

**In the Environment Court of New Zealand  
Auckland Registry**

**I Te Kooti Taiao O Aotearoa  
Ōtautahi Rohe**

**ENV-2019-AUC**

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Under the Resource Management Act 1991

In the matter of an appeal under clause 174 of the Resource Management Act 1991

Between **Auckland Transport**  
Appellant

And **Minister of Education**  
Respondent (Requiring Authority)

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**Notice of appeal by Auckland Transport**

Dated 21 November 2019

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**KensingtonSwan** 

18 Viaduct Harbour Avenue  
Private Bag 92101  
Auckland 1142

P +64 9 379 4196  
F +64 9 309 4276  
DX CP22001

Solicitor: Marija Batistich / Louise C Trevena-Downing  
E: [marija.batistich@kensingtonswan.com](mailto:marija.batistich@kensingtonswan.com) / [louise@kensingtonswan.com](mailto:louise@kensingtonswan.com)

To The Registrar  
Environment Court  
Auckland

- 1 Auckland Transport appeals against part of the decision of the Minister of Education ('the **Minister**') on a notice of requirement by the Ministry of Education for a designation for educational purposes – a primary school and an early childhood centre at 289 West Hoe Heights, Orewa, Auckland ('**Proposal**').
- 2 Auckland Transport made a submission dated 15 May 2019 on the Proposal.
- 3 Auckland Transport is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ('**RMA**').
- 4 Auckland Transport received notice of the decision on 31 October 2019.
- 5 The decision was made by the Respondent. The place to which the notice of requirement applies is 289 West Hoe Heights, Orewa, Auckland.
- 6 The part of the decision that Auckland Transport is appealing relates to the traffic and transport-related conditions.

#### **Reasons for the appeal**

- 7 The general reasons for this appeal are that, in the absence of the relief sought, the Respondent's decision:
  - a Will not promote sustainable management of resources, and will not achieve the purpose of the RMA;
  - b Does not promote the efficient use and development of natural and physical resources;
  - c Is contrary to Part 2 and other provisions of the RMA;
  - d Will not assist in the reasonably foreseeable needs of future generations being met.
- 8 The specific reasons for the appeal are set out below.

#### *Conditions – generally*

- 9 The conditions in the decision do not adequately avoid, remedy or mitigate traffic/transport effects from the Proposal.

- 10 As outlined in Auckland Transport's submission (attached as **Appendix 2**), Auckland Transport is a Council Controlled Organisation of Auckland Council and is the Road Controlling Authority for local roads in Auckland. Auckland Transport's purpose as per section 39 of the Local Government (Auckland Council) Act 2009 is to contribute to an 'effective, efficient and safe Auckland land transport system in the public interest.' To help achieve its purpose, Auckland Transport works with third parties to seek to avoid, remedy or manage the effects of land use and development on the local transport network.
- 11 The Minister's decision does not provide Auckland Transport with the confidence that the level of transport infrastructure required to address the effects generated by the school will be provided. To date, it is not clear what transport modelling and assessment has been undertaken and, therefore, it is not possible to understand with any certainty the measures required to address the effects. It is also not clear what the full roll of the school will be for the Proposal, and whether a staged approach to development may occur.
- 12 Given these uncertainties, it is essential that appropriate and comprehensive conditions are in place to ensure that traffic/transport effects are appropriately managed and mitigated. Because comprehensive transport modelling and assessment has not been undertaken by the Minister to date, the conditions need to include requirements to undertake the appropriate transport related tests/modelling, determine what mitigation measures are required, and how those measures are to be carried out. Auckland Transport's concerns with the conditions in the Minister's decision can be grouped into two overarching issues:
- a The decision fails to address traffic/transport network effects. No appropriate modelling has been undertaken to inform the conditions. Instead, the conditions allow for such modelling/testing to occur at a later stage, and for any effects identified at that time to be dealt with as part of the outline plan of works process; and
  - b Auckland Transport's concerns about traffic/transport effects are that the majority of these will occur outside of the designation boundary and, as such, will be outside of the scope of the outline plan of works ('**OPW**') process.
- 13 The Minister has rejected most of the transport related conditions in Auckland Council's recommendation (dated 30 August 2019).

- 14 The Minister has also not taken into account Auckland Transport's evidence nor comments on the draft conditions provided during the Auckland Council hearing. As such, Auckland Transport considers that there are key transport matters missing from the conditions included in the decision. Auckland Transport's specific concerns with conditions 3 to 8 in the Minister's decision are outlined below.

*Conditions – specific*

- 15 Auckland Transport's concerns with the specific conditions in the decision are as follows:
- a **Consultation with Auckland Transport:** The decision rejects Auckland Council's recommended condition 6 which required consultation and engagement with Auckland Transport prior to the preparation of the outline plan of works. The reasoning is that the condition is redundant given the requirement for Auckland Transport input in some of the other conditions<sup>1</sup>. Auckland Council's recommended conditions included condition 6 in addition to the other requirements for Auckland Transport input. Auckland Transport considers that it is important to require consultation with Auckland Transport in relation to the preparation of an Integrated Transport Assessment ('ITA'), the School Travel Plan, and the Early Childhood Education Centre Travel Plan, and that evidence of/records of all consultation and Auckland Transport's feedback is provided. This is critical for Auckland Transport, given the potential transport impacts of the Proposal and the Minister's proposal to rely on the outline plan process for dealing with transport effects.
  - b **Condition 3 - Outline Plan:** The Minister has re-worded Auckland Council's recommended condition 7 relating to the Minister's requirements for the outline plan process. As a result:
    - i the outline plan requirements over and above those required in section 176A(3) of the RMA have been limited in comparison to the Auckland Council recommendation condition 7.<sup>2</sup>
    - ii much of the detail concerning safety for non-vehicular modes that was included in Auckland Council's recommended condition 7 has now been

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<sup>1</sup> For example, condition 7 which requires the Minister to provide a draft Traffic Impact Assessment to Auckland Transport for the purpose of consultation and engagement, and for the Minister to provide a summary of consultation and engagement with Auckland Transport along with the outline plan of works.

<sup>2</sup> For example, the Minister's condition 3(a) requires the outline plan to consider the promotion of non-vehicular modes of transport to and from the school. Auckland Council's recommended condition 7(iv) required the outline plan to include measures that encourage and provide for safe walking and cycling or scooter use along routes leading to and from the proposed school, including but not limited to...[list]

lost. For example, the Minister has deleted the requirement for provision of on-site car, bike and scooter parking, and the Minister's reasoning is that much of the condition is a repeat of its statutory requirements and standard education conditions in the Unitary Plan. Although the re-worded condition still requires Auckland Transport input, it fails to address key transport matters. The condition has also been changed to refer to the "first outline plan of works" only, and given the potential staging of the site's development, this limits the opportunity to ensure Auckland Transport's input is part of the site's development. Further, Auckland Transport's position is that the requirements for an ITA should be set out in a separate condition to ensure that the specific requirements are clear and enforceable, regardless of the separate OPW process.

- c **Bicycle parking:** The Minister has rejected Auckland Council's recommended conditions 8 to 11 requiring bicycle parking. The Minister's reasoning is that they are overly prescriptive. The Minister considers that they are better dealt with through the outline plan and travel plan conditions. Auckland Transport considers that bicycle (and scooter) parking requirements need to be specifically addressed in the conditions, including requirements in relation to the minimum number of spaces. These requirements should sit within the ITA conditions.
- d **Conditions 5-7 - School travel plan:** The Minister has re-worded Auckland Council's proposed conditions 12-17, relating to the School Travel Plan. Auckland Transport does not support the re-worded conditions given that the transport related requirements have either been deleted<sup>3</sup>, or re-worded<sup>4</sup> in a way that does not adequately address transport issues.
- e **Condition 8 - Early childhood travel plan:** The Auckland Council recommendation included conditions 18 to 20 requiring an early childhood travel plan to be developed in consultation with Auckland Transport to address potential transportation effects resulting from the early childhood centre being located at the school. The Minister has re-worded Auckland Council's proposed conditions, with no reasoning provided. The Minister has deleted the requirement for the plan to include a monitoring programme, and

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<sup>3</sup> The Minister has deleted the requirement to complete the travel plan prior to the opening of the school. Instead, the reworded condition requires the plan 6 months after the opening of the school.

<sup>4</sup> The requirement for Auckland Transport input has changed. The re-worded condition requires the Minister to seek the assistance of Auckland Transport, whereas the Auckland Council recommended condition required the plan to be developed in consultation with Auckland Transport, as well as evidence of such consultation to be provided by the Minister. In addition, the trigger for revising the plan has changed so that revision is only required if there is an increase in teaching space (the Auckland Council recommended condition was triggered by roll/number increase).

has also deleted the requirement for evidence of consultation with Auckland Transport in relation to any revision of the plan. Again, Auckland Transport does not consider that the re-worded conditions adequately address transport issues nor potential effects of the proposed early childhood centre on the surrounding network.

- f **Implementation:** The Minister has rejected Auckland Council's recommended condition 11<sup>5</sup> regarding who is responsible for implementing the measures identified within the conditions. It is important that there is a condition specifying that the Minister is responsible for the implementation of the measures. Where measures can only be delivered by Auckland Transport as the relevant road controlling authority, the Minister needs to work with Auckland Transport on the delivery of those measures.

### Relief sought

- 16 Auckland Transport seeks the following relief:
- a That the site specific conditions set out in **Appendix 3** of this appeal should attach to the proposal in place of conditions 3 to 8 in the Minister's decision; and
  - b Such further additional or alternative relief and consequential or ancillary changes that give effect to the concerns set out in this appeal.
- 17 Auckland Transport attaches the following documents to this notice:
- a A copy of Auckland Transport's submission in **Appendix 1**;
  - b A copy of the Minister's decision in **Appendix 2**;
  - c A copy of the relief sought in **Appendix 3**; and
  - d A list of names and addresses of persons to be served in **Appendix 4**.

Dated 21 November 2019



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Marija Batistich

<sup>5</sup> We note that Auckland Council's recommended condition 11 on implementation was contained under the "Bicycle Parking" heading which is not the appropriate place for this type of condition.

Counsel for Auckland Transport

**Address for service of the Appellant:**

Kensington Swan

PO Box 92101

Auckland 1142

Telephone: 09 3751187

Email: [marija.batistich@kensingtonswan.com](mailto:marija.batistich@kensingtonswan.com)

Contact person: Marija Batistich/ Louise Trevena-Downing

**Advice to recipients of copy of notice of appeal**

*How to become party to proceedings*

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

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*

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington, or Christchurch.