

**IN THE ENVIRONMENT COURT
AUCKLAND**

ENV

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Clause 14(1) of Schedule One of the Act

BETWEEN **AUCKLAND REGIONAL HOLDINGS**

Appellant

AND **AUCKLAND REGIONAL COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT IN RESPECT OF
PLAN CHANGE 3 TO THE AUCKLAND REGIONAL PLAN: COASTAL**

MISCELLANEOUS MATTERS

20 FEBRUARY 2009

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AUCKLAND REGIONAL HOLDINGS ("ARH") appeals against the decision of the Auckland Regional Council on the following matter:

Introduction

1. ARH made a submission on Plan Change 3 ("Plan Change") to the Auckland Regional Plan: Coastal ("Coastal Plan") on 20 August 2007.
2. ARH also made further submissions on the Plan Change on 7 December 2007.
3. The Plan Change, in conjunction with associated plan changes and notices of requirement to the Auckland City District Plan: Central Area within the jurisdiction of Auckland City Council, will enable extensive redevelopment of Wynyard Quarter.

Decision

4. A notice of the decision made by Auckland Regional Council ("ARC") on the Plan Change was received on 29 November 2008 ("Decision"). The time for filing appeals on the Plan Change has been extended pursuant to s281 of the RMA to 20 February 2009.
5. ARH generally supports the Plan Change and Decision. However there are some alterations made to the notified version of the Plan Change which ARH appeals. The parts of the Decision being appealed relate to:
 - (a) Matters for discretion on restricted discretionary activities.
 - (b) Notification issues.
 - (c) Traffic and parking provisions.

Reasons for appeal

Matters for discretion on RDAs

6. The specific provisions that ARH appeals are:
 - (a) Rule 25.5.31(a2) is a new restricted discretionary activity assessment criterion for new buildings on Halsey Street Extension Wharf, which requires an assessment of the relevant objectives and policies.
 - (b) Rule 25.5.33B(b) is a new provision requiring a similar assessment of objectives and policies, in this case for a new restricted discretionary activity category introduced by the Decision, of activities including 10 or more car parking spaces or creating over 100 average daily traffic movements.

7. These new rules, which require an assessment of the relevant activity against the objectives and policies of the Coastal Plan are inappropriate and unnecessary because they undermine the restricted discretionary activity classification under section 77B of the Act which is a method under section 75 of the Act to achieve the objectives and policies. It is not appropriate or necessary to require such objectives and policies to again be reconsidered in the assessment of a restricted discretionary activity under section 104 of the Act.
8. The purpose of a restricted discretionary activity is to draw out and define those particular matters which need assessing. Wider matters have already been taken into account and deemed acceptable in developing the particular restricted discretionary activity rule. The specific other assessment criteria are sufficient if these two restricted discretionary activity categories are maintained

Notification Issues

9. The specific provision that ARH appeals is the unnumbered clause immediately following Rule 25.5.33B.
10. The Operative Coastal Plan currently provides that:

An application for a resource consent for any restricted discretionary activity will be considered without notification or the need to obtain the written approval of affected persons in accordance with section 94(1A) of RMA unless, in the opinion of the ARC, there are special circumstances justifying notification.
11. This operative provision, which applies to all restricted discretionary activities - not just those in and around the Wynyard Quarter has been in place for many years
12. The notified version of the Plan Change updated and accordingly replaced the operative provision, and stated that:

Applications for restricted discretionary activities shall be considered without public notification or the need to serve notice of the application on affected persons in accordance with Sections 94D(2) and 94D(3) of the RMA, unless in the opinion of the ARC there are special circumstances justifying public notification in accordance with Section 94C(2) of the RMA.
13. The provision for non-notification of restricted discretionary activities in both the Operative Coastal Plan and the notified version of the Plan Change reflected the careful work that had been done in formulating which activities could appropriately be established within the Coastal Marine Area ("CMA") as restricted discretionary activities.
14. The Decision has altered the clause following Rule 25.5.33B of the Plan Change to provide that:

Applications for restricted discretionary activities, other than applications under Rule 25.5.29, shall be considered without public notification of the need to serve notice of the application on affected persons in accordance with Sections 94D(2) and 94D(3) of the RMA, unless in the opinion of the ARC there are special circumstances justifying public notification in accordance with Section 94C(2) of the RMA.

15. No submission sought this substantial alteration to the proposed Plan Change Submission (50/4) which is referred to in the Decision instead requested:

Keep the aesthetics and heritage of the area as a priority and to keep consulting with the public on the details of development.

16. Not only is the change without jurisdiction, reinstatement of the notified version of the Plan Change in respect of this matter is appropriate to achieve the purpose of the Act and the Respondent's decision-making functions as consent authority.

Traffic and parking

17. The specific provisions that ARH appeals are the following:
- (a) Rule 25.5.13(g).
 - (b) Objective 30.4.14(j).
 - (c) Rule 25.5.33A.
 - (d) Rule 25.5.33B.
18. The alterations to Rule 25.5.13(g) limit parking on the Halsey Street Extension Wharf to a maximum of 50 spaces.
19. The alterations to Objective 30.4.14(j) limits parking on wharves to port and ancillary services. This excludes parking for loading, short term, ancillary or disabled parking.
20. The alterations to the Plan Change introduce new Rule 25.5.33A which provides for port activities which provide 10 or more parking spaces or which result in 100 or more average daily traffic movements to be a restricted discretionary activity. It appears to apply throughout the Port Management Areas ("PMAs"), both around Wynyard Quarter and beyond but there was apparently no submission on the Plan Change seeking such relief.
21. The alterations also include new Rule 25.5.33B, which has been introduced as a consequence of the proposed new Rule 25.5.33A and the (B) rule specifies the matters to which the Respondent's discretion is limited.

22. These traffic and parking matters referred to above are not considered to be appropriate or necessary in the context of the activities to which they relate. There also appears to be an absence of jurisdiction for some of the alterations made and clause 25.5.33B(g) appears inconsistent with section 36A of the Act.
23. In addition to the above reasons, the relief sought in the appeal is appropriate and necessary:
- (a) to promote the sustainable management of natural and physical resources and achieve the purpose of the Act;
 - (b) to satisfy Part 2 and other provisions of the Act;
 - (c) to meet the reasonably foreseeable needs of future generations;
 - (d) to enable social, economic and cultural well being; and
 - (e) to represent the most appropriate means of exercising the Respondent's functions, having regard to s32 and other provisions of the Act.

Relief sought

24. The Appellant seeks the following relief:

Matters for discretion on RDAs

- (a) Delete Rule 25.5.31(a2).
- (b) Delete Rule 25.5.33B(b).

Notification issues

- (c) Amend the clause following Rule 25.5.33B to reinstate the notified version as follows:

Applications for restricted discretionary activities shall be considered without public notification or the need to serve notice of the application on affected persons in accordance with Sections 94D(2) and 94D(3) of the RMA, unless in the opinion of the ARC there are special circumstances justifying public notification in accordance with Section 94C(2) of the RMA.

Traffic and parking

- (d) Delete Rule 25.5.13(g)(ii); and any necessary consequential amendments to Rule 25.5.13(g) generally in respect of parking on Wynyard Wharf to ensure appropriate parking is provided for in connection with the ultimate activities able to be established on this Wharf. ← stand by (1)
- (e) Delete Rule 25.5.33A.

- (f) Delete Rule 25.5.33B, in particular delete Rule 25.5.33B(g).
- (g) Reinstate the notified version of Objective 30.4.14(j) as follows:
 - (j) limit vehicle parking to only providing for loading, short-term ancillary and disabled parking, to minimise vehicle movement on the wharf and not detract from the amenity of the area.
- (h) such further orders, relief or consequential or other amendments as considered appropriate and necessary by the Court to address the concerns set out in the appeal.


Attachments

25. The following documents are attached to this notice:

- (a) a copy of ARH's submission and further submission on the Plan Change;
- (b) a copy of the relevant decision; and
- (c) a list of names and addresses of persons to be served with a copy of this notice.

AUCKLAND REGIONAL HOLDINGS by its
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Signature:


Malcolm Maclean

Date:

20 February 2009

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TO: The Registrar of the Environment Court at Auckland
AND TO: Minister of Conservation
AND TO: Submitters

AND TO: Respondent

Advice to recipients of copy of notice of appeal

How to become party to proceedings

1. 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.
2. 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

3. The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

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