

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of an appeal under section 174 of the
Act

BETWEEN

LUKE STREET PROPERTY
LIMITED AND LEADER PRODUCTS
LIMITED

ENV-2010-AKL-000025

Appellant

AND

THE MINISTER OF EDUCATION

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge M Harland sitting alone under section 279 of the Act

IN CHAMBERS at Auckland.

CONSENT ORDER

Introduction:

1. The Court has read and considered the appeal, the reply to appeal and the memorandum of the parties dated 16 August 2010.
2. Auckland City Council is the only interested party under section 274 of the Resource Management Act 1991 ("RMA").
3. All parties have signed the memorandum setting out the relief sought.

The Court is making this order under s279(1)(b) of the RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to



section 297. The Court understands for present purposes that all parties to the proceedings:

- (a) have executed the memorandum (unless stated otherwise for specific reasons) requesting this order; and
- (b) are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the RMA, including in particular Part 2.

Order

5. Therefore the Court orders, by consent, that the decision of Minister of Education under section 172 of the RMA to confirm the notice of requirement for the proposed Luke Street Special School ("the School") to be located at 32-44 Luke Street, Otahuhu, Auckland City, is amended by amending the conditions of the designation in accordance with the Revised Conditions of Designation attached as Annexure 1.
6. The appeal is otherwise dismissed.
7. There is no order as to costs.

DATED at Auckland this 17th day of August 2010

M Harland

M Harland
Environment Judge



Annexure 1: Revised Conditions of Designation



**LUKE STREET SPECIAL SCHOOL, NOTICE OF REQUIREMENT FOR A DESIGNATION:
DECISION OF REQUIRING AUTHORITY**

Full text copy of the conditions - Minister's decision version

- (1) The designation shall lapse on the expiry of 10 years from the date on which it is included in the District Plan if it has not been given effect to before the end of that period.
- (2) The height of all buildings (excluding any goal posts associated with sporting activities) shall not exceed 10m except for assembly halls, recreational facilities, and cultural or performance facilities.
- (3) No part of any building shall project above a 45° recession plane measured from any point 2 metres above the ground level along any boundary of the site.
- (4) The minimum building setbacks to be met are as follows: from the Luke Street boundary – 3m; the western and rear boundaries – 8m; eastern boundary – refer condition 8 below.
- (5) A fence shall be erected at the cost of the Requiring Authority along the full length of the common boundary between 32-44 Luke St and 50 Luke St. From the Luke St boundary, no new fence shall be erected for the first 1.8m. From a distance of 1.8m from Luke St to 137m from Luke St a solid (minimum 200mm thick) fence shall be constructed along the boundary. The fence shall be a minimum of 3m high (above existing ground or finished ground level). Where existing buildings are on or very near the boundary from 1.8m to- 137m from Luke St the fence may be integrated and aligned into those buildings. Beyond 137m from Luke St to the northern boundary a new Hurricane wire fence with 3 barbed wires atop shall be constructed to a minimum height of 2m (above existing or finished ground level). The fence shall be erected prior to the occupation and use of the site as a school.
- (65) Noise from all activities on the site shall be subject to the following standards:

- (i) The noise level from any activities within the site, except where otherwise specified below at (iv), measured at or within the boundary of any adjacent site (not held in common ownership) zoned Business 4 shall not exceed:

7.00am – 10.00pm	60 dBA L ₁₀
10.00pm – 7.00am	60 dBA L ₁₀

- (ii) The noise level from activities within the site, except where otherwise specified below at (iv), shall not exceed the following limits when measured at or within the boundary of any residential zoned site:

Monday to Saturday 7.00am – 10.00pm	55dBA L ₁₀
Sunday & Public Holidays 9.00am – 6.00pm	55dBA L ₁₀
All other times	45dBA L ₁₀ 75dBA L _{max}



- (iii) Noise levels shall be measured and assessed in accordance with the requirements of NZS 6801:1991 "Measurement of Sound" and NZS 6802:1991 "Assessment of Environmental Sound".
- (iv) The above limits shall not apply to noise generated by normal school related outdoor activities on any parts of the site between the hours of 8.00am and 6.00pm.
- (v) Sound from construction activity shall not exceed the limits recommended in and shall be measured and assessed in accordance with NZS 6803:1999 "Acoustics – Construction Noise".

(87) In the event that any archaeological sites or remains are discovered during the earthworks, then the works at that place of discovery will cease immediately and the appropriate statutory authorisations or consents obtained.

(98) In consultation with the adjoining owners, the Requiring Authority shall, establish a 'separation distance' from any existing buildings or plant at 46-62 Luke St that contain refrigeration equipment or piping. Existing buildings or plant for the purposes of this condition shall be those which existed at the date of the recommendations on this Requirement on behalf of the Auckland City Council.

The 'separation distance' shall be determined by a person suitably qualified and experienced in the assessment and management of hazardous facilities and substances based on the following recognised industry codes of practice:

- AS/NZS 2022: 2003 Anhydrous Ammonia – Storage and Handling
- AS/NZS 1677.2:2000 Refrigerating Systems – Safety Requirements for Fixed Applications

The separation distance shall be not less than 25m, and no buildings shall be established within this 'separation distance'.

(109) ~~Prior to commencement of the school activity, the Requiring Authority shall prepare an Emergency Management Plan ("EMP") that incorporates the response to a toxic gas release from the property at 46-62 Luke Street, Otahuhu.~~

An Emergency Management Plan ('EMP') shall be prepared, at the cost of the Requiring Authority and in consultation with the owner and occupier of 50 Luke Street, by a suitably qualified person taking into account all of the various emergency and hazardous issues that may arise as a result of activities that occur at 50 Luke St. Copies of the EMP shall be provided to Council, the NZ Fire Service and the owner and occupier of 50 Luke Street.

The Requiring Authority shall engage in a consultative manner with the owner and occupier of 50 Luke Street to have the EMP reviewed as required and in any event no later than on each third anniversary of the opening of the school to take into account any changes to regulations, procedures and methodologies that may occur over time. Copies of any reviewed EMP shall be provided to the Council, the NZ Fire Service and the owner and occupier of 50 Luke St.



The EMP shall be completed prior to the occupation of a school on the site and will remain in place as long as 50 Luke St is used for activities that may give rise to hazardous emergencies.

The EMP shall be developed and maintained in accordance with the Ministry of Education's own Emergency Response Management Plan guidelines as well as the guidance prepared by ERMA and the Department of Labour and must address the matter of what triggers and methods are used to identify any potential risk events.

The EMP shall include regular (at least 12 monthly) drills. The Requiring Authority shall invite the operator of the factory at 46-62 Luke Street to participate in these drills.

