

IN THE ENVIRONMENT COURT OF NEW ZEALAND
AUCKLAND REGISTRY

ENV-2025-AKL-000

I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE

UNDER the Resource Management Act 1991 ("RMA")

AND

IN THE MATTER an appeal under s 174 of the RMA against decisions by Auckland Transport to confirm notices of requirement for the South Frequent Transit Network (NoR 4) and Takaanini Level Crossing (NoR 2)

BETWEEN ALDA INVESTMENTS LIMITED

First Appellant

AND DANIEL ELIAS NAKHLE AND FERUZ RAHAT ALI as trustees of the D E NAKHLE INVESTMENT TRUST

Second Appellant

AND AUCKLAND TRANSPORT

Respondent

NOTICE OF APPEAL AGAINST DECISIONS TO CONFIRM NOTICES OF
REQUIREMENT

21 FEBRUARY 2025

Counsel acting:
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NOTICE OF APPEAL

To: the Registrar
Environment Court
Auckland, Wellington and Christchurch

This document notifies you that:

1. Alda Investments Ltd ("**Alda**") and Daniel Elias Nakhle and Feroz Rahat Ali as trustees of the D E Nakhle Investment Trust ("**Trust**") appeal against decisions on the following notices of requirement:
 - a. South Frequent Transit Network: Takaanini FTN – Porchester and Popes Road Upgrades ("**NoR 4**") for upgrades to Porchester Road between Alfriston Road and Walters Road; and to Popes Road between Takanini School Road and Porchester Road to accommodate general traffic lanes, active mode facilities (ie walking and cycling facilities), and intersection upgrades; and
 - b. Takanini Level Crossing (TLC): Walters Road level crossing closure and new multi-modal bridge ("**NoR 2**") Auckland Transport for a new multi-modal bridge crossing of the North Island Main Trunk (NIMT) railway at Walters Road
2. Alda and the Trust made submissions on the notices of requirement.
3. Alda and the Trust received notice of the decisions on 30 January 2025.
4. The decisions were made by Auckland Transport ("**AT**").
5. Neither Alda nor the Trust are trade competitors for the purposes of section 308D of the RMA.
6. The decisions Alda and the Trust are appealing are the decisions by AT to confirm both NoR 2 and NoR 4.
7. The site or place to which the requirement applies, of particular relevance to Alda and the Trust, is 164-166 Porchester Road, Takaanini.

General reasons

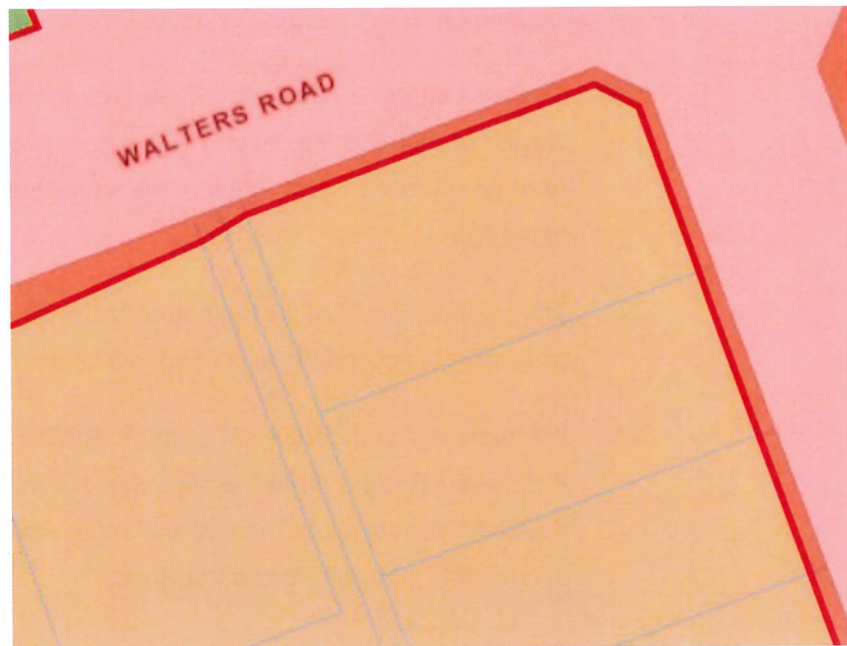
8. The general reasons for the appeal are that the decisions to confirm NoR 2 and NoR4:
 - a. fail to promote the sustainable management of natural and physical resources, and therefore fail to meet the purpose and principles of the Resource Management Act 1991 (“**RMA**”);
 - b. fail to meet the reasonably foreseeable needs of future generations;
 - c. fail to enable the social, economic and cultural well-being of the Auckland community to be met;
 - d. are inconsistent with the purposes and provisions of the relevant planning documents, including the Unitary Plan and the Regional Policy Statement (“**RPS**”);
 - e. are inconsistent with Part 2 and other provisions of the RMA, including sections 74 and 75, including the functions of Auckland Council (“**Council**”) under s 31;
 - f. will generate significant adverse effects on the environment;
 - g. are not an efficient use and development of natural and physical resources;
 - h. fail to comply with s 171(1)(b) of the RMA, as adequate consideration has not been given to alternative sites, routes or methods of undertaking the proposed works in circumstances where AT does not have an interest in the land sufficient for undertaking the work; and in light of (f) above; and
 - i. are not reasonably necessary to achieve the objectives of the requiring authority for which the designations are sought.

Specific reasons

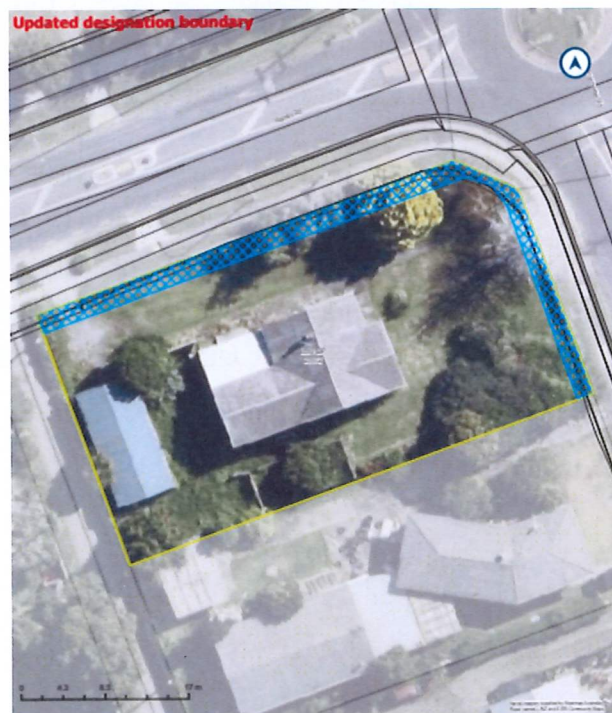
9. Without limiting the generality of the above, additional specific reasons for the appeal are set out below.

Background and introduction

10. Alda holds a resource consent to develop the sites at 164-166 Porchester Road, Takaanini. The Trust owns the sites at 164-166 Porchester Road, Takaanini.
11. The sites are zoned Mixed Housing – Urban under the Auckland Unitary Plan (Operative in Part) (“AUP”).
12. The sites are currently bare land, following demolition of the existing dwellings in late 2022. The land has a resource consent for two four level apartment blocks, carrying 42 residential units, including consents for all necessary land modification, infrastructure provisions, landscaping, vehicle access, car parking and contamination remediation.
13. A copy of the resource consent and approved plans were attached to the parties’ submissions.
14. The units are a mixture of one and two-bedroom residences, which are considered to be ideal for social or community housing purposes. The Trust has recently concluded an agreement to lease with a social housing provider.
15. Works have commenced to implement the consents, with pre-loading now complete and detailed geotechnical investigation underway.
16. The notices of requirement for the proposed designation (as notified) cover the front yard area on the corners of Walters Road and Porchester Road, as shown in the image below:



17. The approved resource consent has allowed the building and its associated decks to be located within the front yard setback, and requires the remaining front yard to be planted to mitigate the effects of the encroachment.
18. As amended, the proposed designation boundary avoids the buildings to be constructed under the approved resource consent, but remains within the planted front yard area.

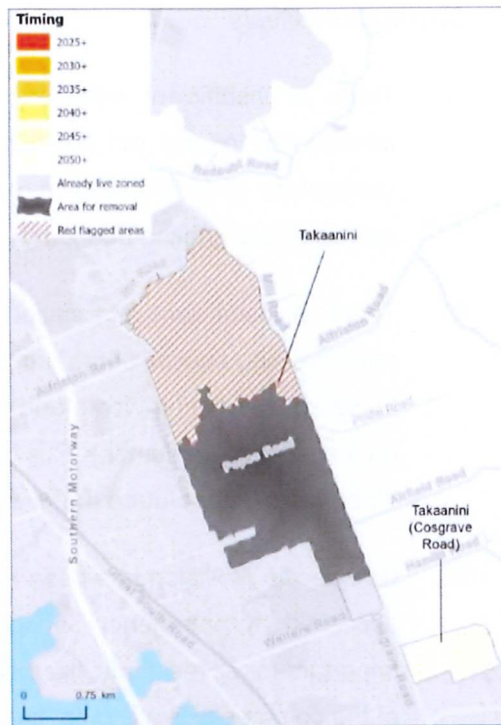


Land requirement is not reasonably necessary for AT's objectives

19. The area which is shown to be required for front and rear berms in the vicinity of 164-166 Porchester Road is in excess of other berm widths used on the other approaches at the same intersection or on other parts of the NoRs.
20. The evidence for AT at the hearing of the NoRs was that a front berm width of 1 metre is acceptable according to AT's own standards.
21. If a narrower and consistent berm is applied to all four corners of the Porchester Road / Walters Road intersection, the width of the upgrade would be reduced and negate the requirement for the designation to extend onto 164-166 Porchester Road.
22. The land requirement is therefore not reasonably necessary for AT's own stated objectives.

Does not take into account recent planning decisions

23. On 2 November 2023 the Planning, Environment and Parks Committee resolved to adopt a new Future Development Strategy. Resolution clause c) states:
 - c) tuhi ā-taipitopito / note that once published, the Future Development Strategy replaces the current Development Strategy (2018) and the Future Urban Land Supply Strategy (2017) and will be considered part of the Auckland Plan 2050.
24. Relevant to the Takanini area, the adopted Future Development Strategy has down-zoned a large area of land that had previously been earmarked for development and has a significant portion of land "red flagged" (i.e. identified as requiring further investigation of potential flooding impacts) alongside the Porchester Road corridor. The below image depicted the newly adopted FDS areas:



25. It is not clear whether the necessity for the project, or at a more detailed level the traffic modelling volumes, take these anticipated zoning changes into account.

Inconsistent with approved resource consents

26. The resource consent that has been granted for the site may now require approval from the requiring authority under s 178. This is an unwarranted impost upon an approved development. The NORs should be amended to eliminate this source of uncertainty.
27. The resource consent requires ongoing and continued compliance with the conditions of its approved land use consents, which include specific landscaping along both road frontages in accordance with approved plans.
28. The designation and associated works will remove features of the approved land use consents.
29. There is no mechanism proposed to address the resultant non-compliance on the part of Alda and the Trust with approved land use consents.

Construction effects

30. There is insufficient information and conditions to ensure that the construction effects will not damage the proposed apartment building (particularly given the close proximity of the building footings etc to the proposed designation boundary).
31. There is insufficient information to ensure that noise received at the outdoor living spaces of the proposed units will maintain the useability of these spaces during works and following completion of the road (based on the new road volumes). This is particularly acute given that NoR 2 and 4 provide different future traffic volumes as set out below.
32. No specific provision has been made to ensure residents are able to be accessed by emergency services at all times. While such access is important for all residents, it is particularly so for the vulnerable members of the community likely to be housed here.
33. There is insufficient information to manage privacy and screening for units from the works occurring directly adjacent to outdoor living spaces.
34. Insufficient information is provided to demonstrate that the designated works can proceed without undermining the foundations of the units.

Flooding

35. Although it appears that flooding of structures will be avoided, there is no such assurance that flooding or ponding of the apartments' carpark area will be avoided. It is essential that the health and safety of vulnerable residents is assured and not imperilled by the works.

Noise impacts

36. As the proposed apartment buildings are under construction now, any required mitigation for future road noise should be installed at the same time to avoid unnecessary wastage of resources and extensive costs associated with retrofitting.
37. As identified in the matter below, as there is no consistency between the NoRs for volumes of traffic and design of this portion of road, the adequacy of any noise assessment is also questionable as to its accuracy in respect of effects.

Certainty of Design

38. NoR 2 (Walters Road) and NoR 4 (Porchester Road) provide inconsistent design responses fronting 166 Porchester Road. NoR 2 proposes a two-lane cross section with central median that ties into the existing roundabout, whereas NoR 4 proposes the signalisation of the Porchester Road/Walters Road intersection. The Resource Consent obtained for 164-166 Porchester Road requires mitigation to be provided on Walters Road based on a road cross section consistent with NoR 2.
39. More concerningly, the two NORs proceed on the basis of different factual starting points, with predicted traffic volumes on Walters Road varying by up to almost 50%. With the FDS removing a large portion of land in Takaanini, there is uncertainty as to whether the Transport Assessment and the predicted traffic volumes below consider this reduced level of development and therefore traffic demand.

	NOR 2 (Walters Road between Arion Road and Porchester Road)	NOR 4 (Walters Road between Arion Road and Porchester Road)
AM Peak	396 vph northbound 811 vph southbound	366 vph northbound 735 vph southbound + Walters Road (north) southbound through traffic
Interpeak	591 vph northbound 693 vph southbound	Not provided
PM Peak	576 vph northbound 511 vph southbound	835 vph northbound 438 vph southbound + Walters Road (north) southbound through traffic

40. There can be no certainty that the proposed solutions will adequately manage predicted future traffic when there is no certainty about what volumes of traffic are to be.
41. Adjacent landowners need certainty as to what is to be constructed. The two NoRs must be reconciled. Maintenance of pedestrian accessibility is essential for the future residents of 164-166 Porchester Road.

Conditions do not provide effective mitigation

42. Finally, the conditions do not address the concerns of Alda and the Trust, and nor do they provide for effective mitigation (including for the reasons set out in their submissions on the NoRs).

Relief sought

43. Alda and the Trust seek that NoR 2 and NoR 4 are cancelled.
44. In the alternative, Alda and the Trust seek that both NoR 2 and NoR4 are removed from the sites at 164-166 Porchester Road, for the reasons set out above.
45. As a further alternative, Alda and the Trust seek conditions to ensure that AT addresses each of the issues raised above and by the appeal, including conditions that:
- a. require an appropriate roading design that caters for predicted future demands consistent with FDS land use and recognises the value and importance of existing investment, minimises intrusions upon private land and eliminates the designation from 164-166 Porchester Road;
 - b. if the relief sought in paragraph 44 above is not granted requiring the removal of the designations from the sites, require the requiring authority to provide approval under ss 176 or 178 if required to allow the construction of the 42 consented dwelling units on 164-166 Porchester Road;
 - c. ensure that noise levels received at the units to be constructed at 164-166 Porchester Road are reasonable and that mitigation is installed as the units are built;
 - d. ensure that there is no damage to the buildings to be constructed at 164-166 Porchester Road, including to their foundations;
 - e. secure access for residents (including by emergency services) during construction;
 - f. provide a safe pedestrian environment on the upgraded roads adjacent to 164-166 Porchester Road;

- g. avoid flooding impacts on the buildings and carparking at 164-166 Porchester Road; and
 - h. require management plans to be certified by the Council against a sensible purpose.
46. Alda and the Trust seek an order for their costs of and incidental to this appeal.

Documents

47. Alda and the Trust attach the following documents:
- a. a copy of their submissions on NoR 2 and NoR 4;
 - b. a copy of the relevant decisions; and
 - c. a list of names and persons to be served with a copy of this notice.



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Janette Campbell | Aidan Cameron
As duly authorised signatories for Alda
Investments Ltd and the D E Nakhle Investment Trust

Dated 20 February 2025

Address for service for the appellants:
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Advice to recipients of copy of notice of appeal

How to become a party to proceedings

1. You may be a party to the appeal if you made a submission on the matter of this appeal.
2. To become a party to the appeal, you must:
 - (a) within 15 working days after the period for lodging a notice of appeal ends, 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 appellants; and
 - (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.
3. 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.
4. 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).

Advice

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

How to obtain copies of documents relating to appeal

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

COPY OF THE APPELLANTS' SUBMISSIONS ON NoR 2 and NoR 4

COPY OF AUCKLAND TRANSPORT'S DECISIONS

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

