

**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

PORTS OF AUCKLAND LIMITED

Appellant

AND

AUCKLAND REGIONAL COUNCIL

Respondent

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

20 FEBRUARY 2009

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PORTS OF AUCKLAND LIMITED ("POAL") appeals against the decision of the Auckland Regional Council ("**ARC**") on the following matter:

Introduction

1. POAL made a submission on Plan Change 3 ("**Plan Change**") to the Auckland Regional Plan: Coastal ("**Coastal Plan**") on 20 August 2007 which supported the notified version of the Plan Change.
2. 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. The Plan Change also amends some provisions of the Coastal Plan with wider implications.

Decision

3. A notice of the decision made by 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.
4. POAL generally supports the Plan Change and Decision as it relates to activities within Wynyard Quarter and the associated water space adjoining Wynyard Quarter. However, there are some aspects of the Decision in which changes have been made to the notified version of the Plan Change that apply to all Port Management Areas ("**PMAs**") within the Coastal Plan. In particular, the Decision has amended the rule relating to the notification of restricted discretionary activities throughout all the PMAs. POAL opposes the Decision in respect of this change as described below in the reasons for appeal.

Reasons for appeal

5. The specific provision that POAL appeals is the unnumbered clause immediately following Rule 25.5.33B.

6. 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

7. This operative provision, which applies to all restricted discretionary activities within all PMAs, including those PMAs that have within them wharves owned by POAL and/or are directly adjacent to land owned by POAL, from which it conducts its operations (namely PMA 1A (Bledisloe Terminal to Fergusson Container Terminal), 1B (Onehunga Wharf), 1C

(Marsden, Captain Cook and Queens Wharf) and 4B (Gabador Place, Tamaki River)), specifies that there shall be no service on any affected persons. This provision has been in place for many years.

8. The notified version of the Plan Change deleted the current 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.

9. This amended rule continued the same approach of not requiring any service on affected persons, and merely updated the statutory references. This presumption of non-notification in both the Operative Coastal Plan and the notified version of the Plan Change reflected the careful work that had been done in formulating what activities could and could not be established within the Coastal Marine Area ("**CMA**") as restricted discretionary activities where third parties need not be involved, and the matters for discretion attached to applications for such consents.

10. The Decision has amended the clause following Rule 25.5.33B of the Plan Change. The rule now provides that:

Applications for restricted discretionary activities, other than applications under Rule 25.5.29, 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

11. While the rule retains the presumption that full notification should not be required, it has removed the presumption that affected parties need not be served. The effect of this is that almost all applications for restricted discretionary activities are likely to be "limited notified".

12. No submission sought this very substantial amendment to the rule.

13. The submission (50/4) which is relied in the Decision as jurisdiction for this change simply stated that:

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

14. The Decision purports to change the notification position for all restricted discretionary activities (many of which apply outside Wynyard Quarter and are not subject to the Plan Change), and it goes beyond any submission on the Plan Change itself.

15. Leaving aside the issue of jurisdiction, POAL does not take a position on this rule insofar as it applies to activities occurring within the Wynyard Quarter area. However, POAL does oppose this aspect of the Decision "on the merits" insofar as it applies to the notification of restricted discretionary activities within *all* PMAs. Not only is the change without jurisdiction, even if a submission had sought the change, the amendment is inappropriate, unnecessary and is an inefficient use of resources. It also unduly creates uncertainty for future consent applications.
16. All of the restricted discretionary activities that have been in the Coastal Plan for many years are fully capable of being assessed by Council officers, with outside consultant expertise when required. They have been assessed without any notification since the Coastal Plan was made operative. Limited notification will just add unnecessary cost and delay and will result in litigation, provide opportunities for non-RMA issues to be pursued under the guise of submissions under the RMA and prevent sensible and timely day-to-day decisions being made on the waterfront.

General grounds

17. In addition to the above specific reasons, the ARC's Decision in respect of the above matter:
- (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

18. POAL seeks the following relief:

- (a) 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.

- (b) Alternatively, amend the Decision version of the clause following Rule 25.5.33B as follows:

Applications for restricted discretionary activities within Port Management Area 2B or 4A, other than applications under Rule 25.5.29, shall be considered without public notification in accordance with Section 94D(2) 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.

Applications for restricted discretionary activities within the other Port Management Areas 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.

19. POAL 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

20. The following documents are attached to this notice:

- (a) a copy of POAL's 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.

PORTS OF AUCKLAND LIMITED 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

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.

PORTS OF AUCKLAND'S SUBMISSION

COPY OF AUCKLAND REGIONAL COUNCIL'S DECISION

LIST OF PERSONS TO BE SERVED