

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-**

**I MUA I TE KOOTI TAIAO  
I TÁMAKI MAKAURAU ROHE**

**IN THE MATTER**

of an appeal under section 174 of the Resource  
Management Act 1991 ("**RMA**")

**BETWEEN**

**PSPIB / CPPIB WAIHEKE INCORPORATED AND  
AUCKLAND BODY CORPORATE LIMITED**

Appellant

**AND**

**AUCKLAND TRANSPORT**

Respondent

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**NOTICE OF APPEAL**

**28 MARCH 2024**

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**Russell  
McAugh**

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To: The Registrar  
The Environment Court  
**AUCKLAND**

1. PSPIB / CPPIB Waiheke Incorporated ("**Waiheke Inc**") and Auckland Body Corporate Limited appeal against parts of the decision of Auckland Transport in respect of a notice of requirement for a designation for the Auckland Airport to Botany Bus Rapid Transit Project, from Rongomai Park to Puhinui Station ("**NOR**").

#### **DECISION APPEALED**

2. Waiheke Inc owns Manukau Supa Centa, situated on the corner of Lambie and Cavendish Drive. The Manukau Supa Centa is home to various retail and hospitality facilities, including Kmart, Noel Leeming, Warehouse Stationery, Rebel Sport, Briscoes.
3. Auckland Body Corporate Limited is a division of Bayleys Group and the contracted manager of the body corporates BC193176 and BC191574 and is responsible for managing the common property area for the Manukau Supa Centa.
4. Waiheke Inc and Auckland Body Corporate Limited presented a joint case at the council-level hearing on the basis that Waiheke Inc, Auckland Body Corporate Limited, and Manukau Supa Centa's 42 individual tenants will be adversely affected by the NOR.
5. On 13 December 2023, the Panel made its recommendation to Auckland Transport on the NOR. The Panel agreed with Waiheke Inc and Auckland Body Corporate Limited's concerns and recommended conditions be imposed to address those concerns. In particular, the conditions ensured loading dock access to both owners or tenants, and vehicle access onto the site was maintained.
6. Waiheke Inc and Auckland Body Corporate Limited received notice of Auckland Transport's decision on the NOR on 8 March 2024 ("**Decision**").
7. The parts of the Decision being appealed are those which reject or accept only in part the matters raised in the submissions of Waiheke Inc and Auckland Body Corporate Limited or amend the NOR in a way that is inconsistent with the matters raised in the submissions of Waiheke Inc and Auckland Body Corporate Limited.

8. Neither Waiheke Inc nor Auckland Body Corporate Limited is a trade competitor for the purposes of section 308D of the RMA.

#### **REASONS FOR APPEAL**

9. The Decision does not meet the relevant requirements of the RMA, and is contrary to Part 2 of the RMA. The Decision:
- (a) will not promote the sustainable management of the natural and physical resources in Tāmaki Makaurau, and is contrary to or inconsistent with Part 2 and other provisions of the RMA;
  - (b) is inconsistent with other relevant planning documents, including the Auckland Unitary Plan;
  - (c) will not meet the reasonably foreseeable needs of future generations;
  - (d) will not enable the social, economic and cultural wellbeing of the community; and
  - (e) does not avoid, remedy or mitigate actual and potential adverse effects on the environment.
10. In addition to the general reasons outlined above, Waiheke Inc and Auckland Body Corporate Limited appeal the Decision on the basis the NOR and Decision:
- (a) fail to include conditions and appropriate designation boundaries which will appropriately avoid, remedy or mitigate the adverse effects of the NOR on Manukau Supa Centa and its tenants operations during both construction and operational phases;
  - (b) fail to ensure that safe and convenient access to the Manukau Supa Centa site is being provided for customers during both construction and operational phases;
  - (c) fail to provide safe and efficient access to Manukau Supa Centa's tenant's loading dock at all times during the construction and operational period;
  - (d) place undue and unreasonable reliance on "management plans";
  - (e) fail to provide effective engagement provisions for affected tenants;

- (f) fail to provide certainty of timing of NOR construction period through a shorter lapse date; and
- (g) fail to adequately consider alternative sites, routes or design methods which would minimise the impact on Manukau Supa Centa.

#### **RELIEF SOUGHT**

11. Waiheke Inc and Auckland Body Corporate Limited seeks:
- (a) amendments to the NOR, to include conditions to address Waiheke Inc and Auckland Body Corporate Limited's concerns;
  - (b) such further other relief or other consequential amendments as considered appropriate and necessary to address Waiheke Inc and Auckland Body Corporate Limited's concerns; and
  - (c) costs.

#### **ATTACHMENTS**

12. The following documents are attached to this notice:
- (a) A copy of Waiheke Inc's submission.
  - (b) A copy of Auckland Body Corporate Limited submission.

**WAIHEKE INC** and **AUCKLAND BODY CORPORATE LIMITED** by their solicitors and authorised agents Russell McVeagh:



**Signature:** D J Minhinnick | J H Fraser

**Date:** 28 March 2024

**Address for Service:** C/- Julia Fraser  
Russell McVeagh  
Barristers and Solicitors  
48 Shortland Street  
Vero Centre  
PO Box 8/DX CX10085

**AUCKLAND**

**Telephone:** (09) 367 8428

**Email:** julia.fraser@russellmcveagh.com

**TO:** The Registrar of the Environment Court at Auckland.

**AND TO:** Auckland Transport.

**AND TO:** The submitters to the notice of requirement.

### **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 or a further 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 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.
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*

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

**APPENDIX A – ORIGINAL SUBMISSION  
WAIHEKE INC**

**SUBMISSION ON REQUIREMENT FOR DESIGNATION THAT IS SUBJECT TO  
PUBLIC NOTIFICATION UNDER SECTION 168 OF THE RESOURCE  
MANAGEMENT ACT 1991**

**To:** Auckland Council ("**Council**")

**Name:** PSPIB/CPPIB Waiheke Inc ("**Waiheke Inc**")

**Submission on:** A notice of requirement from Auckland Transport for a new designation for Auckland Airport to Botany Bus Rapid Transit ("**BRT**") Project, specifically Rongomai Park to Puhinui Station ("**Notice of Requirement**")

**Introduction**

1. Waiheke Inc. owns a \$1.1 billion property portfolio of commercial and retail assets in New Zealand, including the Manukau Supa Centa. Waiheke Inc is managed by AMP Capital / Dexus.
2. Waiheke Inc owns the Manukau Supa Centa, situated on the Corner of Lambie & Cavendish Drive. The Manukau Supa Centa is home to various retail and hospitality facilities, including Kmart, Noel Leeming, Warehouse Stationery, Rebel Sport, and Briscoes. Manukau Supa Centa, and its 40 tenants, will be adversely affected by the Notice of Requirement.
3. Waiheke Inc could not gain an advantage in trade competition through this submission.

**Scope of submission**

4. This submission relates to the Notice of Requirement, particularly as it relates to the works in and around the Manukau Supa Centa along Lambie Drive.

**Nature of submission**

5. Waiheke Inc acknowledges the intent to provide for a BRT corridor and address both network congestion and safety issues while providing improved transport choices.
6. However, Waiheke Inc opposes the Notice of Requirement being confirmed as currently proposed on the basis that the Notice of Requirement will adversely affect the operation of the Manukau Supa Centa.

**Reasons for submission**

7. The reasons for this submission are that the Notice of Requirement (as currently proposed), if confirmed:
  - (a) will not promote the sustainable management of the natural and physical resources in Auckland, and is therefore contrary to or inconsistent with Part 2 and other provisions of the Resource Management Act 1991;



- (b) is inconsistent with other relevant planning documents, including the Auckland Unitary Plan;
- (c) will not meet the reasonably foreseeable needs of future generations;
- (d) will not enable the social, economic and cultural wellbeing of the people of Auckland; and
- (e) does not avoid, remedy or mitigate actual and potential adverse effects on the environment.

#### **Specific reasons for submission**

8. Without limiting the generality of paragraph 7 above, Waiheke Inc opposes the Notice of Requirement as it relates to Lambie Drive to the east of the Manukau Supa Centa as it will result in adverse effects (both during construction and once operational) on the operation of the Manukau Supa Centa which have not been adequately avoided, remedied or mitigated, including:
- (a) Adverse effects on traffic and the transport network during construction, including:
    - (i) various lane and road closures, which will increase congestion and travel time, and adversely affect the performance of key intersections surrounding the Manukau Supa Centa;
    - (ii) a reduction in the Level of Service at peak commuter times arising from the replacement of the Lambie Drive / Ronwood Avenue roundabout with a signalised intersection; and
    - (iii) increased pressure on customers shopping at the Manukau Supa Centa with limited carpark access due to restrictions on surrounding access points.
  - (b) Construction effects on the Manukau Supa Centa, its tenants and customers, including amenity, dust, noise and vibration, traffic and access.
  - (c) Economic impacts on Manukau Supa Centa and its tenants including:
    - (i) direct loss of land;
    - (ii) impacts on business revenue;
    - (iii) impacts on entry and exit access for suppliers and other site servicing needs;
    - (iv) loss of road frontage space; and

- (d) Adverse effects on carparking through the loss of parking spaces at Manukau Supa Centa on Lambie Drive.
9. Inadequate consideration has also been given to alternative sites, routes and methods of undertaking the works for the BRT and in particular alternative routes, sites and methods that would minimise the impact on the Manukau Supa Centa as a whole, in particular, alternatives that minimise land take and adverse effects on the Manukau Supa Centa. There has also been a lack of engagement from Auckland Transport through the Multi Criteria Analysis process and assessment of alternatives.

**Recommendation sought**

10. Waiheke Inc seeks that the Council recommends:
- (a) amendments to the Notice of Requirement, including by way of conditions to address Waiheke Inc's concerns;
- (b) further and continuous engagement is undertaken by Auckland Transport with Waiheke Inc; and
- (c) such further other relief or other consequential amendments as considered appropriate and necessary to address the concerns set out above.
11. Waiheke Inc wishes to be heard in support of this submission.
12. If others make a similar submission, consideration would be given to presenting a joint case with them at any hearing.

**PSPIB/CPIB WAIHEKE INC** by its solicitors and authorised agents Russell McVeagh:



**Signature:** Daniel Minhinnick / Jacob Burton

**Date:** 11 April 2023

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**APPENDIX B – ORIGINAL SUBMISSION  
AUCKLAND BODY CORPORATE LIMITED**

**SUBMISSION ON REQUIREMENT FOR DESIGNATION THAT IS SUBJECT TO  
PUBLIC NOTIFICATION UNDER SECTION 168 OF THE RESOURCE  
MANAGEMENT ACT 1991**

**To:** Auckland Council ("**Council**")

**Name:** Auckland Body Corporate Limited

**Submission on:** A notice of requirement from Auckland Transport for a new designation for Auckland Airport to Botany Bus Rapid Transit ("**BRT**") Project, specifically Rongomai Park to Puhinui Station ("**Notice of Requirement**")

**Introduction**

1. Auckland Body Corporate Limited is a division of Bayleys Group and act as the contracted manager of the body corporates BC193176 & BC191574 which control the common areas under unit title ownership at the Manukau Supa Centa under the Unit Titles Act 2010 and the Unit Titles Regulations 2011 ("**MSC Complex**").
2. Auckland Body Corporate Limited is responsible for managing the common property area of the MSC Complex, situated on the Corner of Lambie & Cavendish Drive. The MSC Complex is home to various retail and hospitality facilities, including Harvey Norman, Bunnings, Kmart, Noel Leeming, Warehouse Stationery, Rebel Sport, and Briscoes. The MSC Complex and its 42 tenants, will be adversely affected by the Notice of Requirement.
3. Auckland Body Corporate Limited could not gain an advantage in trade competition through this submission.

**Scope of submission**

4. This submission relates to the Notice of Requirement, particularly as it relates to the works in and around the Manukau Supa Centa along Lambie Drive.

**Nature of submission**

5. Auckland Body Corporate Limited acknowledges the intent to provide for a BRT corridor and address both network congestion and safety issues while providing improved transport choices.
6. However, Auckland Body Corporate Limited opposes the Notice of Requirement being confirmed as currently proposed on the basis that the Notice of Requirement will adversely affect the operation of the Manukau Supa Centa.

**Reasons for submission**

7. The reasons for this submission are that the Notice of Requirement (as currently proposed), if confirmed:

- (a) will not promote the sustainable management of the natural and physical resources in Auckland, and is therefore contrary to or inconsistent with Part 2 and other provisions of the Resource Management Act 1991;
- (b) is inconsistent with other relevant planning documents, including the Auckland Unitary Plan;
- (c) will not meet the reasonably foreseeable needs of future generations;
- (d) will not enable the social, economic and cultural wellbeing of the people of Auckland; and
- (e) does not avoid, remedy or mitigate actual and potential adverse effects on the environment.

#### **Specific reasons for submission**

8. Without limiting the generality of paragraph 7 above, Auckland Body Corporate Limited opposes the Notice of Requirement as it relates to Lambie Drive to the east of the Manukau Supa Centa as it will result in adverse effects (both during construction and once operational) on the operation of the Manukau Supa Centa which have not been adequately avoided, remedied or mitigated, including:
- (a) Adverse effects on traffic and the transport network during construction, including:
    - (i) various lane and road closures, which will increase congestion and travel time, and adversely affect the performance of key intersections surrounding the Manukau Supa Centa;
    - (ii) a reduction in the Level of Service at peak commuter times arising from the replacement of the Lambie Drive / Ronwood Avenue roundabout with a signalised intersection; and
    - (iii) increased pressure on customers shopping at the Manukau Supa Centa with limited carpark access due to restrictions on surrounding access points.
  - (b) Construction effects on the Manukau Supa Centa, its tenants and customers, including amenity, dust, noise and vibration, traffic and access.
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    - (i) direct loss of land;
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- (iii) impacts on entry and exit access for suppliers and other site servicing needs; and
  - (iv) loss of road frontage space; and
  - (d) Adverse effects on carparking through the loss of parking spaces at Manukau Supa Centa on Lambie Drive.
9. Inadequate consideration has also been given to alternative sites, routes and methods of undertaking the works for the BRT and in particular alternative routes, sites and methods that would minimise the impact on the Manukau Supa Centa as a whole, in particular, alternatives that minimise land take and adverse effects on the Manukau Supa Centa. There has also been a lack of engagement from Auckland Transport through the Multi Criteria Analysis process and assessment of alternatives.

**Recommendation sought**

10. Auckland Body Corporate Limited seeks that the Council recommends:
- (a) amendments to the Notice of Requirement, including by way of conditions to address the concerns set out above;
  - (b) further and continuous engagement is undertaken by Auckland Transport with Auckland Body Corporate Limited; and
  - (c) such further other relief or other consequential amendments as considered appropriate and necessary to address the concerns set out above.
11. Auckland Body Corporate Limited wishes to be heard in support of this submission.
12. If others make a similar submission, consideration would be given to presenting a joint case with them at any hearing.

**AUCKLAND BODY CORPORATE LIMITED** by its solicitors and authorised agents Russell McVeagh:



**Signature:** Daniel Minhinnick / Jacob Burton

**Date:** 11 April 2023

**Address for Service:** C/- Jacob Burton  
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