

IN THE ENVIRONMENT COURT
AUCKLAND

ENV-2009-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal against decisions of the Auckland Regional Council on proposed private change 11 and change 12 to the Auckland Regional Policy Statement and Variation 2 to the Proposed Auckland Regional Plan: Air Land and Water

BETWEEN PAPAURA DISTRICT COUNCIL

Appellant

AND AUCKLAND REGIONAL COUNCIL

Respondent

NOTICE OF APPEAL TO ENVIRONMENT COURT
11 August 2009

TO: The Registrar
Environment Court
AUCKLAND

1. Papakura District Council (**PDC**) appeals against the decision of the Auckland Regional Council (**ARC**) on proposed private change 11 (**PPC11**) to the Auckland Regional Policy Statement (**ARPS**), proposed change 12 (**PC12**) to the ARPS, and Variation 2 (**Var2**) to the Proposed Auckland Regional Plan: Air, Land and Water (**ALW**).
2. PDC submitted an application to the ARC which requested that the Metropolitan Urban Limits (**MUL**) be extended to include three adjoining areas, Area 2A, Part 2B and Area 2C of the Takanini Structure Plan (**TSP**) and which consequentially required an extension to the Urban Air Quality Management Areas (**UAQMA**) in these areas.
3. The ARC:
 - 3.1 Accepted the application under clause 25(2)(b) in relation to Area 2A and notified it as PPC11;
 - 3.2 Adopted the application under clause 25(2)(a) in relation to Part 2B and Area 2C and notified it as PC12; and
 - 3.3 Initiated a consequential variation to the Proposed Auckland Regional Plan: Air, Land and Water for Areas 2A, Part 2B and Area 2C and notified it as Var2.
4. The ARC's decision granted the MUL and UAQMA extensions relating to Area 2C of the TSP but refused consent for Areas 2A and Part 2B.
5. PDC received notice of the decision on 1 July 2009.
6. The decision was made by the ARC.
7. The parts of the decision that PDC is appealing are:
 - 7.1 In relation to PPC11, the rejection of the proposal to extend the MUL to include Area 2A of the TSP;
 - 7.2 In relation to PC12, the rejection of the proposal to extend the MUL to include Part 2B of the TSP;
 - 7.3 In relation to Var2 to ALW, the rejection of the proposal to extend the UAQMA to Area 2A and Part 2B of the TSP.

Reasons for appeal

8. The reasons for this appeal are as follows:
 - 8.1 The ARC's decision not to extend the MUL and the UAQMA in Area 2A and Part 2B of the TSP:
 - (a) Does not promote the purpose of the Resource Management Act 1991 (**the Act**) being the sustainable management of resources (section 5);
 - (b) Does not promote the efficient use and development of resources (section 7(b));
 - (c) Is contrary to Part II and other provisions of the Act;
 - (d) Is contrary to other relevant planning documents including the Auckland Regional Growth Strategy 1999 and Southern Sector Agreement 2001;
 - (e) Will not meet the reasonable foreseeable needs of future generations and in particular will not adequately provide for growth within the TSP.
9. In particular, and without limiting the generality of paragraph 8 above:
 - 9.1 The ARC's decision is inconsistent with the Strategic Policies and Methods in the ARPS as amended by proposed change 6 (**PC6**) to the ARPS and in particular the policies for urban containment in Policy 2.6.2;
 - 9.2 The ARC's decision acknowledges that Area 2A and Part 2B of the TSP are appropriate for urbanisation and that both Area 2A and Part 2B have been identified as future urban areas for development in Schedule 1 to PC6.
 - 9.3 Notwithstanding the acknowledgement of the appropriateness of urbanising these areas, the ARC decision rejects the request to extend the MUL and UAQMA in these areas on the basis:
 - (a) That Ardmore Aerodrome may potentially be adversely affected by reverse sensitivity effects in relation to the urban development proposed in Area 2A.
 - (b) Of concerns regarding the proposed land use mix in Area 2A.

- (c) Of an alleged lack of certainty in relation to the management of stormwater discharges in Area 2A and Part 2B.

9.4 The issue of reverse sensitivity effects and proposed land use mix, were not matters raised in any submissions lodged with respect to PPC11 (Area 2A), and no submissions (following the withdrawal of the New Zealand Transport Agency's opposition at the hearing) opposed the extension of the MUL to include Area 2A.

9.5 No submission to PPC11 or PC12 opposed the extension of the MUL on the basis of an alleged lack of certainty around the management of stormwater discharges. All necessary stormwater discharge consent applications (a Variation to an existing consent) have been applied for by PDC. The decision by the ARC refers to PDC "preparing additional information regarding the coastal outfall component of this application". The ARC has directed that the consideration of PDC's stormwater discharge consent variation be placed on hold until an application has been lodged for the outfall structure. The matters delaying the application for the outfall structure do not relate to design matters concerning the quality or quantity of the stormwater to be discharged from the PPC11/PC12 areas. The outstanding matters relate solely to the visual amenity and the physical integration with the future recreational use of the area. These applications could have been determined separately by the ARC. Notwithstanding the above, PDC has now lodged an application for the design of the outfall structure with the ARC.

9.6 In reaching its decision, the ARC has failed to have regard to the evidence called by PDC and other parties which specifically addresses these issues:

- (a) With respect to reverse sensitivity, evidence was presented by:

- (1) Mr Bain Cross for PDC regarding Variation 1: Land Use Compatibility Planning to Proposed Plan Change No.6: Ardmore Aerodrome Noise Controls and Proposed Private Change No.4 and Plan Change No.11 to the Operative Papakura District Plan; and
- (2) The Cosgrave Residents and Landowners Association Inc. which demonstrated that any effects of aircraft noise in the Outer Control Boundary would be adequately mitigated with acoustic insulation and ventilation measures.

- (b) With respect to the proposed land use mix, evidence was presented by Mr Bain Cross and Mr Nathanael Savage for PDC that the proposed land use mix was appropriate.
- (c) With respect to stormwater, PDC, the Kirikiri Residents and Landowners Association and the Cosgrave Residents and Landowners Association provided evidence that Area 2A and Part 2B can be serviced for stormwater discharge and that the variation to the catchment management plan sought by PDC while not yet granted has been applied for.

Relief sought

10. PDC seeks the following relief:

- 10.1 That the ARC's decision on PPC11 be overturned and the MUL be extended to include Area 2A of the TSP.
- 10.2 That the ARC's decision on PC12 be overturned and the MUL be extended to include Part 2B of the TSP.
- 10.3 That the ARC's decision on Var2 in relation to Area 2A and Part 2B be disallowed and that the UAQMA be extended to include Area 2A and Part 2B of the TSP.
- 10.4 Such further orders, relief, consequential amendments or other amendments as considered appropriate and necessary to address the concerns set out above.
- 10.5 Costs of and incidental to this appeal.

Attachments

11. The following documents are attached to this notice:

- 11.1 A copy of PDC's application to extend the MUL to include TSP Area 2A and Part 2B (**Annexure A**);
- 11.2 A copy of the ARC decision being appealed (**Annexure B**).
- 11.3 A list of relevant names and addresses of persons to be served with a copy of this notice (**Annexure C**).

PAPAKURA DISTRICT COUNCIL
by its solicitors and authorised
agents Atkins Holm Joseph
Majurey

Signature:



H A Atkins / V N Morrison

Date:

11 August 2009

Address for Service:

c/o Vicki Morrison
Atkins Holm Joseph Majurey
PO Box 1585
Shortland Street
AUCKLAND 1140

Telephone:

(09) 304 0294

Facsimile:

(09) 309 1821

Advice to recipients of copy of notice*How to become party to proceedings*

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

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 or inquiry

The copy of this notice served on you does not attach a copy of the relevant application, submission or the decision (Annexures A-C). These documents may be obtained, on request from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington or Christchurch.