

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2023-AKL-

IN THE MATTER

of an appeal pursuant to section 174, Resource Management Act 1991

BETWEEN

THE WAREHOUSE LIMITED, part of The Warehouse Group, a duly incorporated company having its registered office at Auckland

Appellant

AND

AUCKLAND TRANSPORT a Council-controlled organisation pursuant to section 38 of the Local Government (Auckland Council) Act 2009

Respondent

Notice of Appeal

21 November 2023

Counsel:
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Barrister
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To: The Registrar
Environment Court
Auckland

1. **The Warehouse Limited**, part of The Warehouse Group (“The Warehouse”), appeals certain conditions of a decision on a notice of requirement for a designation to:
 - (i) extend the existing Panmure to Pakuranga busway with the construction of a new Pakuranga Bus Station;
 - (ii) build the Reeves Road Flyover and modify the SEART offramp at Ti Rakau Drive; and
 - (iii) upgrade local walking, cycling and stormwater infrastructure at 5 Reeves Road, Pakuranga Heights.
2. The Warehouse made a submission on the notice of requirement, providing Corporate and specialist evidence, with legal submissions at the Commissioners’ hearing.
3. The Warehouse received notice of the decision on 3 November 2023.
4. The decision was made by Auckland Transport.
5. The Warehouse is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
6. The site or place to which the requirement applies is the area in and around Pakuranga Plaza at 5 Reeves Road, Pakuranga.
7. The Conditions appealed along with the relief sought are:

8(a)(iii)

8(a)(iv)

8(d)
17
19A
19B
21
22A
33

8. The Warehouse requests that the conditions be amended (or added to) as follows:

Condition Number & Topic	The Warehouse Proposed Wording
<p>8(a)(iii) Management Plan Certification</p>	<p>Additional Condition Prior to the submission of a management plan to the Council, the requiring authority shall consult with The Warehouse Group on a draft of the management plan and incorporate any reasonable requests for changes to the draft.</p>
<p>8(a)(iv) Management Plan Certification</p>	<p>Additional Condition The Council shall consult with The Warehouse Group on matters that relate to the ongoing operation of The Warehouse Pakuranga store prior to certifying any management plan.</p>
<p>8(e) Management Plan Certification</p>	<p>Additional Condition Notwithstanding the requirements of (b) and (c) above, no change to a management plan that may have implications for the ongoing satisfactory operation of The Warehouse Pakuranga shall be approved by the Council without the written approval of The Warehouse Group.</p>
<p>17 The Warehouse Pakuranga Basement Carparking</p>	<p>Amend as follows: During the construction of EB2 the Requiring Authority must not restrict use of those carparks within the basement carpark that immediately adjoin Reeves Road unless it is necessary for safety reasons. Any restrictions must not be in place for no more than 3 days at any one time Except for the purposes of installing construction safety equipment to protect these car park spaces <u>any restrictions shall not be imposed:</u></p> <ul style="list-style-type: none"> a) <u>between 1 November and 31 January in any year, or</u> b) <u>from Thursday to Sunday during any week, or</u> c) <u>for more than 3 days during one calendar month</u>

Condition Number & Topic	The Warehouse Proposed Wording
<p>19A</p> <p>Freight access to The Warehouse Pakuranga</p>	<p>Replace as follows:</p> <p>Should the Requiring Authority not comply with condition 18(a) Construction work in the vicinity of The Warehouse shall cease and unlimited access to the Reeves Road loading dock for the large truck and trailer shall be provided until the matter causing non-compliance with condition 23(a) has been remedied.</p>
<p>19B</p> <p>Freight access to The Warehouse Pakuranga</p>	<p>Additional condition</p> <p>Should the Requiring Authority not comply with conditions 18(c) and 18(d), the Requiring Authority shall fully fund the design, consenting, construction (including any modifications to the fire protection system for the building) and operating costs of a secondary loading dock at the western end of The Warehouse (Cortina Place extension) to accommodate the unrestricted loading and unloading of the smaller trucks and vans. Construction work in the vicinity of The Warehouse shall cease and unlimited access to the Reeves Road loading dock shall be provided until the secondary loading dock is fully operational.</p>
<p>21</p> <p>Freight access to The Warehouse Pakuranga</p>	<p>Add to Condition 21:</p> <p>If dust ingress is not managed to the satisfaction of The Warehouse, construction work in the vicinity of The Warehouse shall cease until the operation causing the effects of dust ingress has been adjusted to address the infringement of this condition,</p>
<p>22A</p> <p>Signage</p>	<p>Replace as follows:</p> <p>The Requiring Authority shall reimburse The Warehouse Group for all reasonable costs incurred in maintaining the existing levels of wayfinding and branding signage for The Warehouse Pakuranga store both during and following the construction of the EB2 works.</p>
<p>33</p> <p>Car Parking and Access at Pakuranga Town Centre</p>	<p>Replace – as agreed to by Auckland Transport at the hearing:</p> <p>The Requiring Authority must ensure that, prior to closing Reeves Road to private vehicles for the purposes of constructing the Reeves Road Flyover or introducing any restrictions on the operation of The Warehouse Pakuranga loading dock or basement carpark access other than managed by Conditions 14 to 17, the following works are completed and operational:</p> <ul style="list-style-type: none"> a) The extension of Cortina Place between William Roberts Road and Aylesbury Street; b) Traffic-light controlled movements in all directions at the intersection of Palm Ave, Ti Rakau Drive and including the access into the Pakuranga Plaza car park; and c) The Mattson Road/Ti Rakau Drive intersection upgrades, as undertaken as part of EB3R.

9. The reasons for the appeal are that the conditions as circulated by AT in its decision:
 - (a) Fail to provide for adequate convenience for The Warehouse's customers, staff and business operations and are therefore in conflict with principles of sustainable management of resources;
 - (b) Fail to adequately to provide for the health and safety of The Warehouse's staff, suppliers and customers;
 - (c) Deny effective participation by The Warehouse, through AT's reliance upon the "Management Plan" technique, to address and manage fundamental issues of adverse effect.
 - (d) Potentially disempower The Warehouse from obtaining effective and timely remedies should any breaches of conditions occur during construction.
 - (e) In the case of Condition 33, resile from what was agreed to by AT representatives at the hearing, and recorded in the Commissioners' recommendation.

10. The Warehouse seeks the following relief:
 - (a) Amendment and additions to the conditions of designation as set out in paragraph 8 above.
 - (b) Such further or other relief as the Court may deem appropriate.
 - (c) Costs.

11. The following documents are **attached** to this notice:
 - (a) A copy of the Recommendation of the Independent Hearings Panel;

- (b) A copy of the Conditions as adopted and/or amended by the Respondent.
- (c) A list of names and addresses of persons to be served with a copy of this notice.



R E Bartlett KC
Counsel for the Appellant

Date: 21 November 2023

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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) you made a submission on the matter of this appeal; and
- (b) 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
- (c) 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 recommendation or the relevant 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.

NAMES AND ADDRESSES OF PEOPLE TO BE SERVED WITH THIS NOTICE

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