

BEFORE THE ENVIRONMENT COURT

IN THE MATTER OF the Resource Management
Act 1991

AND

IN THE MATTER OF an appeal pursuant to
Clause 14(1) of the First
Schedule of the Act in
respect of **PLAN CHANGE**
3 to the **AUCKLAND**
REGIONAL PLAN:
COASTAL

BETWEEN Creative Functions Limited
(trading as Sero)

Appellant

AND Auckland Regional Council

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON
AUCKLAND REGIONAL PLAN: COASTAL - PROPOSED PLAN CHANGE 3**

TO: The Registrar
Environment Court
Auckland

- 1. CREATIVE FUNCTIONS LTD (trading as Sero) ("Sero") appeals against a part of the decision of the Auckland Regional Council on the following proposed plan change:**

The Auckland Regional Plan – Proposed Plan Change 3.

- 2. Sero made a submission on that proposed plan change.**
- 3. Sero received notice of the decision on 1 December 2008. The Environment Court has extended the time period for lodging appeals to 20 February 2009 (by order dated 16 December 2008).**

4. **The decision was made by the Auckland Regional Council.**

5. **The part of the decision that Sero is appealing is:**

5.1 Those parts of the decision that:

(a) Reject the provision for events, functions and office facilities on The Floating Pavilion in the Viaduct Harbour area of Port Management Area 2A as a permitted activity; and

(b) Reject the provision for events, functions and office facilities on The Floating Pavilion in Port Management Areas 2A (outside the Viaduct Harbour), 2B, 3 and 4A as a controlled activity.

6. **The reasons that Sero is appealing the decision are:**

Background

6.1 Sero is a functions and events company which manages functions at its own or other venues throughout Auckland. A key aspect of the company's business (and the company's main corporate office) is The Floating Pavilion, which is currently located at Halsey Street Extension Wharf. The Floating Pavilion is a "dumb barge" (unpowered vessel) which is berthed in water space adjacent to the Lighter Basin at the end of Halsey Street.

6.2 The Floating Pavilion is used for corporate events (e.g., dinners, Christmas parties), corporate staff training, product launches, weddings, etc. Functions on The Floating Pavilion are very popular, particularly due to the unique Viaduct Harbour location which provides for events close to the water.

6.3 The Floating Pavilion was originally designed and built to be used as part of the 2000 Americas Cup defence. It was originally located in the Viaduct Harbour and was used during the Americas Cup defence as the American Express media centre and was also used for functions, etc. It was subsequently relocated to its current location at Halsey Street Extension Wharf where it was used as the base for the BMW Oracle Racing Syndicate. To that extent, the Floating Pavilion is ideally suited to host or support marine and non-marine related events in the Viaduct Harbour and represents an existing physical resource within the meaning of the RMA that needs to be sustainably managed in accordance with the purpose of the RMA.

Reasons for appeal

6.4 TFP is a unique and highly popular function and events venue that has a functional need to be located within the CMA and derives a particular benefit from its location within the Viaduct Harbour.

6.5 TFP represents a valuable physical resource that makes a significant contribution to the local economy that should be sustainably managed in terms of section 5 of the RMA.

6.6 The existence of TFP is critical to the success of the Sero business and, in turn, its location in the Viaduct Harbour is critical to the success of TFP as a venue. In that regard (and having regard to the significant contribution of TFP to the local economy), providing for the continued use of TFP within the Viaduct Harbour would provide for social and economic wellbeing in terms of section 5 of the RMA.

- 6.7 The value of TFP to the community in both economic and social terms may be lost if TFP had to relocate outside of the Viaduct Harbour, and would certainly be lost if TFP relocated outside of Auckland City.
- 6.8 As a function centre located within the CMA, TFP represents an opportunity for the public to access the CMA in terms of section 6(d) of the RMA.
- 6.9 Having regard to the above, the planning provisions for the Wynyard Quarter should recognise and provide for TFP as a unique and valuable functions and events centre within the marine events precinct, which is identified as an appropriate location for a wide range of entertainment and events for public and private marine and non-marine events
- 6.10 Providing for activities (i.e. events and ancillary activities) on TFP as a permitted activity (subject to performance standards, including noise standards, etc) within the Viaduct Harbour area within Port Management Area 2A and as a controlled activity within other Port Management Areas will implement the policies that recognise that those areas are an appropriate space for entertainment and events, including events facilities
- 6.11 Overall, making appropriate provision in the Coastal Plan to enable Sero to undertake functions, events and ancillary activities on TFP as a permitted activity (within the Viaduct Harbour or controlled outside of the Viaduct Harbour) would represent sound resource management practice and promote the sustainable management purpose of the RMA.
7. **Sero seeks the following relief:**
- 7.1 For the foregoing reasons, Sero seeks relief which will address the concerns set out above and as a minimum that provision be made for activities undertaken on the dumb barge known as "The Floating Pavilion" within the Viaduct Harbour as a permitted activity and in Port Management Areas 2A (outside the Viaduct Harbour), 2B, 3 and 4A as a controlled activity.
- 7.2 That the following specific amendments be made to Proposed Plan Change 3:
- (a) Amend Rule 25.5 to provide for the use of The Floating Pavilion within the Viaduct Harbour as a permitted activity as follows:
- 25.5 X The use of lawfully established buildings, structures or facilities on wharfs or moored within the Viaduct Harbour (being part of Port Management Area 2A as defined in Plan Map Series 2, Sheet 7A) for the purposes of marine and non-marine events (including temporary events) and ancillary office activities subject to the conditions specified in Clause 25.5.13.*
- (b) Amend Rule 25.5 to provide for the use of The Floating Pavilion within Port Management Areas 2A, 2B, 3, and 4A (outside of the Viaduct Harbour) as a controlled activity as follows:
- 25.5.17A The use of lawfully established buildings, structures or facilities on or moored to wharfs within Port Management Areas 2A (outside of the Viaduct Harbour), 3, 4A or 2B for the purposes of marine and non-*

marine events (including temporary events) and ancillary office activities, subject to the standard and terms specified in Rule 25.5.18.

7.3 Such further or other relief as sought in Sero's original submission as may be necessary to address the concerns outlined in this Notice of Appeal.

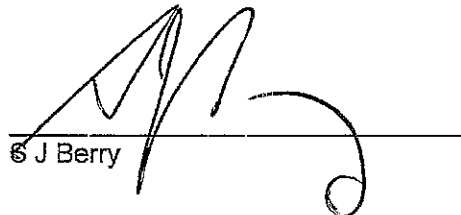
8. **The following documents are attached to this notice:**

- (a) A copy of Sero's submission (and further submissions) on Proposed Plan Change 3.
- (b) A copy of the relevant decision of the Auckland Regional Council
- (c) A list of the names and addresses of persons to be served with a copy of this notice.

DATED this 20th day of February 2009

CREATIVE FUNCTIONS LTD (trading as Sero)
by its legal counsel and duly authorised agent:

S J Berry



Address for service of Appellant:

S.J. Berry
Barrister
Old South British Chambers
Level 3
3 – 13 Shortland Street
AUCKLAND

Telephone: (09) 9692300
Facsimile: (09) 9692304
Email: simon@simonberry.co.nz
Contact person: Simon Berry

ADVICE TO RECIPIENTS OF COPY OF NOTICE OF APPEAL

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

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

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

Contact details of Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar.

The Auckland address of the Environment Court is:

8th Floor, District Court Building
3 Kingston Street
Auckland

Its postal address is:

PO Box 7147
Wellesley Street
Auckland