

IN THE ENVIRONMENT COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

ENV-2024-AKL-

I TE KŌTI TAIAO O AOTEAROA  
TĀMAKI MAKAURAU ROHE

UNDER

the Resource Management Act 1991  
("RMA")

AND

IN THE MATTER OF

an appeal under s 174 of the RMA  
against Auckland Transport's decision to  
accept a recommendation that NoR S4  
be confirmed subject to conditions

BETWEEN

**GAEL AND EZRA KEREN**

Appellant

AND

**AUCKLAND TRANSPORT**

Respondent

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NOTICE OF APPEAL BY GAEL AND EZRA KEREN AGAINST DECISION TO  
CONFIRM NOR S4: ACCESS ROAD

11 JULY 2024

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**Counsel acting:**

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**NOTICE OF APPEAL BY GAEL AND EZRA KEREN AGAINST DECISION TO  
CONFIRM NOR S4: ACCESS ROAD**

**To:** the Registrar  
Environment Court  
Auckland, Wellington and Christchurch

**This document notifies you that:**

1. Gael and Ezra Keren appeal part of a decision on a notice of requirement for the upgrade of Access Road, between State Highway 16 and Tawa Road, Kumeu-Huapai, with separated active mode facilities (“**NoR S4**”).
2. Mr and Mrs Keren made a submission on the notice of requirement.
3. Mr and Mrs Keren received notice of the decision on 20 June 2024.
4. The decision was made by Auckland Transport (“**AT**”).
5. Mr and Mrs Keren are not trade competitors for the purposes of section 308D of the RMA.
6. The part of the decision Mr and Mrs Keren are appealing against is AT’s refusal to:
  - a. impose a five year lapse condition on NOR S4;
  - b. regardless of the lapse date in (a) above, to impose a designation review condition which applies every five years from confirmation of the designation; and
  - c. in the absence of the requested changes above, withdraw the notice of requirement.
7. The site to which the requirement applies is 56 Tawa Road, Kumeu.

**General reasons for the appeal**

8. The reasons for the appeal are that the decision (without the amendments sought above):
  - a. would result in unacceptable adverse effects on Mr and Mrs Keren’s property, in a way which fails to enable people and communities to provide for their social and economic wellbeing and for their health and safety under s 5(2) of the RMA;

- b. is inconsistent with, or contrary to, the relevant provisions of:
  - i. the Auckland Unitary Plan (Operative in Part) (“AUP”);
  - ii. the Regional Policy Statement (as contained within the AUP); and
  - iii. the National Policy Statement on Urban Development 2020 (“NPSUD”);
- c. has not given adequate consideration to alternative methods of undertaking the work without the significant adverse effects which would result from the ongoing planning blight associated with the designation on Mr and Mrs Keren’s land for 20 years or more; and
- d. is otherwise inconsistent with, or contrary to Part 2 of the RMA.

**Specific reasons for the appeal**

- 9. Mr and Mrs Keren own the property at 56 Tawa Road, Kumeu. They purchased the property in March 2019, for the express purpose of relocating both their existing residence and their business, Pedaltours, to the site.
- 10. Pedaltours is a cycling tour operating company. For over 30 years, Pedaltours has designed and operated New Zealand cycle tours. The current business at the property includes offices, storage for bicycles, spare parts and equipment for bike maintenance, trailers and equipment. Mr and Mrs Keren use it as a base for their existing operations in the North Island
- 11. Mr and Mrs Keren lodged a submission on NoR S4, identifying what they saw as the effects on their property, namely:
  - a. That the proposed boundary of the designation was entirely inappropriate and represented a disturbing lack of empathy and understanding from a public entity.
  - b. That while the proposed area of land shown within the designation might be the most financially “efficient” option, it would effectively destroy the value of the remaining land entirely, making it impossible to sell.
  - c. That should land be taken pursuant to the designation, with the balance of the land remaining in their hands, the Kerens would have no ability to continue to live in the house during construction, and that construction would have significant noise, dust and vibration effects.

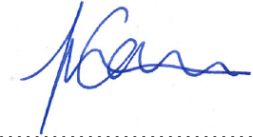
- d. The Kerens also raised concerns that, once the road is operational, they would be exposed to noise, vibration and air quality issues from a bypass constructed in close proximity to their house. The Kerens noted a lack of any detailed assessment of those matters.
  - e. Finally, the Kerens noted that the proposed area of the designation left no room for their business to continue to exist, significantly impacting Pedaltours' ability to operate from the premises.
12. The Kerens' submission sought that AT acquire their entire property now; and offered an option of deferred settlement (if certainty could be achieved on the purchase and purchase price).
13. In its decision, AT confirmed the designation over the Kerens' property, including a 20 year lapse date period and no five-yearly review condition. The combination of the lapse date, and the absence of a review condition, will have significant adverse effects on the Kerens, particularly their ability to maintain their investment and to retire (Mr and Mrs Keren are 72 and 68 years old respectively).

#### **Relief sought**

14. Mr and Mrs Keren seek the following relief (including through amendments to the conditions to NoR S4):
- a. the imposition of a five year lapse date for NoR S4;
  - b. in the alternative, the imposition of a ten year lapse date, with a designation review condition which applies every five years from confirmation of the designation;
  - c. that, in the absence of changes to the lapse date or designation review condition as sought in (a) and (b) above, the notice of requirement over the Kerens' property should be cancelled; and
  - d. costs of and incidental to this appeal.

#### **Documents**

15. Mr and Mrs Keren attach the following documents:
- a. a copy of their submission;
  - b. a copy of the relevant decision; and
  - c. a list of names and persons to be served with a copy of this notice.



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**A M Cameron**

As duly authorised signatory for Mr and Mrs Keren

**Dated** 11 July 2024

Address for service for the applicants:

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*Advice*

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

**COPY OF MR AND MRS KEREN'S SUBMISSION**

**COPY OF AUCKLAND TRANSPORT'S DECISION**

**LIST OF NAMES AND ADDRESSES OF PERSONS SERVED WITH A COPY OF THIS  
APPEAL**