

**IN THE ENVIRONMENT COURT
AUCKLAND**

ENV

IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN **AUCKLAND REGIONAL HOLDINGS**

Appellant

AND **AUCKLAND CITY COUNCIL**

First Respondent

AND **AUCKLAND REGIONAL COUNCIL**

Second Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT
RISK AND STATUS OF RESIDENTIAL ACTIVITIES**

20 FEBRUARY 2009

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AUCKLAND REGIONAL HOLDINGS ("ARH") appeals against the decision of the Auckland City Council ("**ACC**") and Auckland Regional Council ("**ARC**") in respect of their respective plan changes to enable the redevelopment of Wynyard Quarter as follows:

Introduction

1. ARH made submissions on Plan Change 4 to the Auckland City Proposed District Plan (Central Area Section 2004) ("**ACC Plan Change**") and on the associated Variation 33 to the Auckland City Proposed District Plan (Central Area Section 1997), Plan Change 119 to the Auckland City Transitional Operative District Plan (Central Area Section 1991) and Auckland City Council designations 370-373, 375, 377-380, 382 and 383, ("**ACC Plan Modifications**") on 20 August 2007. ARH also made further submissions on the Plan Change on 7 December 2007.
2. ARH also made a submission on Plan Change 3 to the Auckland Regional Plan: Coastal ("**ARC Plan Change**") on 20 August 2007, and further submissions on the ARC Plan Change on 7 December 2007.
3. ARH's submissions on the Plan Change supported the notified version of the Plan Change and only sought some minor amendments.

Decision

4. A notice of the ACC decision on the ACC Plan Change and the ARC decision of the ARC Plan Change was received on 29 November 2008 ("**Decisions**"). The time for filing appeals on both the Plan Changes has been extended pursuant to s281 of the RMA to 20 February 2009.
5. ARH supports both the Plan Changes and Decisions. However, there are some areas where changes have been made to the notified version of the ACC Plan Change which are not acceptable to ARH, in relation to the status of residential activities under the ACC Plan Change and the risk assessment that must be undertaken in respect of particular risk sensitive activities. In particular, ARH appeals the following provisions of the ACC Plan Change:

Status of residential activities

- (a) Objective 14.9.3.7.
- (b) Objective 14.9.3.8.
- (c) Quarter Plan E.

Risk assessment

- (d) Rule 14.9.12.11
- (e) Quarter Plan L

Reasons for appeal

Status of residential activities

6. The specific provisions of the ACC Plan Change that ARH appeals include:
 - (a) Objective 14.9.3.7, method (ii).
 - (b) Objective 14.9.3.8, method (ii).
 - (c) Quarter Plan E and Activity Table 14.9.6.6 in respect of the constraints on accommodation arising from risk.
 - (d) The text in clause 14.9.4, where reference is made to the new constraints on accommodation.

7. The notified version of the ACC Plan Change provided for all accommodation activities (both permanent and non-permanent) as a permitted activity provided such activities were subject to an appropriate level of risk (determined by compliance with rules in the plan) and also provided they complied with Quarter Plan E (requiring provision of no-complaints covenants for permanent accommodation in some areas and making such accommodation a non-complying activity in certain other areas).

8. The ACC Decision has made a number of changes to the notified Plan Change insofar as accommodation activities are provided for:
 - (a) Quarter Plan E, as notified, contained an overlay making permanent accommodation a non-complying activity on certain sites in Quarter Areas 5 and 7. The Decision has amended Quarter Plan E so that this overlay now makes both permanent and *non-permanent accommodation* a non-complying activity in these areas. The Decision has also extended this overlay to apply to the northern half of Quarter Area 4, south of the Sanford block. This was an area that extensive urban design investigation showed would be ideal for residential activities. It is inappropriate, unnecessary and inconsistent with the purpose of the Act to make accommodation activities non-complying in this location, and Quarter Plan E should be reinstated to its notified form in this respect. Similarly, by applying the Overlay to both permanent and non-permanent accommodation, the Decision significantly undermined the ability to establish a hotel site in Quarter Area 7. This matter is the subject of a separate appeal by ARH.

 - (b) Elsewhere in Quarter Areas 4-7 and the Transitional Overlay Precinct in Quarter Area 3, Activity Table 14.9.6.6 provides that both permanent and non-permanent accommodation that is in compliance with Quarter Plan E is now a restricted discretionary activity, rather than a permitted activity as notified. Similarly, the conversion of floor-space in existing buildings to accommodation in these same Quarter Areas has been

changed from a controlled activity to a restricted discretionary activity. Both of these changes are unnecessary and inappropriate.

- (c) The ACC Decision appears to have mistakenly removed the requirement for a no-complaints covenant for accommodation in the Transitional Overlay precinct from Quarter Plan E. This requirement should be reinstated.
9. Overall, ARH opposes the changes described above regarding the provision of residential activity on certain sites within Wynyard Quarter.
10. ARH understands that the rationale for the changes in the Decision version is related to the risk associated with the ammonia based refrigeration system on land owned by Sanford Limited within Quarter Area 3. ARH recognises the need to ensure that the risks arising from locating residential activity in close proximity to hazardous activities are appropriately avoided, remedied and mitigated. In particular, ARH recognises the need to manage potential adverse effects associated with the ammonia plant, however, the classification of all living activities in Quarter Area 5, 7 and the northern half of Quarter Area 4 as non-complying is too onerous and is unnecessary. The notified version of the ACC Plan Change was the result of extensive investigation regarding the appropriateness of the provision of accommodation on those sites, and it should be preferred.
11. Furthermore, the Decision in respect of the provision of accommodation has also upset the mixed use balance that existed in the notified version of the Plan Change. This mixed use balance reflects the principles embedded in the Urban Design Framework which underpins the redevelopment of the Wynyard Quarter. The Decision recognises the role that residential activity throughout the Wynyard Quarter provides as it is an important element of achieving a vibrant, mixed use environment. In addition, with significant constraints on the amount of office space able to locate in the Quarter, there is a need for proper and full provision for residential activities. By being more enabling of accommodation within certain areas, the notified version of the ACC Plan Change, achieved a better balance between the provision of accommodation, whilst recognising and protecting against potential adverse risk effects.
12. The changes made by the Decision are inappropriate and represent an inefficient use of resources and are inconsistent with the purpose of the RMA. The notified version of the ACC Plan Change should be preferred.

Risk assessment

13. As well as affecting the provision of residential activities within the Wynyard Quarter as outlined above, the Decision has changed the actual risk assessment mechanism which has wider effects on all risk sensitive activities that might be proposed. The risk assessment rules in the ACC Plan Change provide for the maximum level of individual fatality risk standards that must be complied with before any activity can be established on land within the jurisdiction of the ACC.

14. The specific provision of the ACC Plan Change that ARH appeals is:
 - (a) Rule 14.9.12.11.
15. In addition, for the reasons explained below, ARH also appeals Rule 25.5.13.j of the ARC Plan Change, to ensure consistency between both Plan Changes as they relate to risk.
16. The notified version of the ACC Plan Change provided two alternative means of determining the level of individual fatality risk for any site. Either by reference to "Quarter Plan L" which showed "risk contours" which were considered to be a "default" or conservative assessment of the existing risk levels on the site, alternatively, an applicant could undertake a new risk assessment on the basis of a methodology set out in the Rule 14.9.12.11(d) of the ACC Plan Change.
17. The ACC Decision has deleted Quarter Plan L so there is no longer an easy, "default" way of determining the level of risk for a particular site.
18. Rule 14.9.12.11(b) of the ACC Plan Change has also been amended by the Decision and now requires that a new risk assessment be undertaken for any activity (including permitted activities such as offices) in Quarter Areas 3, 4, 5, 6 and 7. However, the methodology for undertaking a risk assessment has also been deleted from the rules. The only guidance provided by the new rules is that a "qualified person experienced in risk assessment" undertake that assessment.
19. ARH does not oppose the removal of Quarter Plan L as a default measure, as it wishes to ensure that risk in Wynyard Quarter is appropriately managed. However, Rule 14.9.12.11(b) applies to all of Quarter Areas 3, 4, 5, 6 and 7. While ARH accepts that a risk assessment should be required for any activity establishing in Quarter Area 4 or 5, which are immediately adjacent to the most hazardous activities, for example on the Sanford land in Quarter Area 5, or the petrochemical industry located in Quarter Area 6. ARH does not accept that all new activities on Quarter Area 3 should be required to undertake a risk assessment. The southern parts of Quarter Area 3 are some distance from the "risk areas". It is inappropriate, unnecessary and inefficient to require such new activities to be accompanied by a risk assessment. Accordingly, consideration needs to be given to reducing the areas which the risk assessment rules apply.
20. In general, ARH does not oppose the removal of the methodology in Rule 14.9.12.11(d); however, resolving the issues associated with risk may mean that some consequential changes, or other clarification or greater certainty may be needed in respect of the new wording in Rule 14.9.12.11, especially as the rule applies to permitted activities, where in theory certificates of compliance are supposed to be able to be issued and therefore everything must be completely clear and with no discretions.
21. The ARC Decision also contains a rule (Rule 25.5.13 j) which requires that any activity on Wynyard Wharf while the wharf is functioning as a dangerous goods wharf shall be located to comply with maximum

individual fatality risk standards, to be determined by a risk assessment. ARH does not oppose this provision in the ARC Plan Change. ARH appeals this aspect of the ARC Decision only to the extent that there is a need to ensure that consistency between the two Plan Changes is achieved, should the ACC rules change as a result of this appeal. If that occurs, the ARC Plan Change should be amended to line up with and fit any amended ACC Plan Change provisions on this topic, to the satisfaction of ARH.

General grounds

22. In addition to the above specific reasons, the Respondents' Decision, in its current form, in respect of the above matters (status of residential activities and risk):
- (a) will not promote sustainable management of resources, will not achieve the purpose of the Resource Management Act 1991 ("**Act**");
 - (b) is contrary to Part II and other provisions of the Act;
 - (c) will not meet the reasonably foreseeable needs of future generations;
 - (d) will not enable social, economic and cultural well being;
 - (e) is otherwise contrary to the purposes and provisions of the Act and other relevant planning documents;
 - (f) is inappropriate and inconsistent with the purpose and principles of the Act;
 - (g) is not necessary to avoid, remedy or mitigate the adverse effects of the proposed activity; and
 - (h) does not represent the most appropriate means of exercising the Respondent's functions, having regard to the efficiency and effectiveness of other available means and are therefore not appropriate in terms of s32 and other provisions of the Act.

Relief sought

23. ARH seeks the following relief:

Status of residential activities

- (a) Reinstate the notified version of the ACC Plan Change in relation to Objective 14.9.3.7, Method (ii) as follows:

By enabling the establishment of risk sensitive activities which exceed the maximum level of fatality risk standards in limited circumstances, subject to a restricted discretionary activity consent (development control 14.9.12.11(b)) and assessment against criteria listed at 14.9.9.3.3

- (b) Delete Objective 14.9.3.8, method (ii)
- (c) Amend Quarter Plan E to reinstate those aspects of the notified version in respect of the constraints on accommodation arising from risk and to show the original "no complaints" areas of the notified ACC Plan Change.
- (d) Amend Activity Table 14.9.6.6 to reinstate the activity status applying to the provision of both permanent and non-permanent accommodation in Quarter Areas 4, 5, 6 and 7 and within the Transition Overlay precinct in Quarter Area 3, as a permitted activity subject to compliance with the requirements in Quarter Plan E.
- (e) As a consequential amendment, delete the text in clause 14.9.4 which refers to the new constraints on accommodation.

Risk assessment

- (f) Amend Rule 14.9.12.11(a) to reduce, to the satisfaction of ARH, the area of land which is subject to the requirement that a risk assessment be undertaken to determine individual fatality risk.
- (g) Also, as a consequential amendment, amend Rule 14.9.12.11 to ensure the new risk assessment procedure is certain and workable by the addition of suitable criteria or other wording, to the satisfy ARH's concerns as outlined above in the reasons for appeal.
- (h) All necessary consequential amendments to the ARC Plan Change, in particular Rule 25.5.13.j of the ARC Plan Change, to ensure consistency between both Plan Changes as they relate to risk.

24. ARH also seeks the following relief:

- (a) such further other orders, relief or other consequential or other amendments as considered appropriate and necessary by the Court to address the concerns set out herein; and
- (b) costs of and incidental to this appeal.

Attachments

25. The following documents are attached to this notice:

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

AUCKLAND REGIONAL HOLDINGS by its
solicitors and authorised agents Russell
McVeagh:



Signature:

Derek Nolan

Date:

20 February 2009

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TO: The Registrar of the Environment Court at Auckland

AND TO: Minister of Conservation (If appeal relates to Regional Coastal Plan)

AND TO: Submitters

AND TO: Respondents

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.