioners' ("Commissioners") recommendation that the NoR should be confirmed ("Decision"). However, NZTA did not accept all recommended conditions in their entirety.
- 1.9 Nuich is not a trade competitor for the purposes of section 308D of the Act.

2. REASONS FOR APPEAL

Site attributes and effects of the NoR

- 2.1 Nuich owns the Site, which is located immediately west of the live-zoned land within Huapai. The Site itself is zoned Future Urban and forms part of the large Kumeu and Huapai future urban area which, under the Future Urban Land Supply Strategy ("FULSS"), is sequenced and timed for urbanisation in the period 2028-2032.

- 2.2 The proposed Huapai Rapid Transit station is an urban land use and can therefore be developed in accordance with the Auckland Council's 2028-2032 period for urbanisation of Kumeu and Huapai.
- 2.3 The Site was purchased by Nuich in March 2020 as a property investment in anticipation of the land's future urbanisation and the Site's ability to be subdivided and developed for residential purposes. Being contiguous with the live-zoned land, the Site currently has potential to be re-zoned under a private plan change request for urbanisation purposes.
- 2.4 The presence of the NoR across the entire Site, and its intended use as a Rapid Transit Station, means that any proposed planning initiatives under the Resource Management Act 1991 ("RMA") will be unable to meet the "prevent or hinder" test under section 176(1)(b) of the RMA. This will effectively render the Site incapable of reasonable use.
- 2.5 In relation to section 171(1) of the RMA and the effects on the environment of allowing the requirement:
- (a) The 20 year lapse period for the NoR is excessive and conflicts with existing time frames for existing transport proposals;
 - (b) The NoR decision fails to adequately address alternatives for future public transport in particular the alternative of rail transport;
 - (c) The NoR boundary is unreasonable and excessively extends over private land;
 - (d) The NoR conditions are inadequate to avoid, remedy or mitigate the adverse effects of the NoR; and
 - (e) The NoR decision fails to properly address the requirements of Part 2 of the RMA.
- 2.6 The Decision:
- (a) Is likely to continue to cause serious hardship to Nuich as it represents a prolonged planning blight on the Nuich's Site, especially as the NoR HS (and to the extent that the Huapai Station is in NoR S3) applies to the Site in its entirety; and
 - (b) Renders the land incapable of reasonable use.

Section 171(1)(a) relevant policy and plan provisions

- 2.7 The adverse effects arising from the NoRs are inconsistent with key provisions of the National Policy Statement on Urban Development 2020 ("NPS-UD") including but not limited to:

- (a) *Policy 6:* When making planning decisions that affect urban environments, decision-makers have particular regard to:
 - (i) the planned urban built form anticipated by those RMA planning documents that have given effect to this NPS-UD; and
 - (ii) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1).
- (b) *Policy 10:* Auckland Council must engage with providers of development infrastructure and additional infrastructure to achieve integrated land use and infrastructure planning.

2.8 The adverse effects arising from the NoRs are inconsistent with key provisions of the partly operative Auckland Unitary Plan (“AUP”) including, but not limited to:

- (a) B3.3 Transport, which seeks:
 - (i) effective, efficient and safe development, operation, maintenance and upgrading of all modes of an integrated transport system;
 - (ii) transport infrastructure is designed to integrate with adjacent land uses, taking into account their current and planned use, intensity, scale, character and amenity;
 - (iii) the integration of land use and transport by ensuring transport infrastructure is planned, funded and staged to integrate with urban growth; and
 - (iv) projects avoid, remedy or mitigate the adverse effects associated with the construction or operation of transport infrastructure on the environment and on community health and safety.
- (b) Chapter E26.2 Network utilities and electricity generation, which seeks that:
 - (i) the benefits of infrastructure are realised;
 - (ii) the resilience of infrastructure is improved and continuity of service is enabled;
 - (iii) the development, operation, maintenance, repair, upgrade and removal of infrastructure throughout Auckland recognises the need to quickly restore disrupted services and its role in servicing existing, consented and planned development; and
 - (iv) the development, operation, maintenance, repair, upgrading and removal of infrastructure to avoid, remedy or mitigate adverse effects on the health, well-being and safety of people and communities.

Section 171(1)(b) consideration of alternatives

- 2.9 The consideration of alternatives was inadequate to meet the statutory requirements. In particular but without limitation:
- (a) Railway options, in particular establishment of a park and ride (or similar station) at alternative locations, particularly one that integrates with the railway;
 - (b) Reduction of the 20 year lapse period for the NoR.
- 2.10 The assessment of alternatives needs to be relevant and proportional to the effects arising. NZTA's failure to consider two relatively obvious and reasonably practicable alternatives shows that the assessment was manifestly inadequate, particularly in light of the beneficial effects arising from the alternative (including benefits which engage with the objective of the project) and avoiding, remedying or mitigating adverse effects arising from the NoRs.
- 2.11 The Auckland Council Hearings Panel erred in its conclusion at paragraph [250] of their recommendation and NZTA likewise erred in relying on that conclusion.

Section 171(1)(c) whether the work and designation is reasonably necessary

- 2.12 The footprint of the NoR HS (and where relevant, S3) is not reasonably necessary as it is based on NZTA not using retaining walls to minimise the extent of land to be taken, which is unreasonable.
- 2.13 The failure to properly consider alternatives also leads to a footprint which is larger than is reasonably necessary. The options put forward by Mr Haines for Nuich in their submission would allow a narrowing of the NoR corridor.
- 2.14 Narrowing the typology of the required lanes and paths would also reduce the extent to which land not owned by NZTA is required.

3. RELIEF

- 3.1 Nuich seeks that NoRs HS and S3 be declined unless the matters raised in this submission are addressed to the satisfaction of Nuich and/or the following amendments to the NoRs are made:
- (a) That NZTA removes NoRs HS and S3 and the Huapai Rapid Transit Station from the land at 29 Meryl Avenue, or modifies NoR HS and S3 to address the essence of the issues raised in this Appeal;
 - (b) NZTA select an alternative location for the Huapai Rapid Transit Station;
 - (c) Reduce the 20 year lapse period for the NoRs HS and S3;
 - (d) Such other further or incidental relief as is needed to give effect to the intent of this notice of appeal; and

(e) Costs of and incidental to the appeal.

3.2 Nuich attaches the following documents¹ to this notice:

- (a) A copy of Nuich's Submissions dated 24 April 2023, attached and marked "**Annexure A**";
- (b) A copy of the relevant Decision notified 20 June 2024 (letter dated 31 May 2024), attached and marked "**Annexure B**";
- (c) A list of names of addresses of persons to be served with a copy of this notice, attached and marked "**Annexure C**".

DATED the 12th of July 2024



A W Braggins

Counsel for Steve and Sofia Nuich Trustee Limited

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Advice to recipients of copy of notice

How to become party to proceedings

¹ These documents constitute part of this form and, as such, must be attached to both copies of the notice lodged with the Environment Court. The appellant does not need to attach a copy of a regional or district plan or policy statement. In addition, the appellant does not need to attach copies of the submission, recommendation, or decision to copies of this notice served on other persons if the served copy lists these documents and states that copies may be obtained, on request, from the appellant.

You may be a party to the appeal if:

- (a) Within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) Within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the relevant submission, recommendation and decision. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

“Annexure A”

Nuich’s Submissions dated 24 April 2023

“Annexure B”

Decision notified on 20 June 2024 (dated 31 May 2024)

Link to Decision:

https://aucklandcouncil.govt.nz/UnitaryPlanDocuments/nor_nw_hs_nzta_decision.pdf

“Annexure C”

Names and addresses of persons to be served with a copy of this notice

Requiring Authority: Waka Kotahi NZ Transport Agency

C/- Sonya McCall, Planning Team Leader, Auckland Transport Services, and
Andrew Beatson, Barrister, Richmond Chambers

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Territorial Authority: Auckland Council

C/- Christian Brown

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Submitters contact details to be provided or waiver sought.

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