

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 W5
be confirmed subject to conditions

BETWEEN

**VISCOUNT INVESTMENT
CORPORATION LIMITED**

Appellant

AND

AUCKLAND TRANSPORT

Respondent

**NOTICE OF APPEAL BY VISCOUNT INVESTMENT CORPORATION LIMITED
AGAINST DECISION TO CONFIRM NOR W5: HOBSONVILLE ROAD**

11 JULY 2024

Counsel acting:

Aidan Cameron

BANKSIDE CHAMBERS

Level 22, 88 Shortland St, Auckland 1010

PO Box 1571, Shortland St, Auckland 1140

P: +64 9 307 9955

E: aidan@bankside.co.nz

**NOTICE OF APPEAL BY VISCOUNT INVESTMENT CORPORATION LIMITED
AGAINST DECISION TO CONFIRM NOR W5: HOBSONVILLE ROAD**

To: the Registrar
Environment Court
Auckland, Wellington and Christchurch

This document notifies you that:

1. Viscount Investment Corporation Limited (“**Viscount**”) appeals part of a decision on a notice of requirement for the alteration of the existing Hobsonville Road designation 1437 to provide for the widening of the Hobsonville Road corridor between Oriel Avenue and Memorial Park Avenue, including provision of separated active mode facilities (“**NoR W5**”).
2. Viscount made a submission on the notice of requirement.
3. Viscount received notice of the decision on 20 June 2024.
4. The decision was made by Auckland Transport (“**AT**”).
5. Viscount is not a trade competitor for the purposes of section 308D of the RMA.
6. The part of the decision Viscount is appealing against is AT’s refusal to:
 - a. remove the requirement for the additional splay within 122 Hobsonville Road at the intersection of 122 Hobsonville Road and Sinton Road;
 - b. include a condition on the designation preventing a central raised median within Hobsonville Road so that right-hand turns from this road into the main street within 122 Hobsonville Road (via a right turn bay), and out of the site onto Hobsonville Road, are maintained;
 - c. include, either as part of the design for the designation or in its conditions, the adoption of an urban form and design approach to its frontage with the Local Centre Zone which prioritises the place-making function of the local centre, over the through-movement function of the road network; and / or
 - d. include the following condition sought in evidence:

**11A Right-hand turn into mainstreet within 122
Hobsonville Road**

The outline plan of works for roading upgrades on Hobsonville Road
(between Sinton Road East and Memorial Park Lane) shall provide

for a right-hand turn and a right-hand turning bay into the mainstreet on 122 Hobsonville Road (identified in the Auckland Unitary Plan Hobsonville Corridor Precinct Plan 2 as 'strategic access point / key intersection'). The outline plan shall provide the assessment of options to maintain/provide a right-hand turn facility to accommodate multi-modal access to the mainstreet.

- e. include, in conjunction with an appropriate condition, the matters set out in an Appendix to this notice, as agreed between planners who participated in expert witness caucusing on 20 September 2023;
 - f. make any alternative or consequential changes necessary to satisfy the issues raised in Viscount's submission.
7. The site to which the requirement applies is to 122 Hobsonville Road and the surrounding roading network (including the intersection of Hobsonville and Sinton Roads).

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 Viscount's ability to develop its landholding consistent with its Local Centre zoned purpose and Hobsonville Corridor Precinct, 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:
 - i. the need for an additional splay at 122 Hobsonville Road, which AT does not have a sufficient interest in under s 171(1)(b)(i) of the RMA; and

- ii. the significant adverse effects which would result from the designation on Viscount's ability to use and operate the site as a local centre under s 171(1)(b)(ii) of the RMA; and
- d. is otherwise inconsistent with, or contrary to Part 2 of the RMA.

Specific reasons for the appeal

9. Viscount owns a 1.7581 ha property at 122 Hobsonville Road (Lot 1 DP505331 and Lot 100 DP505331) within the Hobsonville Corridor Precinct (Auckland Unitary Plan). The site is zoned Business - Local Centre.
10. Viscount obtained resource consents on 23 September 2016 (LUC-2015-2167, SUB-2015-2168, REG-2016-1966) for the property described above. These consents provide for subdivision and the development of a commercial local centre based on a mainstreet form of development (ie commercial buildings fronting a north south street which runs between Hobsonville Road and Settlers Avenue, which is designed as a street to accommodate all users including vehicle access in the manner of a traditional main street). Viscount engaged extensively with AT through the consenting process, to arrive at a design which AT was comfortable with.
11. In its submission, Viscount opposed those parts of the NOR which seek to widen the intersection of Hobsonville Road and Sinton Road (ie requiring an additional land take from 122 Hobsonville Road, beyond that already put aside for the existing designation within Lot 100 DP505331), and through the NOR would result in the construction of a central raised median on Hobsonville Road (opposite the submitter's site frontage) that would prevent vehicles turning right off this road into the Precinct's main street (and vice versa).
12. On this point, Viscount's concern is the effect of the NOR on the consented local centre and the restriction of traffic movements into the planned main street which undermine this form of urban development which is so important to creating urban places for the Hobsonville Corridor and Hobsonville Point communities to recreate and meet their daily needs. The submission noted that this access from Hobsonville Road to 122 Hobsonville Road is identified on the approved resource consent and the Hobsonville Corridor Precinct Plan 2 as an indicative strategic access point / key intersection. The resource consent has sought to give effect to this.
13. Viscount sought its abovementioned resource consents on the basis that Hobsonville Road would be widened as part of the designation works (hence Lot 100 DP505331). One of the reasons for Council granting consent was that "*the*

development will establish road and pedestrian infrastructure that integrates well with both the existing and future planned transport network". Viscount's development is therefore founded on a road network that has already been supported by Council as that would provide for traffic / pedestrian flows that support the viability of commercial activities in the main street as envisaged by the AUP's Precinct objectives and policies, along with the precinct plan.

14. Viscount presented evidence at the hearing of the NOR from Chris Arbuckle, a Senior Manager of Crown Asia Pacific, and Mark Tollemache, Viscount's expert planning consultant.
15. At paragraph 97 of its recommendation report, the Panel identified the concerns raised by Viscount and other submitters in relation to access issues, particularly in relation to turning movements into sites. The Panel rejected the requiring authorities' submissions and reply evidence in this regard, and sought to impose additional requirements on AT to demonstrate at the Outline Plan stage how safe, efficient and effective access to the transport corridor, on-site parking and manoeuvring, will be provided (where existing access to property is proposed to be altered by the project).
16. AT rejected that recommendation, on the basis that it is unnecessary for the reasons explained in closing legal submissions and the evidence of Ms Seymour.
17. From Viscount's perspective, the NOR's likely potential to restrict access to the main street (particularly right hand turns) creates considerable uncertainty for it. The design which is consented and in the Precinct Plan would not work or be viable if access, particularly vehicles, was restricted at the intersection of main street and Hobsonville Road. The concern that Viscount has is that it could invest \$55 million on the current design and find that AT seek to restrict vehicle access to a consented and planned main street because it keeps flexibility to do so in its NOR conditions.
18. The urban design and landscape conditions are generic and do not adequately reflect the issues raised in a substantive amount of evidence before the Panel. There is a risk, without identifying specific conditions, for this matter to be overlooked or inadequately considered by the requiring authority or Council at the time of the Outline Plan. The effect on Viscount if it proceeded with the consented development could be an inaccessible main street to vehicles travelling from the east, effectively undermining the centre.
19. Without such specific acknowledgement, Viscount does not have certainty in proceeding with their consent. While Viscount prefers to continue with their

consented design, the uncertainty that is generated by the NOR W5 may require them to consider a redesign that does not rely on a main street. The suggested new condition sought in Viscount's relief is considered appropriate to provide Viscount with certainty that access will be maintained as intended by the AUP so that they can proceed with the implementation of their resource consent.

Relief sought

20. Viscount seeks the following relief (including through amendments to the spatial extent and/or conditions to NOR W5):
- a. remove the requirement for the additional splay within 122 Hobsonville Road at the intersection of 122 Hobsonville Road and Sinton Road;
 - b. include a condition on the designation preventing a central raised median within Hobsonville Road so that right-hand turns from this road into the main street within 122 Hobsonville Road (via a right turn bay), and out of the site onto Hobsonville Road, are maintained;
 - c. include, either as part of the design for the designation or in its conditions, the adoption of an urban form and design approach to its frontage with the Local Centre Zone which prioritises the place-making function of the local centre, over the through-movement function of the road network; and / or
 - d. include the following condition sought in evidence:

11A Right-hand turn into mainstreet within 122 Hobsonville Road

The outline plan of works for roading upgrades on Hobsonville Road (between Sinton Road East and Memorial Park Lane) shall provide for a right-hand turn and a right-hand turning bay into the mainstreet on 122 Hobsonville Road (identified in the Auckland Unitary Plan Hobsonville Corridor Precinct Plan 2 as 'strategic access point / key intersection'). The outline plan shall provide the assessment of options to maintain/provide a right-hand turn facility to accommodate multi-modal access to the mainstreet.

- e. include, in conjunction with an appropriate condition, the matters set out in an Appendix to this notice, as agreed between planners who participated in expert witness caucusing on 20 September 2023;
- f. make any alternative or consequential changes necessary to satisfy the issues raised in Viscount's submission; and

- g. costs of and incidental to this appeal.

Documents

21. Viscount attaches the following documents:

- a. a copy of its 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.



.....
A M Cameron

As duly authorised signatory for Viscount
Investment Corporation Ltd

Dated 11 July 2024

Address for service for the applicants:

c/- Aidan Cameron
Barrister, Bankside Chambers
Level 22, 88 Shortland Street
Auckland 1140

E: aidan@bankside.co.nz

T: +64 21 0437 482

Advice

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

APPENDIX – FURTHER RELIEF SOUGHT

Annexure 1

Proposed Schedule X Format

<u>Ref / Designation</u>	<u>Property Address</u>	<u>Party consulted (at NOR)</u>	<u>Site-Specific Issue</u>	<u>Requiring Authority Response (this column to be completed at each Stage of Work)</u>
<u>Property Access</u>				
<u>W5</u>	<u>122 Hobsonville Road (Lots 1 and 100 DP 505331 / Record of Title 762383)</u>	<u>Viscount Investment Corporation Ltd</u>	<u>Provision for a right-hand turn and a right-hand turning bay into the mainstreet on 122 Hobsonville Road (identified in the Auckland Unitary Plan Hobsonville Corridor Precinct Plan 2 as 'strategic access point / key intersection')</u>	<u>---</u>

COPY OF VISCOUNT'S SUBMISSION

COPY OF AUCKLAND TRANSPORT'S DECISIONS

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