

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2024-AKL_ _ _ _

**I MUA I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

UNDER the Resource Management Act 1991
("the Act")

AND

IN THE MATTER of a notice of appeal under section 174
of the Act

BETWEEN **SPG MANUKAU LIMITED**
Appellant

AND **AUCKLAND TRANSPORT**
Respondent

NOTICE OF APPEAL CONCERNING NOTICE OF REQUIREMENT FOR DESIGNATION

DATED 2 April 2024



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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 SPG Manukau Limited (“SPG”) appeals part of a decision on a notice of requirement (“NoR”) for a designation for the Airport to Botany Bus Rapid Transit Project (“Airport to Botany Project”) which includes four NoRs, being:
- (a) NoR 1 – Airport to Botany Bus Rapid Transit from Botany to Rongomai Park;
 - (b) NoR 2 – Airport to Botany Bus Rapid Transit from Rongomai Park to Puhinui Station (in the vicinity of Plunket Avenue);
 - (c) NoR 3 – Airport to Botany Bus Rapid Transit from Puhinui Station (in the vicinity of Plunket Avenue) to State Highway 20/20B Interchange; and
 - (d) NoR 4a – Airport to Botany Bus Rapid Transit from the State Highway 20/20B Interchange to Orrs Road.
- 1.2 SPG made a submission on the NoR 2 on 31 March 2023. For the purpose of this notice of appeal, NoR 2 is “the Project” and the wider project is the Airport to Botany Project.
- 1.3 SPG received notice of the decision on 8 March 2024 (“Decision”), though the letter is dated 21 February 2024.
- 1.4 The Decision was made by Auckland Transport (“AT”), who accepted the Auckland Council Independent Hearing Commissioner’s (“Commissioners”) recommendation that the NoRs should be confirmed (“Decision”). However AT did not accept all recommended conditions in their entirety.
- 1.5 SPG is not a trade competitor for the purposes of section 308D of the Act.
- 1.6 SPG appeals all of the Decision pertaining to NoR 2 – Airport to Botany Bus Rapid Transit from Rongomai Park to Puhinui Station (in the vicinity of Plunket Avenue) (see paragraph 1.1(b) above).
- 1.7 The site or place to which the Airport to Botany Project requirement applies is between Botany Town Centre and the Airport (Orrs Road) via Manukau Central.
- 1.8 For NoR 2 / the Project specifically, this includes the construction, operation and maintenance of an upgrade to Te Irirangi Drive, Great South Road, Ronwood Avenue, Davies Avenue, Manukau Station Road and Lambie Drive between Rongomai Park and Plunket Avenue for a BRT corridor, walking and cycling facilities and associated infrastructure.

- 1.9 Of particular relevance to SPG is the proposed widening of Lambie Drive. A drawing is included in Figure 1 of the Submission (attached as **Annexure A**). AT made minor changes to the extent of the NoR through the hearing, but those changes are insufficient to address the concerns of SPG.

2. REASONS FOR APPEAL

Site attributes and effects of the NoR

- 2.1 SPG owns 67 Cavendish Drive ("Site") which is located at the north-western corner of the Cavendish Drive / Lambie Drive intersection, Manukau Central. The Site is located on the north-western corner of the Lambie Drive and Cavendish Drive intersection.
- 2.2 There are currently several buildings on the Site occupied by a mix of retail and service activities including a large format fabrics, crafts and homewares supplier (Spotlight) serving as the primary anchor and a range of other businesses that operate together to present an attractive and convenient retail offering.
- 2.3 Vehicle access to the Site is obtained via two vehicle crossings: one from Cavendish Drive located at the western end of the frontage, and a second from Lambie Drive near the Site's northern boundary. Each vehicle crossing provides for two-way all-turns vehicle movements.
- 2.4 A notable feature of the Site is its provision of on-site parking and manoeuvring areas for customers and business operators. The Site currently operates efficiently with approximately 204 on-site parking spaces. A large number of parking spaces will be lost if the NoR is implemented, in addition manoeuvring and access will be substantially compromised.
- 2.5 Additional vehicle movements at the Cavendish Drive vehicle crossing will exacerbate the existing traffic safety concerns, which arise from drivers illegally using the central flush median and the crossing's proximity to the entry/exit driveway serving the property to the west (77 Cavendish Drive, the "Gilmour's" site).
- 2.6 In relation to section 171(1) of the Resource Management Act 1991 ("RMA") and the effects on the environment of allowing the requirement:
- (a) Given the scale of the Project, even the limited information that is available within the NoR documents and evidence suggests it will generate significant adverse effects on traffic flows and the ability to access businesses along / near the corridor, for a long time – up to 5 years.
 - (b) The lack of evidence on construction effects and operational effects precludes a proper assessment of environmental effects.
 - (c) The Auckland Council Hearing's Panel found that the Project is likely to cause disruption to adjoining businesses during the construction of the Project. The timeframes for construction are significant and currently the timing of construction is unknown.
 - (d) The proposal to address effects through management plans is contrary to the legal requirements for using management plans. The Recommendation and Decision therefore had unlawful reliance on management plans to avoid, remedy or mitigate anticipated adverse environmental effects.

- (e) Property and social / economic effects on the community and community members who own or lease land subject to the NoR or adjacent to the NoR will be significantly adverse, particularly in relation to business disruption and traffic disruption (including pre-construction, during construction and on-going operation of the Project). The Public Works Act 1981 does not avoid, remedy or mitigate these effects.
- (f) The NoR boundary is unreasonable and excessively extends over private land.
- (g) The NoR conditions are inadequate to avoid, remedy or mitigate the adverse effects of the Project.

2.7 The Decision:

- (a) is likely to continue to cause serious hardship to SPG given it will be unable to implement its resource consent LUC60411280 ("Consent") obtained on 17 January 2023 to undertake development of the Site;
- (b) renders the land incapable of reasonable use; and
- (c) is able to be modified in such a way that SPG could proceed with development without impeding NoR 2.

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

2.8 The adverse effects arising from the Project¹ are inconsistent with key provisions of the National Policy Statement on Urban Development 2020 including but not limited to:

- (a) Policy 6: When making planning decisions that affect urban environments, decision-makers have particular regard to:
 - (i) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement; 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.

2.9 The adverse effects arising from the Project² are inconsistent with key provisions of the Auckland Unitary Plan including, but not limited to:

- (a) B3.3 Transport, which seeks that:
 - (i) effective, efficient and safe development, operation, maintenance and upgrading of all modes of an integrated transport system;

¹ Including impact of uncertainty and the lack of integration between the project and surrounding land use.

² Including impact of uncertainty and the lack of integration between the project and surrounding land use.

- (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

- 2.10 The consideration of alternatives was inadequate to meet the statutory requirements. In particular but without limitation:
- (a) Mr Haines' evidence at the hearing was that Mr Buckley's rebuttal evidence had seemingly dismissed the two alternatives he had identified for the Lambie Drive portion of the NoR.
 - (b) The evidence presented by AT in relation to those alternatives was a Single Stage Business Case, which refers to a "Property Acquisition Strategy" at Appendix M, that was heavily redacted rendering it largely incapable of being relied upon.
 - (c) To the extent that any reliance could be placed on such a study:
 - (i) The Strategy (dated 1 March 2021) is likely to have pre-dated the SPG witnesses' conclusions (in evidence) that the adverse effects of the NoR are not significant. As these conclusions are not correct, the out-of-date values ascribed to property acquisition in Appendix M are anticipated to be correspondingly undercalculated.
 - (ii) There were no plans / concept drawings on which the assessment of off-street options was based.
 - (iii) The off-street option described in the Technical Note had been summarised into the "Auckland to Botany Assessment of Alternatives document (dated 9

December 2022) as the single line entry “Northern Busway style grade separated busway”.

- (iv) “Northern Busway style grade separated busway, with grade separation of Te Irirangi Drive cross streets, Manukau tunnel and / or elevated sections with large offline interchange stations.”
- (d) The two alternatives presented in Mr Haines evidence involved less than the full length of Lambie Drive (for the hybrid at-grade solution) and most of Lambie Drive and a small portion of Manukau Station Road (for the elevated busway solution).
- (e) These alternatives are materially different from the Integrated Off-street Options upon which Mr Buckley relied to confirm in rebuttal that the hybrid at-grade option was not tested.

2.11 The assessment of alternatives needs to be relevant and proportional to the effects arising and AT’s failure to consider two relatively obvious and reasonably practicable alternatives shows that the assessment was manifestly inadequate, particularly in light of the beneficial effects arising from the alternative (including benefits which engage with the objective of the project) and avoiding, remedying or mitigating adverse effects arising from the Project.

2.12 The Auckland Council Hearings Panel erred in its conclusion at paragraph 300 and AT likewise erred in relying on that conclusion.

Section 171(1)(c) whether the work and designation is reasonably necessary

2.13 The footprint of the NoR is not reasonably necessary as it is based on AT not using retaining walls to minimise the extent of land to be taken, which is unreasonable.

2.14 The failure to properly consider alternatives also leads to a footprint which is larger than is reasonably necessary. The options put forward by Mr Haines would allow a narrowing of the NoR corridor.

2.15 Narrowing the typology of the required lanes and paths would also reduce the extent to which land not owned by AT is required.

Section 171(1)(d) other matters

2.16 AT has refused permission for SPG to implement a resource consent which it holds to develop its property. This refusal is subject to a separate appeal, but it highlights one kind of direct adverse effects of the NoR on the community and adjoining owners.

3. RELIEF

3.1 That the NoR be declined unless the matters raised in this submission are addressed to the satisfaction of SPG and the following amendments to the NoR are made:

- (a) That AT withdraws NoR 2 or modifies it to address the essence of the issues raised in this Appeal; and/or
- (b) That the purpose and scope of the NoR be limited to “route protection” only, with another NoR to follow to allow construction; and/or

- (c) Changes to the construction design to include retaining walls, alternatives proposed by SPG and lane / path widths with resultant reduction in the footprint of the NoR; and/or
- (d) That the extent of the NoR along the Site's Lambie Drive frontage be relocated eastwards to avoid the injurious affection caused by the NoR and BRT to:
 - (i) SPG's land;
 - (ii) Operation of the existing retail centre; and
 - (iii) SPG's proposed drive-through restaurant project; and/or
- (e) That the extent of the NoR be extended westwards along Cavendish Drive to include installation of a new signalised intersection with a single, combined entry to serve both SPG's and Gilmours' sites; and/or
- (f) That the width of the NoR along the Site's Cavendish Drive frontage be reduced to avoid unnecessary loss of carparking spaces; and/or
- (g) That the extent of the NoR be extended westwards along Cavendish Drive to include installation of a new signalised intersection with a single, combined entry to serve both SPG's and Gilmours' sites; and/or
- (h) Retaining full entry and exit turning manoeuvres from existing vehicle crossings; and/or
- (i) Such other further or incidental relief as is needed to give effect to the intent of this notice of appeal; and
- (j) Costs of and incidental to the appeal.

3.2 SPG attaches the following documents³ to this notice:

- (a) A copy of SPG's Submissions dated 31 March 2023, attached and marked "**Annexure A**";
- (b) A copy of the relevant Decision notified 8 March 2024 (dated 21 February 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**";

³ These documents constitute part of this form and, as such, must be attached to both copies of the notice lodged with the Environment Court. The appellant does not need to attach a copy of a regional or district plan or policy statement. In addition, the appellant does not need to attach copies of the submission, recommendation, or decision to copies of this notice served on other persons if the served copy lists these documents and states that copies may be obtained, on request, from the appellant.

DATED the 2nd of April 2024



Andrew Braggins
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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, recommendation and 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.

“Annexure A”

SPG’s Submissions dated 31 March 2023

"Annexure B"

Decision notified on 8 March 2024 (dated 21 February 2024)

“Annexure C”

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

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SPG Manukau Limited
Annexure A - Submission

**NOTICE OF REQUIREMENT BY AUCKLAND TRANSPORT FOR A NEW DESIGNATION
OVER 67 CAVENDISH DRIVE, MANUKAU, FOR THE AIRPORT TO BOTANY BUS RAPID
TRANSIT PROJECT**

SUBMISSION BY

SPG MANUKAU LIMITED

Introduction

1. This is a submission on the Notice of Requirement: Rongomai Park to Puhinui Station ("NoR 2") by Auckland Transport ("AT") for a new designation associated with the Airport to Botany Bus Rapid Transit ("BRT") project as it relates to the property at 67 Cavendish Drive, Manukau ("the Site") under s168 of the Resource Management Act 1991.
2. The submission is made on behalf of SPG Manukau Limited ("the Submitter").

Airport to Botany BRT Project

3. The Airport to Botany BRT Project proposes an 18 km, dedicated, high capacity, and frequent BRT corridor and walking and cycling facilities. The Project will improve connections between the major centres of Botany, Manukau, Auckland Airport and their employment areas to existing and intensifying residential areas in southern and eastern Auckland.
4. Four new designations are proposed. NoR 2 proposes the widening of several existing roads to provide for the BRT and cycling and walking facilities from Rongomai Park to Puhinui Station. Of particular relevance to the Submitter is the proposed widening of Lambie Drive. A plan showing the extent of the proposed designation over the subject Site is illustrated in **Figure 1**.



Figure 1: Extent of proposed designation (green dots) as it relates to 67 Cavendish Drive.

5. NoR 2 was notified on 10 March 2023.

The Site

6. The Site is located on the north-western corner of the Lambie Drive and Cavendish Drive intersection.
7. There are currently several buildings on the Site occupied by a mix of retail and service activities including:
 - a. A large format fabrics, crafts and homewares supplier (Spotlight) serving as the primary anchor,
 - b. a homewares retailer (Bedpost),
 - c. a fitness centre (Jetts),
 - d. a discount supermarket (Reduced to Clear),
 - e. a furniture retailer (Project Kitchens),
 - f. a hair and beauty salon (The Gender Hair and Beauty),
 - g. a café (Kreem Café), and
 - h. a bank (ANZ).
8. Vehicle access to the Site is obtained via two vehicle crossings: one from Cavendish Drive located at the western end of the frontage, and a second from Lambie Drive near the Site's northern boundary. Each vehicle crossing provides for two-way all-turns vehicle movements.

9. A notable feature of the Site is its provision of on-site parking and manoeuvring areas for customers and business operators. The Site currently operates efficiently with 204 on-site parking spaces.
10. In January 2023 the Council granted a resource consent (reference LUC60411280) to convert the existing building located in the south-east corner of the Site, currently occupied by ANZ Bank, into three food and beverage tenancies. To accommodate this change of use, a 147m² addition will be undertaken to the southern side of the building.
11. The southernmost tenant within the building is proposed to operate as a fast-food drive-through restaurant. A dual-lane drive-through is proposed to the east of the building, merging to a single lane at the drive-through window on the southern side of the building.
12. A loading / servicing area is proposed on the eastern side of the building to service all three new tenancies.
13. The approved site plan is illustrated in **Figure 2** below and included as **Attachment 1**.

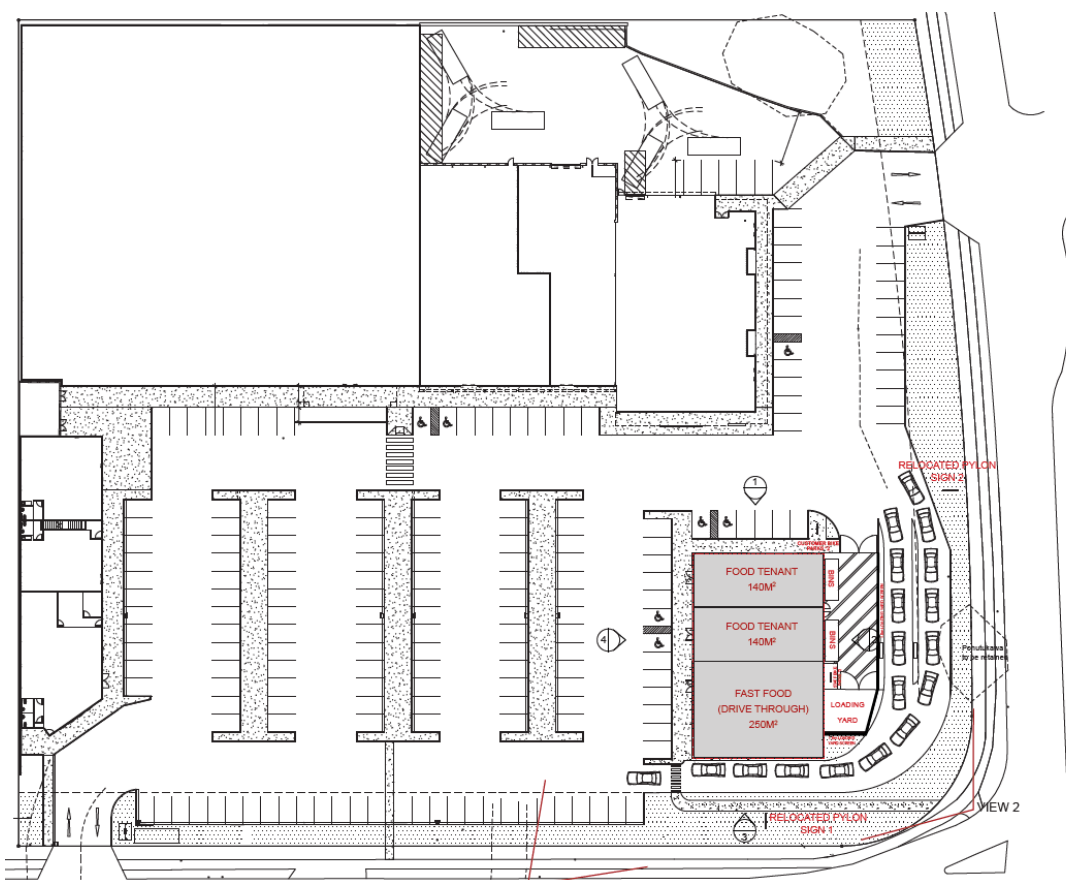


Figure 2: Approved Site Plan.

Effects of the NoR and BRT Project

Submission

14. The NoR proposes to take approximately 2,305m² of land from the eastern and southern road frontages of the Site. This is identified as being predominantly required for the construction of cut and fill batter slopes to integrate the future transport corridor with the Site. A large 'indentation' in the NoR extent (refer Figure 1) is also proposed in the location of the existing vehicle crossing off Lambie Drive. It is understood that this particular area of the NoR will be needed temporarily to re-level the Site with the new road corridor and replace the two-way, all-turns access to the property with a left turn entry/exit only.
15. The area of proposed NoR 2 is currently used for car parking and for Site access, including the service area and a loading bay on the northern side of the building. At least 45 parking spaces associated with the existing retail activities will be lost. It is noted that the Assessment of Effects report for NoR 2 only identifies 36 off-street spaces being lost (refer to page 85 of the AEE) and that these are used to service offices. This is incorrect. The proposed loss of land may also reduce the manoeuvring space for the remaining spaces.
16. The loss of 45 spaces will severely impact the Site's ability to operate efficiently, with consequential adverse effects on the operation(s) of the Centre and individual retailers. In turn, this will give rise to adverse social and economic effects on owners and operators within the Centre and the overall viability of the Centre itself.
17. The Project will prevent right turning movements into and out of the Site at the existing Lambie Drive vehicle crossing. This will require vehicles to utilise alternative routes within the roading network with only left-in or left-out manoeuvres being possible. Alternatively, visitors to the Site may instead utilise the all-turns Cavendish Drive vehicle crossing. Right turning manoeuvres from this access have already been reported to have safety concerns due to illegal traffic movements along the median strip.
18. Additional vehicle movements at the Cavendish Drive vehicle crossing will exacerbate the existing traffic safety concerns, which arise from drivers illegally using the central flush median and the crossing's proximity to the entry/exit driveway serving the property to the west (77 Cavendish Drive, the "Gilmour's" site). It is submitted that, in order to mitigate the increased safety risk from additional vehicles needing to use the Cavendish Drive vehicle crossing, the NoR needs to be extended westwards and show a new signalised intersection with a single, combined entry to serve both the Submitter's and Gilmours' sites.

19. The proposed land take will significantly impact the operation of the resource consented drive-through activity. The widening will take the land associated with the drive through lanes and will prevent this activity from proceeding. It will also take the land associated with the loading and servicing bay and will require the two proposed free-standing signs to be relocated. The NoR is also shown to encroach into the proposed building extension area.
20. Please refer to the **Figure 3** below and **Attachment 2** showing the designation boundary over the approved site plan.



Figure 3: Extent of designation as it relates to the approved resource consent.

21. The taking of the land in the north-eastern portion of the Site will significantly affect the existing service and loading area. This area supports the entire retail development and the loss of access to it will have a number of adverse operational effects on the existing tenants.

22. The Submitter opposes the NoR in its entirety as it relates to 67 Cavendish Drive for the reasons set out in this submission.
23. The Submitter further states that the NoR 2 is contrary to the sustainable management purpose of the Act in so far as the NoR extent fails to properly consider the social and economic wellbeing of:
 - a. The Site's owners and occupiers whose interests are deleteriously affected by the proposed route protection and land take; and
 - b. Ratepayers and taxpayers whose funding of the BRT costs could be reduced if alternative designs were proposed, as set out in this submission.

Relief Sought

24. The Submitter seeks the following relief:
 - a. That the NoR be declined unless the matters raised in this submission are addressed to the satisfaction of the Submitter and the following amendments to the NoR are made:
 - i. That the extent of the NoR along the Site's Lambie Drive frontage be relocated eastwards to avoid the injurious affection caused by the NoR and BRT to:
 - The Submitter's land;
 - Operation of the existing retail centre; and
 - The Submitter's proposed drive-through restaurant project.
 - ii. That the extent of the NoR be extended westwards along Cavendish Drive to include installation of a new signalised intersection with a single, combined entry to serve both the Submitter's and Gilmours' sites.
 - iii. That the width of the NoR along the Site's Cavendish Drive frontage be reduced to avoid unnecessary loss of carparking spaces.
 - b. Any alternative relief of like effect; and
 - c. Any consequential or incidental amendments necessary to achieve the relief sought.

Procedural Matters

25. The Submitter wishes to be heard in support of this submission.

26. The Submitter would consider presenting a joint case with any other party seeking similar relief.
27. The Submitter agrees to participate in mediation or other alternative dispute resolution and would be pleased to discuss the content of this submission with the Auckland Transport and Auckland Council staff.

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Date: 31 March 2023

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