

**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**

**GENERAL DISTRIBUTORS LIMITED**

Appellant

**AND**

**AUCKLAND TRANSPORT**

Respondent

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**NOTICE OF APPEAL**

**28 MARCH 2024**

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**Russell  
McAugh**

D J Minhinnick | J H Fraser  
P +64 9 367 8000  
F +64 9 367 8163  
PO Box 8  
DX CX10085  
Auckland

To: The Registrar  
The Environment Court  
AUCKLAND

1. General Distributors Limited ("**GDL**") appeals 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. GDL operates Countdown Manukau ("**GDL's Site**") which is located at 652 Great South Road, which adjoins Te Irirangi Drive subject to the Notice of Requirement. GDL also sublets approximately 3000m<sup>2</sup> of retail space adjoining the supermarket to a third-party retailer. The supermarket is an essential service which provides for the wider Manukau community.
3. GDL made a submission on the NOR on 11 April 2023. GDL presented evidence and legal submissions at the hearing on the NOR on 31 August 2023.
4. The Panel released its recommendation to Auckland Transport on 13 December 2023. The Panel were largely in agreement with the concerns raised by GDL, and imposed conditions which addressed GDL's concerns. In particular, the Panel recommended conditions which ensured access to loading docks and key access routes to sites within the designation boundary were maintained both during construction and operation phases.
5. GDL received notice of Auckland Transport's decision on the NOR on 8 March 2024 ("**Decision**").
6. The parts of the Decision being appealed are those which reject or accept only in part the matters raised in GDL's submission or amend the NOR in a way that is inconsistent with the matters raised in GDL's submission.
7. GDL is not a trade competitor for the purposes of section 308D of the RMA.

## REASONS FOR APPEAL

8. 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.
9. In addition to the general reasons outlined above, GDL appeals the Decision on the basis the NOR and Decision:
- (a) fail to include conditions which ensure robust and effective consultation with GDL is undertaken in relation to loading dock access, and other matters which will impact Countdown Manukau's operations both during and after construction;
  - (b) fail to ensure the existing provision of parking at Countdown Manukau is maintained in its current location, or in a location which is convenient to GDL and its subletter's customers;
  - (c) fail to provide safe and efficient access to Countdown Manukau's loading dock at all times during the construction and operational period;
  - (d) place undue and unreasonable reliance on "management plans";
  - (e) fail to adequately consider alternative sites, routes or methods which would minimise the impact on Countdown Manukau; and
  - (f) fail to provide certainty of the commencement of NOR construction through a shorter, more appropriate lapse period.

**RELIEF SOUGHT**

10. GDL seeks the NOR be declined, or otherwise:
- (a) amendments to the NOR, including by way of conditions to address GDL's concerns;
  - (b) such further other relief or other consequential amendments as considered appropriate and necessary to address GDL's concerns; and
  - (c) costs.

**ATTACHMENTS**

11. A copy of GDL's submission is attached to this notice.

**GENERAL DISTRIBUTORS LIMITED** by its solicitors and authorised agents Russell McVeagh:



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**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**

**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:** General Distributors Limited ("**GDL**")

**Submission on:** A notice of requirement from Auckland Transport for a new designation for Auckland Airport to Botany Bus Rapid Transit ("**BRT**") Project, from Rongomai Park to Puhinui Station (NoR 2) ("**Notice of Requirement**")

**Introduction**

1. GDL is a wholly owned subsidiary of Woolworths New Zealand Limited and is responsible for operating Countdown stores nationwide. GDL operates Countdown Manukau at 652 Great South Road, which adjoins Te Irirangi Drive subject to the Notice of Requirement. GDL also sublets approximately 3000m<sup>2</sup> of retail space adjoining the supermarket to a third party retailer. Accordingly, GDL has a direct interest in the Notice of Requirement.
2. GDL could not gain an advantage in trade competition through this submission.

**Scope of submission**

3. This submission relates to the Notice of Requirement in its entirety, particularly as it relates to the works in and around Countdown Manukau.
4. GDL opposes the Notice of Requirement being confirmed as currently proposed on the basis that the Notice of Requirement will significantly adversely affect the operation of Countdown Manukau.

**Reasons for submission**

5. The reasons for this submission are that the Notice of Requirement (as currently proposed), if granted:
  - (a) will not promote the sustainable management of the natural and physical resources in Tāmaki Makaurau, 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 Tāmaki Makaurau; and



- (e) does not avoid, remedy or mitigate actual and potential adverse effects on the environment.

**Specific reasons for submission**

- 6. Without limiting the generality of paragraph 5 above, GDL opposes the Notice of Requirement because it will result in adverse effects (both during construction and once operational) on the operation of Countdown Manukau which have not been adequately avoided, remedied or mitigated, including:
  - (a) Adverse effects on traffic and the transport network including:
    - (i) various temporary lane and road closures, which will increase congestion and travel time, and adversely affect the performance of Countdown Manukau and the adjoining retail unit; and
    - (ii) increased pressure on the customer and staff carparking at the Centre; and
    - (iii) the loss of truck access to the loading bay area at the rear of the Countdown store, which is exclusively used by Countdown and its subtenant (being the sole means of goods delivery to Countdown's leased premises).
  - (b) Adverse noise and vibration effects, including as a result of high noise generating activities during construction.
  - (c) Business disruption and other economic effects caused by:
    - (i) reduced access to essential services such as Countdown Manukau;
    - (ii) impacts on GDL's sublessee, both in terms of loss of carparking and servicing access, and other effects outlined in this submission.
  - (d) Adverse visual and amenity effects, including as a result of effects from construction activities (eg noise and dust, traffic) surrounding Countdown Manukau.
  - (e) Adverse effects on carparking through:
    - (i) the temporary and/or permanent loss of parking spaces at the Centre, including the current access to the basement carpark and car parks off Great South Road; and
    - (ii) suboptimal carpark area circulation (in terms of the accommodation of vehicle movements in a safe and efficient manner).

7. GDL is also concerned that inadequate consideration has been given to alternative sites, routes and methods of undertaking the works for BTR and in particular alternative routes, sites and methods that would minimise the impact on Countdown Manukau.

**Recommendation sought**

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

**GENERAL DISTRIBUTORS LIMITED** by its solicitors and authorised agents  
Russell McVeagh:



<b>Signature:</b>	_____ Allison Arthur-Young / Jacob Burton
<b>Date:</b>	11 April 2023
<b>Address for Service:</b>	C/- Jacob Burton Russell McVeagh Barristers and Solicitors Level 30 Vero Centre 48 Shortland Street PO Box 8/DX CX10085 <b>AUCKLAND 1140</b>
<b>Telephone:</b>	+64 9 367 8000
<b>Email:</b>	jacob.burton@russellmcveagh.com