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BARRISTER
LLB/BA

Auckland Council
Manager Regulatory Litigation
Legal and Risk
Mail Room, Basement 1
135 Albert Street
AUCKLAND 1010

By courier

To whom it may concern

Re: Appeals by Alda Investments Ltd and Ors, and by Zabeel Investments Ltd against decisions by Auckland Transport to confirm notices of requirement

1. Please find **enclosed**, by way of service, copies of notices of appeal by Alda Investments Ltd and the trustees of the D E Nakhle Investment Trust, and by Zabeel Investments Ltd, against decisions by Auckland Transport to confirm notices of requirement for the South FTN and Takaanini Level Crossings Projects.

Yours sincerely,



Aidan Cameron
Barrister



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IN THE ENVIRONMENT COURT OF NEW ZEALAND
AUCKLAND REGISTRY

ENV-2025-AKL-000

I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE

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

AND

IN THE MATTER an appeal under s 174 of the RMA against a
decision by Auckland Transport to confirm
notices of requirement for the South Frequent
Transit Network (NoR 4)

BETWEEN **ZABEEL INVESTMENTS LIMITED**

Appellant

AND **AUCKLAND TRANSPORT**

Respondent

NOTICE OF APPEAL AGAINST DECISION TO CONFIRM NOTICES OF
REQUIREMENT

21 FEBRUARY 2025

Counsel acting:
Janette Campbell | Aidan Cameron

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NOTICE OF APPEAL

To: the Registrar
Environment Court
Auckland, Wellington and Christchurch

This document notifies you that:

1. Zabeel Investments Ltd appeals against a decision on the following notice of requirement:
 - a. South Frequent Transit Network: Takaanini FTN – Porchester and Popes Road Upgrades (“**NoR 4**”) for upgrades to Porchester Road between Alfriston Road and Walters Road; and to Popes Road between Takanini School Road and Porchester Road to accommodate general traffic lanes, active mode facilities (ie walking and cycling facilities), and intersection upgrades.
2. Zabeel made a submission on the notice of requirement.
3. Zabeel received notice of the decision on 30 January 2025.
4. The decision was made by Auckland Transport (“**AT**”).
5. Zabeel is not a trade competitor for the purposes of section 308D of the RMA.
6. The decision Zabeel is appealing is the decisions by AT to confirm NoR 4.
7. The site or place to which the requirement applies, of particular relevance to Zabeel, is 354 Porchester Road, Takaanini.

General reasons

8. The general reasons for the appeal are that the decision to confirm NoR 4:
 - a. fails to promote the sustainable management of natural and physical resources, and therefore fail to meet the purpose and principles of the Resource Management Act 1991 (“**RMA**”);

- b. fails to meet the reasonably foreseeable needs of future generations;
- c. fails to enable the social, economic and cultural well-being of the Auckland community to be met;
- d. is inconsistent with the purposes and provisions of the relevant planning documents, including the Unitary Plan and the Regional Policy Statement ("**RPS**");
- e. is inconsistent with Part 2 and other provisions of the RMA, including sections 74 and 75, including the functions of Auckland Council ("**Council**") under s 31;
- f. will generate significant adverse effects on the environment;
- g. is not an efficient use and development of natural and physical resources;
- h. fails to comply with s 171(1)(b) of the RMA, as adequate consideration has not been given to alternative sites, routers or methods of undertaking the proposed works in circumstances where AT does not have an interest in the land sufficient for undertaking the work; and in light of (f) above; and
- i. is not reasonably necessary to achieve the objectives of the requiring authority for which the designations are sought.

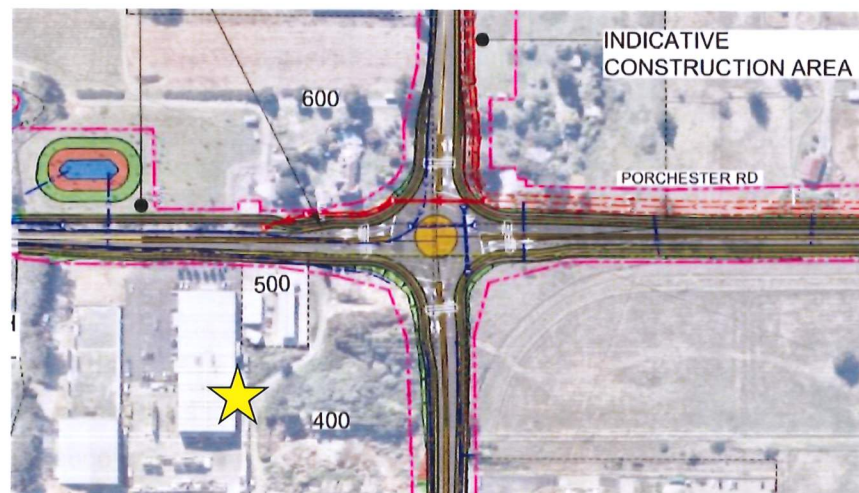
Specific reasons

- 9. Without limiting the generality of the above, additional specific reasons for the appeal are set out below.

Background and introduction

- 10. Zabeel owns the property at 354 Porchester Road, Takaanini.
- 11. The site is zoned Business – Light Industry under the Auckland Unitary Plan (Operative in Part) ("**AUP**").
- 12. The site currently accommodates a PlaceMakers building materials store (located to the north of the site), a Mobil service station and a recently completed high-end logistics warehouse. These activities were

constructed and operate under approved land use consents. The proposed designation, shown in the image below, covers areas of the PlaceMakers carpark and Mobil forecourt, including areas where petrol tanks are located below ground. The works area appears to also overlap with approved car parking (which in total was for 74 spaces) for PlaceMakers and landscaping required by the Takanini Precinct and the approved resource consents. The site at 354 is identified by the yellow star below, and is the only site on the intersection which is currently developed:



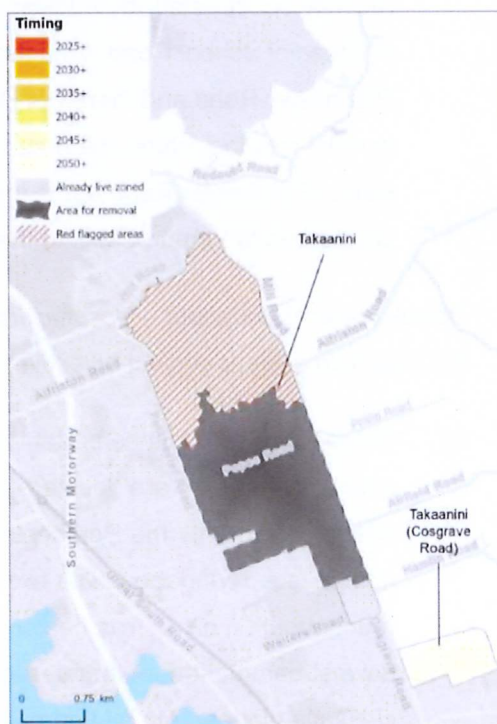
13. In closing submissions for the requiring authority, the land requirement was amended to reduce the extent of land within the site.
14. Despite those changes, the proposed two-lane roundabout continues to extend across the as-yet undeveloped corner of the site, near the intersection of Porchester and Popes Roads. Prior to the NoR being notified, Zabeel had been advancing plans for a fast food outlet on that corner.
15. The pink line above, which shows the extent of designation originally required, extends a distance of 6 m from the edge of physical works. Zabeel has been told by the requiring authority that this is required to accommodate construction and that provision has been made for a moderate batter slope (shown in light green), despite the fact that the land is flat in this location.

Does not take into account recent planning decisions

16. On 2 November 2023 the Planning, Environment and Parks Committee resolved to adopt a new Future Development Strategy. Specifically resolution clause c) states:

c) tuhi ā-taipitopito / note that once published, the Future Development Strategy replaces the current Development Strategy (2018) and the Future Urban Land Supply Strategy (2017) and will be considered part of the Auckland Plan 2050.

17. Relevant to the Takanini area, the adopted Future Development Strategy has removed a large amount of land that had previously been earmarked for development and has a significant portion of land “red flagged” alongside the Porchester Road corridor. The below image depicted the newly adopted FDS areas:



18. It is not clear whether the necessity for the project, or at a more detailed level the traffic modelling volumes take these anticipated zoning changes into account.

Inadequate assessment of alternatives generally

19. The NoR and the Assessment of Alternatives is flawed as it does not appropriately account for or place a greater weight on the loss of already zoned urban land (and in particular zoned industrial land) over Future Urban zoned land. This failure is further exacerbated by the FDS direction that the adjoining Future Urban Zone be “downzoned”.
20. The NoR in this location should be modified to avoid the loss of urban zoned land.

Infrastructure (including existing shared path facilities), kerbing and channels are already in place

21. The western side of Porchester Road was upgraded in 2016 with works which widened the carriageway, provided a 3m shared path, relocated and upgraded the utility services and watermain and provided a piped stormwater drainage system. The stormwater system connects to the recently constructed (by Auckland Council) treatment wetland at the end of Takanini School Road. With the FDS signalling no development east of Porchester Road and therefore little change in people demand along this corridor into the future, the recently upgraded facilities along the western side of Porchester Road are fit for purpose today and therefore should be considered fit for purpose into the future.

Double lane roundabout - Insufficient assessment of alternatives and not necessary to achieve project objectives

22. There has been an inconsistent design approach for the various corridor intersections that are located alongside the Porchester/Popes Road intersection. Only the Porchester/Popes Road intersection comprises a double lane roundabout with two approach and two exit lanes. No other roundabout on Porchester Road or Popes Road (all downstream/upstream intersections or road mid-blocks) provides for two circulating lanes, with all approaches and circulating lanes being a single lane.
23. The proposed intersection at Porchester Road/Popes Road includes active mode crossings at the roundabout. The proposed pedestrian/cycle crossings on multi-lane approach/exits are not safe. Auckland Transport's own design manual notes that single lane roundabouts should be used when catering for pedestrians and cyclists, with the NZ Transport Agency

Waka Kotahi guidance also not supporting zebra crossings on multi-lane roads. To cross a four lane road, crossing points should be signalised, and would typically be provided midblock and not at the intersection.

24. The intersection could be signalised (as demonstrated through the evidence of Mr Church for Zabeel). If that were the case, and the alignment altered to reflect that, there would be no need for a land requirement as part of the two-lane roundabout, which would result in a substantially reduced impact on 354 Porchester Road. A signalised intersection also provides safe crossing facilities for users of the shared path, which includes school children that attend the local schools located on Porchester Road.

Overreach

25. Zabeel's land is not zoned future urban, but is live-zoned urban land. It is valuable land, planned for productive use. Designation of such land should not be undertaken lightly, particularly when development is yet to occur and will be constrained by the designation, particularly for such a protracted period. If a designation is to proceed, it should only be on the basis of detailed design, where it is certain that land is required.
26. The designation appears extremely unlikely to be constructed in the way suggested by the plans. Pedestrian crossings are paired with multiple traffic lanes in a way that is unsafe and the Porchester/Popes' Road intersection is shown with two completely different approaches between NORs 2 (roundabout) and 4 (signalised).
27. It is essential that AT show a need for the designation, which it may have done in the generality, but has failed to do as to the specific impact on Zabeel's property. This designation currently seeks to preserve flexibility for AT, but at a cost to adjacent landowners that cannot be justified.

Planning blight due to extended lapse period of 15 years

28. The NOR proposes a ten year extension beyond the ordinary five year lapse period. While such an early approach to designation might have its purposes in currently undeveloped areas, making sure that landowner are alive to the restrictions on their land, that is not the case in this already urbanised zone.

29. Zabeel has active plans for further development of this industrially zoned site. Confirmation of the proposed extent of the designation as shown in the NOR will create difficulties in obtaining approval from the requiring authority for these plans under s176 and s178 of the RMA. These difficulties are compounded by the length of time that such approval would be required for.
30. The designation would stand in the way of reasonable use of the land as proposed by its owner.

Lack of Integration for future uses

31. The concept design including NoR boundary/location will create integration problems for future development of the site. This includes:
 - a. The contours and future swales appear to preclude any additional access points from the site onto Popes Road,
 - b. The contours raise both Popes Road and Porchester Roads and will either need to be replicated within the Zabeel site (creating wider issues for flooding and additional costs for importation fill), have retaining walls constructed (additional cost to Zabeel for construction but also consenting within a floodplain), or waste land through battering.
 - c. There is no certainty that the existing access arrangement (in particular right hand turning from Porchester Road into the site) will be maintained.
32. Additionally, the Takanini Precinct and Precinct Plan contains landscaping requirements which Zabeel will need to comply with in its proposed development. If the designation means that these obligations cannot be met (i.e the planting shown on the Precinct Plan is not supported by AT) it will tip the proposed development into non-complying activity status (Rule 1438.6.1.8(2)). If landscaping remains possible, then care will need to be taken to ensure that that required landscaping is not compromised in any way during construction of the designated works.

Inconsistent with approved resource consents

33. Zabeel is liable for ongoing and continued compliance with the conditions of its approved land use consents, which include specific landscaping along the Porchester Road frontage and operation of activities (including carparking areas) in accordance with approved plans.
34. The designation and associated works will remove features of the approved land use consents.
35. There is no mechanism proposed to address the resultant non-compliance with approved land use consents.

Flooding

36. The site is already flood prone as is clearly shown on Auckland Council's GIS maps including the recently published flood maps on Council's "Flood Viewer" website.
37. Extensive analysis in conjunction with Council's Healthy Waters team was undertaken at the time of design of the Placemakers store and logistics warehouses.
38. The Assessment of Flooding Effects Report prepared by AT provides no specific assessment for the length of Porchester Road between the Papakura Stream bridge and Popes Road despite there being a 200 cumec flow at that point, a large portion of which flows across Porchester Road and into the subject site.
39. It is not possible to alter the western side of Porchester Road without significantly and adversely affecting the flood levels, conveyance of overland flows and floor level freeboards on Zabeel's property. There is no confirmation that the conditions on flood levels could be achieved.
40. Conveyance and treatment on Popes Road and the west side of Porchester Road by swales is unnecessary due to the presence of Auckland Council's new wetland that was commissioned recently to treat the runoff from this subcatchment.
41. Leaving the status quo on the western side of Porchester Road by moving the works comprised in NOR4 to the eastern side of Porchester Road

seems a logical and simple engineering solution to avoid serious and complex adverse effects on developed industrial properties.

Conditions do not provide effective mitigation

42. Finally, the conditions do not address the concerns of Zabeel, and nor do they provide for effective mitigation (including for the reasons set out in Zabeel's submissions on the NoRs).

Relief sought

43. Zabeel seeks that NoR 4 is cancelled.
44. In the alternative, Zabeel seeks that NoR4 is removed from its site at 354 Porchester Road, for the reasons set out above, and that the necessary widening of the corridor to provide for the proposed rapid transit network is located on the Future Urban zoned land to the east of the current Porchester Road alignment.
45. As a further alternative, Zabeel seeks conditions to ensure that AT addresses each of the issues raised above and by the appeal.
46. Zabeel seeks an order for their costs of and incidental to this appeal.

Documents

47. Zabeel attaches the following documents:
- a. a copy of its submission on NoR 4;
 - b. a copy of the relevant decision; and
 - c. a list of names and persons to be served with a copy of this notice.

.....
Janette Campbell | Aidan Cameron

As duly authorised signatories for Zabeel Investments Ltd

Dated 20 February 2025

Address for service for the appellant:
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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 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

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

How to obtain copies of documents relating to appeal

6. The copy of this notice served on you does not attach a copy of the relevant submission (or recommendation) and (or or) the relevant decision (or part of the decision). These documents may be obtained, on request, from the appellant.

COPY OF THE APPELLANT'S SUBMISSION ON NoR 4

COPY OF AUCKLAND TRANSPORT'S DECISION

**LIST OF NAMES AND ADDRESSES OF PERSONS SERVED WITH A COPY
OF THIS APPEAL**

