

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 **GRANGE RIDGE LIMITED**
Appellant

AND **AUCKLAND TRANSPORT**
Respondent

NOTICE OF APPEAL CONCERNING NOTICE OF REQUIREMENT (NOR 6)

DATE: 2 AUGUST 2024



Helen Andrews
Director
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Postal: The B Hive, 72 Taharoto Road, Takapuna 0622

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 Grange Ridge Limited (“GRL” or the “Appellant”) appeals that part of the decision on notices of requirement (“NoR”) for designations for the Warkworth Project which relates to NoR 6 – Western Link – South.
- 1.2 NoR 6 forms part of 8 NoRs in the Warkworth area lodged by Auckland Transport (“AT”) with Auckland Council for route protection. These projects include three new urban arterial corridors, four upgrades to existing corridors and a new Public Transport Hub and Park and Ride facility.
- 1.3 GRL made a submission on NoR 6 dated 6 July 2023.
- 1.4 GRL received notice of the decision on 12 July 2024 (“Decision”). The Decision was made by AT, who accepted the Auckland Council Independent Hearing Commissioners’ (“Commissioners”) recommendation that NoR 6 should be confirmed (“Decision”). However, AT did not accept the conditions recommended to apply to NoR 6 in their entirety.
- 1.5 GRL is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (“RMA”).

2. PART OF THE DECISION BEING APPEALED

- 2.1 The part of the Decision being appealed relates to NoR 6 – Western Link – South as a whole and in particular, the potential flooding effects from NoR 6, as those may impact GRL.

3. GRL’S INTEREST IN NOR 6

- 3.1 GRL owns the following land (“GRL’s land”):
 - (a) 59 Woodcocks Road (Lot 4 DP 467037) with an area of 1.3477ha;
 - (b) 24 Morrison Drive (Lot 2 DP 454568) with an area of 2.0091ha;
 - (c) 20-22 Morrison Drive (Lot 16 DP 185146) with an area of 2388m²; and
 - (d) Lot 1 DP 556765 with an area of 2688m².
- 3.2 The land is currently utilised for a range of industrial activities consistent with its Business – Light Industry zoning. A public stormwater pond sits adjacent to the southern boundary of 24 Morrison Drive. GRL’s land and the public stormwater

pond are identified on Auckland Council's GeoMaps database as flood plain and flood prone areas.

- 3.3 NoR 6 includes a proposed new stormwater pond to the east of Evelyn Street, directly adjacent (to the west of) 24 Morrison Drive. While not stated within the NoR, through previous conversations with Supporting Growth Alliance it is understood that the overflow from this proposed new stormwater pond will discharge to the existing stormwater pond adjacent to the southern boundary of GRL's land. That existing pond already overflows resulting in flooding of GRL's land. In addition, further development which has recently been consented in this catchment is going to direct its stormwater to the existing pond which appears to already be at capacity.

4. REASONS FOR APPEAL

General reasons for appeal

- 4.1 In relation to section 171(1) of the RMA and the potential effects on the environment from NoR 6, the reasons for the appeal are that as currently proposed, NoR 6:
- (a) Fails to promote the sustainable management of natural and physical resources, and is therefore inconsistent with the purpose and principles of the RMA;
 - (b) Does not enable the social, economic, and cultural wellbeing of the community;
 - (c) Will generate significant adverse effects on the environment, and in particular, on GRL's land;
 - (d) Will not appropriately manage natural hazard risks and in particular, is not subject to conditions that will appropriately avoid, remedy or mitigate potential flooding effects on surrounding properties, including GRL's land;
 - (e) Is inconsistent with the policy intent and applicable provisions of the relevant planning documents, including the partly operative Auckland Unitary Plan ("AUP") and the Regional Policy Statement ("RPS") (as addressed in more detail below); and
 - (f) Has not been sufficiently justified, based on a robust (and adequate) consideration of alternative sites, routes and methods of undertaking the proposed works (as addressed in more detail below).
- 4.2 In addition, and without limiting the generality of the above, GRL considers that the assessment of potential flooding effects from NoR 6 was inadequate. In particular, the assessment has not demonstrated the following:

- (a) The quantum of effects associated with the proposed discharge of stormwater, particularly with respect to potential flooding of GRL's land;
- (b) That the stormwater runoff from the works authorised by NoR 6 will be appropriately managed, such that it will not have adverse effects on neighbouring properties; and
- (c) That the stormwater treatment devices proposed via NoR 6:
 - (i) Are efficient and effective;
 - (ii) Will appropriately integrate with existing infrastructure; and
 - (iii) Will not compromise the development and use of land within the catchment in accordance with its zoning.

4.3 As proposed via the Decision, NoR 6 is also likely to cause serious hardship to GRL, in particular by potentially increasing the risk (and severity) of flooding on GRL's land and therefore rendering that land incapable of reasonable use.

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

4.4 The adverse flooding effects arising from NoR 6 are inconsistent with key provisions of the National Policy Statement on Urban Development 2020 ("NPS-UD"), including (but not limited to):

- (a) Policy 6: When making planning decisions¹ that affect urban environments,² decision-makers³ have particular regard to:
 - (i) The planned urban built form anticipated by those RMA planning documents that have given effect to this NPS-UD; and
 - (ii) The benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1).
- (b) Policy 10: Auckland Council must engage with providers of development infrastructure and additional infrastructure to achieve integrated land use and infrastructure planning.

4.5 The adverse flooding effects arising from NoR 6 are inconsistent with key provisions of the AUP and RPS, including (but not limited to):

- (a) Chapter B3.3 Transport, which seeks:

¹ Defined in clause 1.4 of the NPS-UD to include a decision on a designation.

² Defined in clause 1.4 of the NPS-UD to include any area of land that is, or is intended to be, predominantly urban in character.

³ Defined in clause 1.4 of the NPS-UD to mean any person exercising functions or powers under the RMA.

- (i) Effective, efficient and safe development, operation, maintenance and upgrading of all modes of an integrated transport system;
 - (ii) Transport infrastructure is designed to integrate with adjacent land uses, taking into account their current and planned use, intensity, scale, character and amenity;
 - (iii) The integration of land use and transport by ensuring transport infrastructure is planned, funded and staged to integrate with urban growth; and
 - (iv) Projects 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.
- (b) 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.

Section 171(1)(b) consideration of alternatives

- 4.6 The consideration of alternatives for the stormwater management system proposed as part of NoR 6 was inadequate to meet the statutory requirements, in that:
- (a) For the reasons outlined above, without design amendments and/or the imposition of appropriate conditions, NoR 6 will have significant adverse flooding effects; and
 - (b) AT has not demonstrated that it has accordingly given adequate consideration to alternative sites, routes or methods of undertaking the proposed works in order to address such effects, as required by section 171(1)(b) of the RMA.

5. RELIEF

5.1 By way of relief, GRL seeks:

- (a) That NoR 6 be declined, unless the matters raised in this appeal are addressed to the satisfaction of GRL, including by way of amendments to NoR 6 and/or the imposition of appropriate conditions;
- (b) Such other further or incidental relief as is needed to give effect to the matters raised in this appeal; and
- (c) Costs of and incidental to the appeal.

5.2 GRL attaches the following documents to this notice:

- (a) A copy of GRL's submission dated 6 July 2023, attached and marked "**Annexure A**";
- (b) A copy of the Decision notified 12 July 2024 (letter dated 24 June 2024), attached and marked "**Annexure B**";
- (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 2nd of August 2024



H C Andrews
Counsel for Grange Ridge Limited

ADDRESS FOR SERVICE OF APPELLANT

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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 or decision (being Annexures A and B). 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”

GRL’s submission dated 6 July 2023

“Annexure B”

Decision notified on 12 July 2024 (dated 24 June 2024)

Link to Decision:

<https://www.aucklandcouncil.govt.nz/UnitaryPlanDocuments/sg-warkworth-nor6-decision.pdf>

“Annexure C”

Names and addresses of persons to be served with a copy of this notice

Requiring Authority: Auckland Transport

C/- Chris Scrafton, Strategic Planning and Conditions; and

Natasha Garvan, Partner, Bell Gully

Email: chris.scrafton@at.govt.nz;

natasha.garvan@bellgully.com and

Address: Auckland Transport, Level 4, 20 Viaduct Harbour Ave, Auckland 1010

Bell Gully, Level 14 Deloitte Centre, 1 Queen St, 1010

Territorial Authority: Auckland Council

C/- Christian Brown

Associate General Counsel - Regulatory & Enforcement

christian.brown@aucklandcouncil.govt.nz

Ngā Ratonga Ture | Legal Services

Ph: 09 890 7703 | Mob: 021 913 952

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

Submitters contact details to be provided or waiver sought.

NoR	Sub #	Submitter Name	Address for Service
NoR 6	1	Samuel Holmes	irish.samuel.holmes@gmail.com
NoR 6	2	Grange Ridge Limited	burnette@thepec.co.nz
NoR 6	3	Te Whatu Ora Health New Zealand	Martyn.Winslade@waitematadhb.govt.nz
NoR 6	4	One Mahurangi Business Association and Warkworth Area Liaison Group	ropeworth@gmail.com
NoR 6	5	Gumfield Property Ltd	bevanmorrison75@gmail.com
NoR 6	6	Nauwhakahoki Limited	cozy@topland.co.nz
NoR 6	7	Woodcocks Property Limited	bill.loutit@simpsongrierson.com ; rachael.mortiaux@simpsongrierson.com
NoR 6	8	Aztek Projects Limited and McKinney Road Estate Limited	Jessica@thepec.co.nz / Burnette@thepec.co.nz
NoR 6	9	Kyle Stephen and Heather Deans	david@reyburnandbryant.co.nz
NoR 6	10	Watercare Services Limited	mark.bishop@water.co.nz
NoR 6	11	Heritage New Zealand Pouhere Taonga	amorris@heritage.org.nz
NoR 6	12	Tom and Robyn Morrison	tdrj.morrison@xtra.co.nz
NoR 6	13	Te Tāhuhu o te Mātauranga Ministry of Education	gemma.hayes@education.govt.nz
NoR 6	14	Equal Justice Project	rgre311@aucklanduni.ac.nz
NoR 6	15	Grant Hewison	grant@granthewison.co.nz