

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 ("RMA")

IN THE MATTER of a notice of appeal under section 174 of the RMA

BETWEEN **OMAC LIMITED AND NEXT GENERATION PROPERTIES LIMITED**
Appellant

AND **AUCKLAND TRANSPORT**
Respondent

**NOTICE OF APPEAL CONCERNING NOTICE OF REQUIREMENT (NOR 5) FOR THE
PUKEKOHE TRANSPORT NETWORK**

DATE: 15 NOVEMBER 2024



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TO: The Registrar of the Environment Court, Auckland

AND TO: Auckland Transport (the Respondent)

AND TO: Auckland Council (the relevant Territorial Authority)

1. INTRODUCTION

- 1.1 OMAC Limited and Next Generation Properties Limited (“Omac” or “Appellant”) appeals part of the decision on the notices of requirement (“NoRs”) for designations for the Pukekohe Transport Network (“Project”). Auckland Transport (“AT”) has lodged six NoRs with Auckland Council for route protection of the Project.
- 1.2 The six NoRs are part of a wider package of nine NoRs sought by the Te Tupu Ngatahi – Supporting Growth Alliance (“SGA”) on behalf of Waka Kotahi NZ Transport Agency (“NZTA”) and AT for the route protection of the Pukekohe, Paerata and Drury West areas.
- 1.3 This appeal relates only NoR 5 – Pukekohe South-East Arterial: upgrade part of Pukekohe East Road and Golding Road, and a new connection from Golding Road to Svendsen Road, Pukekohe across Station Road and the NIMT - including active mode facilities (“NoR 5”).
- 1.4 Omac made a submission against NoR 5 on 13 November 2023. The site or place to which NoR 5 applies is 47 Golding Road and 50 Pukekohe East Road, Pukekohe (“the affected land”).
- 1.5 Omac received notice of the decision on 24 October 2024 (“Decision”). The Decision was made by AT, who accepted the Auckland Council Independent Hearing Commissioners’ (“Commissioners”) recommendation that the NoR should be confirmed (“Decision”). However, AT did not accept all recommended conditions in their entirety.
- 1.6 Omac is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (“RMA”).

2. REASONS FOR APPEAL

Site attributes and effects of the NoR

- 2.1 Omac owns the affected land, which is currently subject to a private plan change request for it to be rezoned from Future Urban to Residential – Mixed Housing Urban under the partly operative Auckland Unitary Plan (“AUP”), known as Plan Change 98 (“PPC98”).
- 2.2 Omac opposes NoR 5 to the extent that it does not provide integrated transport and land use planning and impacts the parts of the affected land that are

proposed to be rezoned in accordance with PPC98. In this regard, Omac's position is that:

- (a) NoR 5 does not have sufficient regard to relevant provisions of applicable national policy statements and the AUP, including the Regional Policy Statement provisions in Chapter B of the AUP;
- (b) There has been inadequate consideration of alternative sites, routes and methods for undertaking at least part of the works proposed by NoR 5;
- (c) The footprint of the work and designation boundary (particularly as it extends onto the affected land) is not necessary for achieving AT's objectives in respect of NoR 5, and there are more appropriate options;
- (d) The NoR must facilitate road connections onto Golding Road in a manner consistent with the provisions of I453 Pukekohe East-Central Precinct ("Precinct Provisions") and proposed in PPC98;
- (e) The proposed upgrade to the culvert under Golding Road is sized and positioned such that it would result in flushing the upstream catchment into the affected land and the attenuation of the 1% AEP event for the upstream catchment would have to be managed within the PPC98 boundaries, which will impact flood levels and freeboard; and
- (f) It is expected that the affected land will be developed in advance of when AT will have the funding to implement the NoR, therefore the conditions of the NoR need to provide a mechanism for the NoR to be surrendered over the development land once Golding Road has been upgraded in accordance with the width specified in the NoR, otherwise it will present an ongoing impact on the desirability of the land for no justifiable reason.

2.3 The presence of the NoR means that any proposed planning initiatives under the RMA will be unable to meet the "prevent or hinder" test under section 176(1)(b) of the RMA. This will effectively render parts of the affected land incapable of reasonable use.

2.4 In relation to section 171(1) of the RMA and the effects on the environment of allowing the NoR:

- (a) The NoR decision fails to adequately consider alternative sites, routes and methods for undertaking at least part of the works proposed by NoR 5;
- (b) The NoR boundary is unreasonable and excessively extends over private land;
- (c) The lapse period of 20 years is excessive and conflicts with existing time frames for existing transport proposals;

- (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.

2.5 The Decision:

- (a) Is likely to continue to cause serious hardship to Omac as it represents a prolonged planning blight on the affected land as:
 - (i) NoR 5 applies to substantial parts of the affected land and is proposed to remain even after Golding Road has been upgraded in accordance with the NoR; and
 - (ii) NoR 5's proposed culvert upgrade will result in adverse flooding effects on the affected land; and
- (b) Renders those parts of the affected land incapable of reasonable use.

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

2.6 The adverse effects arising from NoR 5 are inconsistent with key provisions of the National Policy Statement on Urban Development 2020 ("NPS-UD") including but not limited to:

- (a) Objective 2, which states that:

Planning decisions improve housing affordability by supporting competitive land and development markets.

- (b) Policy 1, which states that:

Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

(a) Have or enable a variety of homes that:

(i) Meet the needs, in terms of type, price, and location, of different households; and

(ii) Enable Māori to express their cultural traditions and norms; and

(b) Have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and

(c) Have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and

(d) Support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and

(e) Support reductions in greenhouse gas emissions; and

(f) Are resilient to the likely current and future effects of climate change.

- (c) Policy 6, where it states that 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;
 - (ii) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1); and
 - (iii) Any relevant contribution that will be made to meeting the requirements of this NPS-UD to provide or realise development capacity.
- (d) Policy 10, which states that Auckland Council must engage with providers of development infrastructure and additional infrastructure to achieve integrated land use and infrastructure planning.

2.7 NoR 5 fails to address Objective 2 and Policies 1, 6 and 10 of the NPS-UD, as the NoR seeks to remove areas proposed (and recently re-zoned, or shortly to be re-zoned) for housing. This would in turn reduce the area of land that is available for the development of much needed housing and businesses, which will be both appropriately priced and located (in terms of access to housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport).

2.8 The adverse effects arising from NoR 5 are inconsistent with key provisions of the AUP, including but not limited to:

- (a) B2.2.1 Urban growth and form, Objective 1:

(1) A quality compact urban form that enables all of the following:

- (a) A higher-quality urban environment;*
- (b) Greater productivity and economic growth;*
- (c) Better use of existing infrastructure and efficient provision of new infrastructure;*
- (d) Improved and more effective public transport;*
- (e) Greater social and cultural vitality;*

- (f) *Better maintenance of rural character and rural productivity; and*
- (g) *Reduced adverse environmental effects.*

...

(3) Sufficient development capacity and land supply is provided to accommodate residential, commercial, industrial growth and social facilities to support growth.

- (b) B3.3 Transport, which states:
 - (i) Policy 1: Enable the effective, efficient and safe development, operation, maintenance and upgrading of all modes of an integrated transport system.
 - (ii) Policy 4: Ensure that transport infrastructure is designed to:
 - (A) integrate with adjacent land uses, taking into account their current and planned use, intensity, scale, character and amenity;
 - (iii) Policy 5: Improve the integration of land use and transport by ensuring transport infrastructure is planned, funded and staged to integrate with urban growth; and
 - (iv) Policy 7: 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.
- (c) Objective 4 of the AUP's Residential-Mixed Housing Urban Zone, which states:

Non-residential activities provide for the community's social, economic and cultural well-being, while being compatible with the scale and intensity of development anticipated by the zone so as to contribute to the amenity of the neighbourhood.
- (d) 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.

2.9 With respect to those key provisions of the NPS-UD and AUP, the designation footprint (as proposed) is not compatible with the development anticipated by the Precinct, PPC98 and the proposed rezoning of the affected land. In particular, by providing for features beyond the required 24m road corridor and on land intended for development, the NoR:

- (a) Will not contribute to the development of a quality, compact urban form;
- (b) Does not represent better use of existing infrastructure and the efficient provision of new infrastructure;
- (c) Will not assist to ensure sufficient development capacity and land supply is provided to accommodate residential, commercial, industrial growth and social facilities to support growth; and
- (d) Will reduce the amenity of the neighbourhood rather than contributing to it.

Section 171(1)(b) consideration of alternatives

2.10 The consideration of alternatives was inadequate to meet the statutory requirements. In particular but without limitation:

- (a) The options assessment has failed to address provision for an intersection with the collector road identified in the Precinct Plan and PPC98 and the NoR should be amended to reflect both.
- (b) The proposed batter slopes are inefficient and AT has not adequately considered whether a smaller designation footprint could be achieved by using alternative methods such as retaining walls.
- (c) It is anticipated some of the land within the current designation boundary on the affected land may in fact only be required for laydown areas (or other such temporary activities) during construction. However, the NoR:
 - (i) Does not clearly set out or identify such temporary activities, and where the designation footprint will be reduced/pulled back following construction; or
 - (ii) Does not demonstrate that adequate consideration has been given to alternative methods or sites that could be used for required laydown areas or other temporary facilities.
- (d) The stormwater pond as proposed on the affected land is unlikely to be built prior to the development of the land proposed to be rezoned in

accordance with PPC98. The proposed location of this pond is partially covering the necessary storage that will be incorporated within the affected land to attenuate an 1% AEP event. However, the NoR does not demonstrate that adequate consideration has been given to alternative methods or sites for the pond.

- 2.11 The assessment of alternatives needs to be relevant and proportional to the effects arising. AT's failure to consider the above reasonably practicable alternatives shows that the assessment was inadequate, particularly in light of the beneficial effects arising from the alternative (including benefits which engage with the objectives of the NoR) and avoiding, remedying or mitigating adverse effects arising from the NoRs.
- 2.12 The Commissioners erred in their conclusion at paragraph [351] of their recommendation and AT likewise erred in relying on that conclusion.

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

- 2.13 The footprint or the extent of the designation boundary of NoR 5 is not reasonably necessary for achieving AT's objectives for NoR 5.
- (a) As currently proposed, the designation boundaries extend over (and will effectively remove) land that is zoned for residential development. As such, the NoR does not align with its purpose to "integrate with and support" planned urban growth. To the contrary, it will effectively preclude some aspects/areas of that planned growth. One of the key factors in considering options for this Project is the extent to which they integrate with planned urban growth in the area.
 - (b) PPC98 already provides for a 2m setback, to allow a total 24m road width for both Pukekohe East and Golding Roads, as well as wetland areas. Such provisions already sufficiently achieve the objectives of NoR 5, making it unnecessary to designate any land beyond the required 24m road corridor.
 - (c) The bulk earthworks proposed as part of the Precinct will elevate the level of the surrounding land and likely reduce the embankments and remove the need for batter slopes, wetlands, laydown areas and other features beyond the required 24m road corridor and on land intended for development. Consequently, the proposed designation boundary can be reduced.
- 2.14 As such, the failure to properly consider alternatives leads to a footprint which is larger than is reasonably necessary. There are options that would allow a reduction of the NoR corridor while meeting AT's objectives. It would also reduce the extent to which land not owned by AT is required.

3. RELIEF

3.1 Omac seeks that NoR 5 be declined unless the matters raised in this submission are addressed to the satisfaction of Omac and/or the following amendments to the NoR are made:

- (a) One or more of the following:
 - (i) The footprint of the NoR is altered or reduced, particularly at the Golding / East Street intersection, in order to achieve land use and transport integration;
 - (ii) That AT removes or modifies (or reduces) NoR 5 to only that required to provide the total 24m wide road cross section, along both the Pukekohe East and Golding Road frontages and to address the essence of the issues raised in this Appeal; and/or
 - (iii) That a condition is provided which require parts of NoR 5 to be immediately removed once the relevant frontage upgrade of Pukekohe East Road / Golding Road / East Street (i.e., Pukekohe East and Golding Road frontages) is completed and vested;
- (b) Specific provision is made for a signalled intersection from the collector road shown in the Precinct Plan to Golding Road;
- (c) Control of the proposed upgrade to the culvert under Golding Road in terms of its size and position to keep upstream stormwater attenuation on the eastern side of Golding Road;
- (d) Alternatively, that AT removes NoR 5 entirely if the project cannot be undertaken within that reduced corridor;
- (e) Such other further or incidental relief as is needed to give effect to the intent of this notice of appeal; and
- (f) Costs of and incidental to the appeal.

3.2 Omac attaches the following documents¹ to this notice:

- (a) A copy of Omac's submission dated 13 November 2023, attached and marked "**Annexure A**";
- (b) A copy of the relevant Decision notified 24 October 2024 (letter dated 3 October 2024), attached and marked "**Annexure B**";

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.

- (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 15th of November 2024



A W Braggins

Counsel for OMAC Limited and Next Generation Properties Limited

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Advice to recipients of copy of notice

How to become party to proceedings

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”

Omac’s Submission dated 13 November 2023

“Annexure B”

Decision notified on 24 October 2024 (dated 3 October 2024)

Link to Decision:

https://www.aucklandcouncil.govt.nz/UnitaryPlanDocuments/pnor5_decision-for-nor-1-3-4-5-6-and-7.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/- Jane Small, Group Manager, Strategic Development Programmes and Property, and
Natasha Garvan, Laura Lincoln, Rebekah Te Rito, Legal Counsel

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Territorial Authority: Auckland Council

C/- Christian Brown

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Auckland Council, 135 Albert Street, Private Bag 92300 Auckland 1142

Submitters contact details to be provided or waiver sought.

NoR	Sub #	Submitter Name	Agents name	Address for Service
5	1	Holy Properties Ltd	Anil Sachdeva	anilsachdeva2001@yahoo.com
5	2	Franklin Agricultural and Pastoral Society	n/a	accounts@pukekoheshowgrounds.co.nz
5	3	Cade Hubert Daroux	n/a	cadedx@gmail.com
5	4	Chris Feng	Chris Feng attn: Paul Zeng	fengchenglang@gmail.com
5	5	DH and IM Mills Properties	Craig Mills	Craig@curlys.co.nz
5	6	Telecommunications Submitters	Telecommunications Submitters c/- Incite Attn: Chris Horne	chris@incite.co.nz
5	7	Enviro NZ Services Limited	Jade du Preez	jade.dupreez@environz.co.nz
5	8	Xiaoli Chen	n/a	d.law@barfoot.co.nz
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5	11	Crosten Investments Ltd	Michael Lieshout	michael@pukekohebuilders.co.nz
5	12	Shao Jie Zheng	CivilPlan Consultants Limited Attn: David Clouston	davidc@civilplan.co.nz

5	13	OMAC Limited and Next Generation Properties Limited	The Environmental Lawyers Attn: Andrew Braggins	andrew@telawyers.co.nz
5	14	Aedifice Development No.1 Limited	The Environmental Lawyers Attn: Andrew Braggins	andrew@telawyers.co.nz
5	15	KiwiRail Holdings Limited	Pam Butler	Pam.butler@kiwirail.co.nz
5	16	The Campaign for Better Transport Incorporated	Jodi Johnston (Mr.)	convenor@bettertransport.org.nz
5	17	Watercare Services Limited	Mark Bishop	Mark.Bishop@water.co.nz
5	18	Ministry of Education	Emma Howie	emma.howie@woods.co.nz
5	19	Siobhan Ainsley	Siobhan Ainsley c/- Birch Surveyors Ltd Attn: Sir William Birch	SirWilliamB@birch.nz
5	20	Counties Energy Limited	Rachel Bilbé	rachel.bilbe@countiesenergy.co.nz
5	21	Pukekohe Mega Trustees Limited and Wrightson Way Limited	MinterEllisonRuddWatts Attn: Bianca Tree	bianca.tree@minterellison.co.nz