

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2016-AKL-**

**IN THE MATTER**

of the Local Government (Auckland  
Transitional Provisions) Act 2010  
("LGATPA") and the Resource  
Management Act 1991 ("RMA")

**AND**

**IN THE MATTER**

of an appeal under section 156(1) of the  
LGATPA

**AND**

**IN THE MATTER**

of Topic 074 - Designations of the  
Proposed Auckland Unitary Plan

**BETWEEN**

**JAMES CHRISTOPHER MAWSON**

**Appellant**

**AND**

**AUCKLAND TRANSPORT**

**Respondent**

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**NOTICE OF APPEAL TO ENVIRONMENT COURT  
BY JAMES MAWSON**

**26 NOVEMBER 2016**

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**JAMES MAWSON ("Appellant")** appeals against part of the requiring authority decision of Auckland Transport in respect of the Proposed Auckland Unitary Plan ("**Unitary Plan**"), insofar as it relates to Designation 1453.

### **Decision**

1. The Appellant has the right to appeal under section 157(1) of the LGATPA because Auckland Transport rejected a recommendation of the Auckland Unitary Plan Independent Hearings Panel ("**Panel Recommendation**"),<sup>1</sup> which was then accepted by Auckland Council in its decision ("**Council Decision**") in relation to Designation 1453.<sup>2</sup> The Appellant addressed the relevant aspects of Designation 1453 in its submission on the Unitary Plan.<sup>3</sup>
2. The Appellant received notice of:
  - (a) the Panel Recommendation on 27 July 2016;
  - (b) the Council Decision on 19 August 2016; and
  - (c) Auckland Transport's requiring authority decision on 30 September 2016 ("**Decision**").
3. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("**RMA**").

### **Parts of the Decision that the Appellant is appealing**

4. The Appellant appeals the part of the Decision that seeks to retain Designation 1453.

### **General reasons for appeal**

5. The reasons for this appeal are that retaining Designation 1453:
  - (a) will not promote sustainable management of resources, will not achieve the purpose of the RMA and will be contrary to Part 2 and other provisions of the RMA;
  - (b) will not meet the reasonably foreseeable needs of future generations;
  - (c) will not enable social, economic and cultural wellbeing;
  - (d) is inconsistent with the relevant provisions of other planning documents;
  - (e) will not avoid, remedy or mitigate adverse effects on the environment; and

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<sup>1</sup> Report to Auckland Council, Hearing Topic 074 Designations - Auckland Transport, Designations, modifications and requirements classified as moderately complex, David Wren, May 2016, at page 174 (extract attached as **Attachment One**).

<sup>2</sup> Decision of Auckland Council, Attachment E, at page 15 (extract attached as **Attachment Two**).

<sup>3</sup> Primary submission on the Unitary Plan, James Christopher Mawson, 26 February 2014, submission 9313-1 (attached as **Attachment Three**).

(f) is not reasonably necessary for achieving the objectives of Auckland Transport.

6. The Appellant also considers that Auckland Transport has not given adequate consideration to alternative sites, routes or methods for undertaking its objectives, as required by the RMA.

**Specific reasons for appeal**

7. In particular, and without limiting the generality of paragraphs 5 and 6 above, the Appellant seeks reinstatement of the Panel Recommendation that Designation 1453 be withdrawn in its entirety as:

- (a) The Titirangi Road rail overbridge to the south of the New Lynn Site functions as a chokepoint. There does not appear to be any intention to undertake bridge widening to address that chokepoint. Therefore, any proposed road widening would fail to achieve Auckland Transport's objectives.
- (b) The works that the road widening designation is to provide for, and the timing and probability of these works occurring are unclear. As a result:
  - (i) Auckland Transport has failed to demonstrate how adverse effects will be avoided, remedied or mitigated, particularly where Auckland Transport has not proposed any designation conditions;
  - (ii) due consideration is unable to be given to alternative sites, routes, or methods of undertaking the work.
- (c) The inclusion of Designation 1453 will have significant impacts on the local community, including:
  - (i) loss of parking spaces for local shops;
  - (ii) increased traffic pollution;
  - (iii) impeded driveway access; and
  - (iv) reduction of neighbouring residences' landholding.
- (d) The benefits of confirming Designation 1453 are not clear, and there is no justification for it.
- (e) The inclusion of Designation 1453 will result in significant costs, associated with additional and unnecessary consenting requirements.

**Relief sought**

8. The Appellant seeks that:

- (a) Designation 1453 be withdrawn in accordance with the Panel Recommendation;

- (b) such consequential or related relief as may be necessary to give effect to its concerns; and
- (c) costs

**Service**

9. An electronic copy of this notice is being served today by email on the Auckland Council at [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz). Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.

**Attachments**

10. Copies of the following documents are attached to this notice:
- (a) **Attachment One:** The relevant parts of the Panel's Recommendation.
  - (b) **Attachment Two:** The relevant parts of the Decision.
  - (c) **Attachment Three:** The Appellant's submission

**JAMES MAWSON:**

**Signature:**   
James Mawson

**Date:** 26 November 2016

**Address for Service:** 98 Titirangi Road

**Telephone:** 8277132

**Email:** jamesm@greenbay.school.nz

TO: The Registrar of the Environment Court at Auckland.

AND TO: Auckland Council

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

#### *How to become party to proceedings*

1. You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.
2. To become a party to the appeal, you must, 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 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to [unitaryplan.ecappeals@justice.govt.nz](mailto:unitaryplan.ecappeals@justice.govt.nz)) and serve copies of your notice by email on the Auckland Council (to [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz)) and the appellant.
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 RMA.
4. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

#### *Advice*

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

**ATTACHMENT 1**

**Panel Recommendation**

**ATTACHMENT 2**

**Council Decision**

**ATTACHMENT 3**

**James Mawson - Primary Submission 9313-1 on Designation 1453**

ATTACHMENT 1  
Panel Recommendation

Table reference No.	AT031
Requiring authority	Auckland Transport
Designation number	1453
Designation purpose	Road Widening Titirangi Road
Location	2-14, 1-11, 17-35, 30, 40, 44-54, 45-49, 53, 58-64, 65-171A, 68-68A, 74-114 and 118-160 Titirangi Road, 2 Margan Avenue and 1 and 2 Northhall Road, Titirangi.
Designation given effect to	No
Lapse date in operative plan	Default – November 2015
Rollover designation with no modifications	No
Description of the modification	Auckland Transport has requested that this designation be modified to allow a 15-year lapse date from being operative in the Unitary Plan unless given effect to prior. In addition Auckland Transport in its submission has requested that the mapped extent of the designation be reduced.
Notice of requirement	NA
Land ownership	The designation includes land not owned by the requiring authority. The background material from the Auckland Transport notes that approximately 15 property frontages within the designation have been acquired and/or vested as road.
Land owned by the requiring authority	As above.
Submitter	There a number of submissions in respect of this designation as follows: Auckland Transport – 6108-3 Brijen Shah – 1370-1 Brooke Nisbett – 1005-1 Bunnings Limited – 6096-68 Caroline Lediard – 1000-1 Elaine M Berryman 1126 -1 and 2 James C Mawson and others – 9313-1 Jan E Tremewan – 1631-1 Karen Mawson – 2189-1 Karina Enser – 917-1 Mr and Mrs Alexander – 72-1 Raymond Waru – 1593-1 Steven Gould – 795-1 Tracy Rodwell – 1536-1
Matters addressed in submission	The submission from Auckland Transport requests that the maps be amended to be consistent with the description in the operative district plan. This involves some amendments at the Great North Road end of the designation.  The other submissions generally seek the deletion of the designation from some or all of the affected properties.
Engagement by requiring authority with submitters.	Auckland Transport has advised that it is currently awaiting plan review showing reduced dimensions before contacting the submitters.  Auckland Transport has had discussions with Bunnings in 2014 and an agreement was drafted but not yet signed.

	Auckland Transport will send another letter to re-engage with the submitter.
Assessment and reasons	<p>Under section 78 of the Local Government (Auckland Transitional Provisions) Act 2010 the Panel has no powers to deal with the lapse dates of designations and accordingly I make no recommendation on the designation. I understand that any application to extend lapse times for designations needs to be made to the Auckland Council.</p> <p>At this time it is not possible to provide a considered assessment of the effects of the designation on the submitters' properties as the requiring authority is reviewing the extent of the designation. Effects will vary depending on the road design and the quantum of land required from properties affected.</p> <p>It is recommended the requiring authority provides additional information about the extent of the designation and confirm the required extent of the designation.</p>
Recommendation to Panel	NA
Response from requiring authority	Neutral. Requests mediation and hearing.
Reporting officer comment on response	<p>Following the pre-hearing meeting in 16 September the Panel has clarified its position on the lapse date issue. It is now appropriate to consider the lapse date matter.</p> <p>In considering a lapse date modification I consider that it appropriate to use the tests in section 184 and section 185A of the Resource Management Act 1991 as a guide. These are whether substantial progress or effort has been made towards giving effect to the designation and is continuing to be made.</p> <p>Auckland Transport has advised the following:</p> <ol style="list-style-type: none"> <li>i. approximately 15 property frontages have been acquired;</li> <li>ii. a number of recent studies have impacted upon the need for the designation;</li> <li>iii. Auckland Transport is proposing to trial the part time operation of mid-block signals for pedestrian crossings on Titirangi Road.</li> </ol> <p>I consider that the requiring authority has made some progress towards implementing the designation. However it is unclear as why a 15-year period is considered necessary by the requiring authority.</p> <p>The requiring authority has provided an assessment of the modification against the objectives and policies of the Proposed Auckland Unitary Plan and has concluded that the designation is consistent with the relevant policies.</p>

	<p>The requiring authority provided assessment of alternatives. These involve the widening of other roads such as Seabrook Avenue and West Lynn Road where no road widening has been proposed or taken. This would involve moving the road widening to another road that currently does not have an arterial road function.</p> <p>Auckland Transport and Vector have agreed a Vector access condition on this designation. As it is recommended to be deleted no condition is necessary.</p>
<p>Panel update</p>	<p>The Panel heard evidence on Designation 1453 from:  Auckland Transport  Bunnings Limited  Breijen Shah  Carline Lediard  Elaine Berryman  James C Mawson  Jan E Tremewan  Jean FTuhipa  Mr and Mrs Alexander  Steven Gould  Colin Newby.</p> <p>Bunnings raised issues regarding the ability of Auckland Transport to give effect to the road widening designation in the vicinity of its New Lynn site as the railway bridge just south of the site constrains the width of the carriageway in this location. Bunning considered that given that there is no evidence of any intention to carry out the works to widen the bridge within the foreseeable future the designation will not achieve Auckland Transport's objectives.</p> <p>Bunnings also raised jurisdictional issues regarding the designation given the land has already been taken for road widening purposes.</p> <p>Breijen Shah, Carline Lediard, Elaine Berryman, James C Mawson, Jan E Tremewan Jean FTuhipa Mr and Mrs Alexander, Steven Gould and Colin Newby are a group of residents with interests in the designated land. They gave evidence opposing the designation on the grounds that:</p> <ul style="list-style-type: none"> <li>• the Council had ceased purchasing properties at least 20 years ago and was not pursuing the original objective of road widening</li> <li>• reasonable progress has not been made in giving effect to the designation.</li> <li>• the designation is not necessary for cycling infrastructure as Seaforth Road is the identified cycle network route</li> <li>• it is not necessary for street amenity.</li> </ul> <p>The evidence of Mr Carter provided on behalf of Auckland Transport states that the project objective for the Titirangi</p>

	<p>Road designation is to provide for improved transport services and choices to the New Lynn end of Titirangi Road including, but not limited to, improved pedestrian environments, and bus and bike services, as well as intersection improvements, whilst managing adverse effects on the local environment and pre 1944 buildings. Mr Carter also states the designation will deliver some of Auckland Transport's general objectives.</p> <p>Mr Carter set out in his rebuttal evidence that he agreed that the railway over bridge presents a potential constraint and noted that it is possible that a future road widening project would incorporate the replacement of this bridge.</p> <p>The Panel has concerns about the lack of clarity regarding the works the road widening designation is to provide for, the timing and probability of these works occurring, particularly given the constraints resulting from the pinch point created by the railway over bridge foundation columns and the absence of any notice of requirement to provide for the bridge widening.</p> <p>Because it is unclear as to the works the designation will provide for, it is difficult to assess who will be affected by the works and the extent of any affects. It is noted that Auckland Transport has not proposed any designation conditions. Usually where construction or operational effects can be identified conditions are imposed to manage such effects. It is assumed that given the lack of certainty regarding the types of work to be undertaken mitigation measure are unable to be identified.</p> <p>Consideration of alternative sites, routes, or methods of undertaking the work is also problematic given the lack of certainty of the types of work to be undertaken.</p> <p>The Panel also has concerns that pinch point created by the railway over bridge foundation columns and the absence of any notice of requirement to provide for the bridge widening will frustrate Auckland Transport's objective of providing for improved transport services and choices to the New Lynn end of Titirangi Road.</p> <p>It is for the reasons discussed above that the Panel consider it is not in a position to recommend the Designation 1453 should be confirmed.</p>
Recommendation from Panel	That Designation 1453 be withdrawn.
Reasons	As set out above.

## AT031 Attachment 1 changes to text of the Proposed Auckland Unitary Plan

Delete all of Designation 1453 from the schedule and the text.

## **AT031 Attachment 2 changes to maps of the Proposed Auckland Unitary Plan**

Delete all of Designation 1453.

*and Departure Path Protection included in the Proposed Auckland Unitary Plan subject to the further modification shown in Attachment 1.”*

4. Report entitled “*Report to Auckland Council Hearing topic 017 Designations – Airways Corporation of New Zealand Limited – Minor matters and errors, May 2016*”

That the following Panel recommendation at section 4 of the above report be **ACCEPTED**:

*“The Auckland Unitary Plan Independent Hearings Panel recommends that Auckland Council recommends to the requiring authority that it confirms the further modifications shown in Attachment 2 recommended in response to submissions on designation 101.”*

5. Report entitled “*Report to Auckland Council Hearing topic 074 Designations – Auckland Transport – Minor matters and errors, May 2016*”

That the following Panel recommendation at section 4 of the above report be **ACCEPTED**:

***“6.1. Notices of requirement for new designations included in the Proposed Auckland Unitary Plan at the time of notification.***

*The Panel recommends to Auckland Council that it recommends to the requiring authority that the notice of requirement R1405 be withdrawn.*

***6.2. Notices of requirement for existing designations included in the Proposed Auckland Unitary Plan with or without modification on which submissions have been lodged; and where issues have been resolved, by mediation, direct discussions, the evidence exchange process, or where submissions were not pursued, or left unrepresented by evidence at the hearing.***

- i. The Panel recommends to Auckland Council that it recommends to the requiring authority that the notices of requirement 1607 and 1608 be withdrawn.*
- ii. The Panel recommends to Auckland Council that it recommends to the requiring authority that the notices of requirement 1408, 1418, 1422, 1423, 1424, 1425, 1426, 1427, 1467, 1469 and 1574 be confirmed subject to the further modifications included in Attachment 1 and Attachment 2.”*

6. Report entitled “*Report to Auckland Council Hearing topic 074 Designations – Auckland Transport – Designations, modifications and requirements classified as moderately complex, May 2016*”

[Designations: 1403, 1407, 1429, 1434, 1441, 1442, 1444, 1445, 1446, 1447, 1449, 1558, 1560, 1564, 1567, 1575, 1583, 1584, 1585, 1588, 1589, 1590, 1591, 1593, 1594, 1603, 1604, 1615, 1617, 1621, 1624, 1627, 1638, 1642, 1646, 1647, 1648, 1649, 1654,

1656, 1664, 1665, 1668, 1672, 1673, 1675, 1676, 1679, 1681, 1682, 1686, 1694, 1703, 1711, 1712, 1800, 1801, 1802, 1809, 1833, 1688, 1438, 1810, 1437, 1467, 1420, 1428, 1468, 1622, 1623, 1639, 1652, 1653, 1643, 1618, 1655, 1644, 1599, 1626, 1709, 1685, 1616, 1592, 1697, 1587, 1657, 1619, 1699, 1700, 1701, 1633, 1806, 1404, 1640, 1609, 1571, 1572, 1573, 1402, 1614, 1452, 1834, 1401, 1431, 1435, 1455, 1433, 1611, 1683, 1448, 1454, 1462, 1562, 1643, 1669, 1671, 1677, 1702, 1807, R1430, R1454, R1458, R1460, R1461, R1462, R1463, R1464, R1465, R1466, R1557, R1559, R1568, 1803, R1804, R1811, R1813, R1814, R1815, R1816, R1817, R1819, R1820, R1821, R1823, R1824, R1826, R1827, R1828, R1830, R1831, 1453 and 1620]

That the following Panel recommendation at section 6 of the above report be **ACCEPTED**:

**6.1. Notices of requirement for new designations included in the Proposed Auckland Unitary Plan at the time of notification.**

*The Panel recommends to Auckland Council that it recommends to the requiring authority that the following notices of requirement be confirmed, subject to any further modifications as identified in the table below and contained in the attachments to the relevant report table.*

*A “yes” is used in the table to indicate where the Panel is recommending further modifications. Refer to the report table referenced for the details of the further modifications recommended.*

<i>Notice of Requirement No.</i>	<i>Report table No.</i>	<i>Additional text modifications recommended</i>	<i>Additional viewer map modifications recommended</i>
<i>R1557</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1559</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1568</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1832</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1829</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1812</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1814</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1804</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1815</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1816</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1817</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1824</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1826</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1818</i>	<i>AT040, AT039</i>	<i>Yes</i>	
<i>R1831</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1811</i>	<i>AT040</i>	<i>Yes</i>	<i>Yes</i>
<i>R1819</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1820</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1826</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1822</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1825</i>	<i>AT040</i>	<i>Yes</i>	
<i>R1827</i>	<i>AT040</i>	<i>Yes</i>	

**6.3. Notices of requirement for existing designations included in the Proposed Auckland Unitary Plan with or without modification on which submissions have been lodged, or were modified when included in the Proposed Auckland Unitary Plan; and where issues were contested in evidence at the hearing.**

The Panel recommends to Auckland Council that it recommends to the requiring authority that the notices of requirement for the following designations be confirmed, subject to any further modifications identified in the table below and contained in the attachments to the relevant report table.

A “yes” is used in the table to indicate where the Panel is recommending further modifications. Refer to the report table referenced for the details of the further modifications recommended.

Designation No.	Report table No.	Additional text modifications recommended	Additional viewer map modifications recommended
1643	AT002, AT039	Yes	
1655	AT004	Yes	
1807	AT005, AT039	Yes	
1677	AT012, AT039	Yes	Yes
1619	AT015	Yes	Yes
1699	AT016	Yes	
1700	AT016, AT039	Yes	
1701	AT016	Yes	
1633	AT017, AT039	Yes	Yes
1806	AT018	Yes	Yes
1671	AT022, AT039	Yes	
1673	AT022, AT001	Yes	

The Panel recommends that the following designations be withdrawn:

Designation No.	Report table No.
1453	AT031
1620	AT034

**6.4. Notices of requirement for existing designations included in the Proposed Auckland Unitary Plan with modification not subject to submissions.**

The Panel recommends to Auckland Council that it recommends to the requiring authority that the notices of requirement for the following designations be confirmed, subject to any further modifications identified in the table below and contained in the attachments to the relevant report table.

A “yes” is used in the table to indicate where the Panel is recommending further modifications. Refer to the report table referenced for the details of the further modifications recommended.

ATTACHMENT 3  
James Mawson's Primary Submission

#9313

James Christopher Mawson      Opposing designation number 1453, widening of Titirangi Rd

I do not wish Titirangi Rd to be widened because

- The local shops will lose their parking spaces and this will lead to their loss of passing trade which is considerable. This will mean residence will lose these shops.
- Extra lanes will make Titirangi Rd more attractive to drivers. This will lead to more traffic which will lead to more pollution. The houses would also be closer to pollution (with gardens gone). This is unhealthy and therefore inappropriate for this residential area.
- A busier road will be harder for residents to exit and enter driveways. Due to the number of driveways this will create multiple hazards for all road users.
- Widening the road will not remove the 'bottleneck' where the road returns to one lane. In other words, the 5 o'clock congestion into Titirangi village will not be addressed.
- There is significant local opposition to this project (see attached signatures).
- We have just re-built our house because of the size of the garden. Gardens in this area are difficult to afford. We do not wish our two children to lose a third of our garden.
- The reduction of land to properties will reduce the quality of properties and therefore the quality of the area.