

IN THE ENVIRONMENT COURT  
AT AUCKLAND

ENV-2025-AKL-

I TE KŌTI TAIAO O AOTEAROA  
TĀMAKI MAKAURAU ROHE

<b>UNDER</b>	the Resource Management Act 1991 (the <b>RMA</b> )
<b>IN THE MATTER</b>	an appeal pursuant to section 174 of the RMA
<b>BETWEEN</b>	<b>ACGR OLD PINE LIMITED</b>  Appellant
<b>AND</b>	<b>NZ TRANSPORT AGENCY WAKA KOTAHI</b>  Respondent

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**NOTICE OF APPEAL ON BEHALF OF ACGR OLD PINE LIMITED**

**DATED 12 FEBRUARY 2025**

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**TO:** The Registrar  
Environment Court  
**AUCKLAND**

**INTRODUCTION**

1. **ACGR OLD PINE LIMITED (Appellant)** appeals all parts of the decisions of NZ Transport Agency Waka Kotahi (**NZTA**) in respect of the “Supporting North” NORs that affect the Appellant’s property at 10 Old Pine Road (**Property**), being (as the Appellant understands it):

- (a) Notice of Requirement - New Rapid Transit Corridor, including a walking and cycling path (**NOR1**).
- (b) Notice of Requirement - New Rapid Transit Station at Pine Valley Road (**NOR3**).

(the **Decision**)

2. It should be noted that the Appellant is separately appealing all parts of the decisions of Auckland Transport (**AT**) that affect the Appellant’s Property, being (as the Appellant understands it):

- (a) Notice of Requirement - Upgrade to Pine Valley Road (**NOR7**).

3. The reasons for this include the cumulative effect of both the NZTA and AT NORs in respect of the Property.

4. The Appellant made a submission on the Notices of Requirement (**NOR**).

5. The Appellant is not a trade competitor for the purposes of section 308D of the RMA.

6. The Appellant received notice of the Decision on 23 January 2025. The Decision was made by NZTA (with a related decision made by AT). This followed the recommendations made by the Hearing Panel appointed to hear and make recommendations on submissions on all NORs.

## REASONS FOR THE APPEAL

### General reasons

7. General reasons for the appeal are that the Decision:
  - (a) does not promote the sustainable management of resources in accordance with section 5 of the RMA in that it:
    - (i) does not manage the use, development, and protection of natural and physical resources which enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety, as required by section 5 of the RMA;
    - (ii) does not sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, as required by section 5 of the RMA;
  - (b) does not promote the efficient use and development of natural and physical resources; and
  - (c) does not recognise and provide for, or otherwise acknowledge, and/or prioritise, the property rights of landowners; and
  - (d) does not represent integrated management or sound resource management practice; and
  - (e) does not have sufficient regard to the relevant planning instruments; and
  - (f) has not given sufficient consideration to alternative sites, routes, or methods, that would otherwise avoid impacting on the Property; and
  - (g) is not reasonably necessary for achieving the objectives of the requiring authority; and
  - (h) fails to respond to the matters raised in the Appellant's submissions, or representations to the Hearing Panel.

### Specific reasons

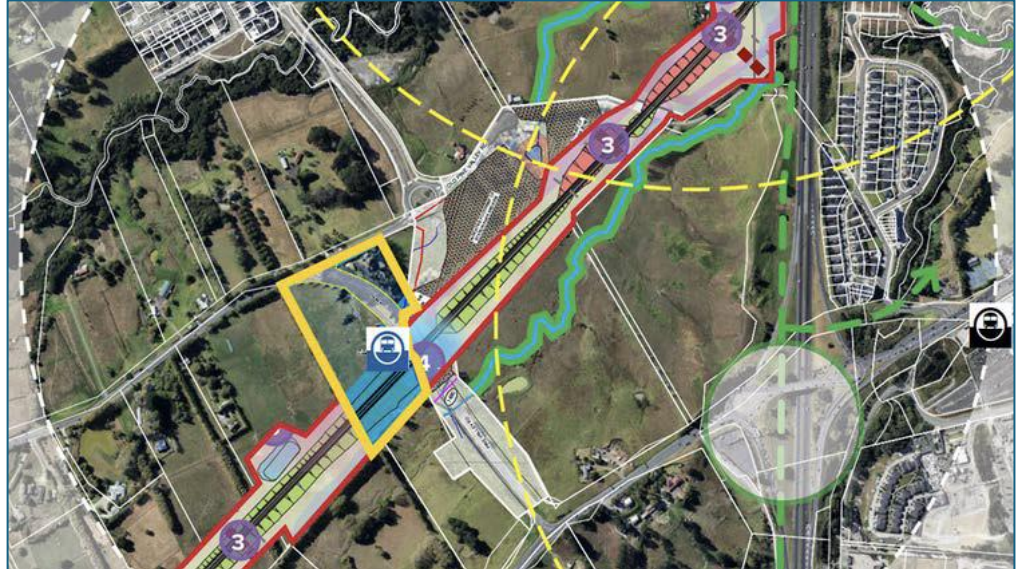
8. Without limiting the generality of paragraph 7 above, the more specific reasons for appealing include:

- (a) The impact of the NORs particularly the NZTA NORs 1 and 3 on the property, that together with the AT NOR7 leave the “unencumbered site” as follows (red outline, just 2.45 ha), although unless and until the current road is stopped (as previously anticipated, but has not occurred) the unencumbered site is in fact severed and significantly less in area:



- (b) It will be self-evident that the currently proposed NORs would therefore leave a severely constrained vestigial area of the Property for use, of little or no value once access and site circulation requirements are factored in. This includes the widening or relocation of Old Pine Road further into the Property under AT’s NOR7.

- (c) The Property is also, clearly, a strategic one, given that a rapid transit station is proposed for the site, to be connected to a Park & Ride facility on the opposite side of the new Pine Valley link road via an over-bridge:



- (d) The background and glacial progress made to date in respect of negotiations with the NZTA for “early” acquisition.

### **Background**

9. The Appellant is both an investor and developer. However, the Appellant is not (by choice) a long term land banker. The Appellant acquired 10 Old Pine in October 2021, well before there was any public notice or inkling of the NORs. The intention was to hold it for a short period before putting it back on the market, which the owners did in mid 2023.
10. As it transpired, soon after that marketing campaign began, the owners received advice from NZTA and AT of likely NORs being progressed by NZTA and AT that would affect the property. This presented difficulties for the ongoing marketing of the property, as the owners had to disclose that this indication of NORs had been given; yet the NORs hadn't actually been lodged and, so, in some ways, the Appellant was at that point in time in a worse position than having definite NORs in play. This is because they could not provide any definite details to purchasers, and could not activate compulsory acquisition.

11. The NORs were ultimately lodged on 20 October 2023, and notified on 16 November 2023. Since this was then so close to Christmas and the new year, the Appellant did not restart their marketing campaign until early February 2024. This was so they had the best chance of securing a sale.
12. This strategy was informed by early discussions with AT and NZTA in July 2023, whereby NZTA advised that “early acquisition” was a possibility, but that the owners would have to demonstrate a case that the requirements of s185 are likely to be met. As the Appellant was the owner of the land when the NORs were lodged, that requirement is that they have:

... tried but been unable to enter into an agreement for the sale of the ... land subject to the [NOR] at a price not less than the market value that the land would have had if it had not been subject to the designation or requirement.

13. The Appellant proceeded accordingly, and advised the Hearing Panel at the time of the hearing in June 2024 that the marketing efforts had been unsuccessful, and that they had accordingly approached NZTA for formal acquisition of the Property. Just prior to the hearing on 27 June 2024, NZTA had stated:

Align Ltd have been instructed as LINZ accredited supplier to prepare the internal reports for NZTA to consider approval to enter the PWA acquisition process, I'm expecting a first draft of the paper in the next two weeks. This initial phase is likely to be about 4-6 weeks (including the approval of the action paper), all going well I anticipate the PWA process to be in full commencement by early-mid August, and Crown valuation/letter of offer to your clients before the end of September.

14. That assurance (or better) was repeated by NZTA at the hearing, following the Appellant's presentation to the Panel.
15. This was consistent with the legal submissions of the requiring authorities (and their evidence), which gave the (now demonstrably false) impression that the NORs are not particularly burdensome for owners over land at the time that the NORs were lodged – if they demonstrate that they have been unable to sell their land at market value, as then they will effectively be “made whole” and there are then therefore no adverse effects. NZTA has also said:

NZTA would prefer landowners to approach it directly for resolution on the basis of the s185 tests, instead of applying to the Environment Court.

16. NZTA's assurances have proved to be almost entirely hollow, at least in respect of timing. With at least 30 follow up emails, from the time of the hearing until just last month, ie over six months, NZTA only finally confirmed on 21 January 2025 that it had resolved to commence "early" compulsory acquisition of the Property – and, at that, only a partial acquisition. NZTA also indicated to the Appellant that the Appellant should not deal with AT in respect of early acquisition.
17. So the Appellant has remained, and remains, in limbo since mid 2023, until now, and most likely for another 6 months or more (most likely a year, based on current performance), while NZTA and its advisors muddle along without any urgency or care in the world. In other words, it will be well over two years, or quite possibly three years or more, since this whole ordeal began, before there is any conclusion to the coercive exercise of a public law power by NZTA (and AT).
18. If the "early" (but actually excruciatingly slow) acquisition of the Property is not agreed with the requiring authorities in sufficient time, then this appeal will need to be pursued.

#### **RELIEF SOUGHT**

19. The Appellant seeks:
  - (a) the NORs be declined or otherwise refused as they relate to the Property;
  - (b) the NORs be amended to avoid or otherwise significantly reduce any intrusion onto the Appellant' land; and/ or
  - (c) any other amendments to the NORs to avoid, remedy or mitigate effects on the Property, or to otherwise address the concerns, issues, and other matters raised in this Appeal (and in the original submission), including any necessary additional or consequential relief; and
  - (d) costs.

**Attachments**

20. The Appellant attaches the following documents to this notice:
- (a) A copy of the Appellant's submission (**Attachment A**);
  - (b) A copy of the relevant decision (**Attachment B**); and
  - (c) A list of names and addresses of persons to be served with a copy of this notice (**Attachment C**).

**Signature:** **ACGR OLD PINE LIMITED** by its duly authorised agent



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**Lara Burkhardt**  
Counsel for the Appellant

**Date:** 12 February 2025

**Address for service of Appellant:**

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**Advice to recipients of copy of notice of appeal***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, 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, 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 or service 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 appellant's submission and (or or) the decision (or part of the decision) appealed. 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

## Attachment C

Names and addresses of persons to be served

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6	Carlton Windust	<a href="mailto:windys@xtra.co.nz">windys@xtra.co.nz</a>
7	Karen Windust	<a href="mailto:windys@xtra.co.nz">windys@xtra.co.nz</a>
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