

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

Lodgement: ENV-2009-
Topic: ENV-2009-

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of an appeal against the
decision of the Auckland
Regional Council in respect of
proposed Plan Change 3 to the
Auckland Regional Plan:
Coastal under clause 14(1) of
Schedule 1 of the Act

BETWEEN Sanford Limited

Appellant

AND

Auckland Regional Council

Respondent

NOTICE OF APPEAL

TO: The Registrar
Environment Court
Auckland

Sanford Limited ("the Appellant") appeals the decision by the Auckland Regional Council ("the Council") on proposed Plan Change 3 to the Auckland Regional Plan: Coastal ("the Coastal Plan") which addresses management of the Coastal Marine Area in the vicinity of the Western Reclamation, Wynyard Wharf and the Viaduct Basin ("the Change")

- 1 The decision that has been appealed ("the Decision") was received by the Appellant on or about 1 December 2008.
- 2 The Appellant made a submission on the Change.
- 3 The Decision was made by the Council
- 4 The Change forms part of a package of planning measures developed by the Council in conjunction with Auckland City Council regarding the future development of the Western Reclamation and its environs (termed "Wynyard

Quarter in the plan changes) and the future use of waterspace in the Viaduct Harbour and in the immediate vicinity of the Western Reclamation, the Halsey Street Reclamation, the Halsey Street Extension Wharf and the Western Viaduct Replacement Wharf.

5. The Appellant is an Auckland based member of the fishing industry and has operated from the Western Reclamation and the adjacent berthage for over 80 years. The Appellant has, together with other Auckland based members of the fishing industry, sought to have the regional and national role of the fishing industry together with its reliance upon berthage, operational port facilities and land based support services recognised in the relevant district and coastal planning instruments.
6. The Appellant acknowledges that amendments made to the Change through the Decision have alleviated many of the Appellant's concerns expressed in the submission lodged by the Appellant on the Change as notified. In the circumstances the Appellant no longer seeks that the Change be disallowed or withdrawn in its entirety. The Appellant is of the view, however, that the Change requires further modification in accordance with the relief set out below in order to appropriately and adequately respond to and provide for the existing fishing and marine industry activities and opportunities for growth and development of those activities.
7. The reasons for the appeal are as follows:
 - (a) The Change, as altered by the Decision but in the absence of the relief sought below:
 - (i) Does not promote the purpose of the Resource Management Act ("the Act") being the sustainable management of natural and physical resources (section 5 of the Act)
 - (ii) Does not amount to or promote the efficient use and development of resources (section 7(b) of the Act)
 - (iii) Is otherwise contrary to the purpose and principles in Part 2 of the Act
 - (iv) Will generate significant adverse effects on the environment and in particular on the operations of and opportunities available for the Auckland based fishing industry

- (v) Is inconsistent with objectives, policies and other provisions in the Coastal Plan and in the Auckland District Plan (Central Area Section) regarding the provision for fishing and marine related industries, including those set out in the Auckland City Council's proposed changes for Wynyard Quarter that were notified contemporaneously with the Change.
- (b) To the extent that it implements provisions that this appeal seeks to change, the Change is inadequate, inappropriate and flawed in terms of section 32 of the Act.
- (c) Provided the Change is amended in accordance with the relief sought below, it will promote the sustainable management of resources and will otherwise be appropriate in terms of Part 2 and section 32 of the Act.

In particular, but without derogating from the generality of the above:

- (d) The fishing industry is a significant regional employer, contributor to Auckland's food supply and earner of foreign exchange. The industry is an important component in Auckland's regional economy.
- (e) The fishing industry and its supporting marine related industries necessarily require access to coastal berthage for lay up berthage, servicing and maintenance operations. The industry is based in and around the Western Reclamation and Viaduct Harbour. There is currently no suitable alternative location in the Auckland Region for the Auckland based fishing industry.
- (f) The Auckland based fishing industry has over the past 25 years been gradually but inexorably compressed into a relatively small and constrained area within and around the Viaduct Harbour, the Halsey Street Extension Wharf, the Western Viaduct Replacement Wharf and North Wharf. The Change, in conjunction with the contemporaneous planning initiatives notified by Auckland City Council continues that process
- (g) Notwithstanding the improvements made to the Change through the Decision it does not yet provide appropriately and adequately for the industry to remain in and around the Viaduct Harbour, the Halsey

Street Extension Wharf, the Western Viaduct Replacement Wharf and North Wharf, let alone for key participants to expand their operations.

- (h) The proposed provisions envisage or imply relegation of the marine industry (but without mentioning the fishing fleet) to a new Port Management Area 2B on the western side of the Western Reclamation adjacent to the Marine Quarter introduced in the Auckland City Council plan change. No mechanisms are provided to ensure that the fishing industry will have access to that area or will physically be able to use it, however.
- (i) The proposed provisions indicate that North Wharf (along Jellicoe Street) in particular will be able to be used by the fishing industry but the ability of the fishing industry to access and use that area is compromised by the Auckland City Council's proposed provisions for the adjacent land and by the lack of specificity in the provisions introduced by the Change. In the circumstances, the Change is not sufficiently explicit with respect to the priority of fishing industry activities in and around the Viaduct Harbour, the Halsey Street Extension Wharf, the Western Viaduct Replacement Wharf and North Wharf (including the waterspace between North Wharf, Wynyard Wharf and the Halsey Street Extension Wharf).
- (j) It is therefore appropriate to amend the Change to provide greater certainty for the fishing industry with regard to:
 - (i) Its ability to continue to berth in and around the Viaduct Harbour, the Halsey Street Extension Wharf, the Western Viaduct Replacement Wharf and North Wharf
 - (ii) The interface between the fishing industry and other activities within adjacent waterspace and on adjacent land

8. The Appellant seeks the following relief:

- (a) That the Change be approved provided the provisions in the Change are amended so that the concerns expressed in this appeal are addressed fully. In that regard, the Appellant seeks amendments including those specified in **Annexure A** to this appeal

- (b) Any alterations to the Change required as a consequence of the above
- (c) Such further or other relief as is appropriate or desirable in order to take account of the concerns expressed in this appeal.
- (d) Costs of and incidental to this appeal.

9 The Appellant attaches the following documents to this Notice of Appeal:

- (a) **Annexure A** referred to in paragraph 8(a) above.
- (b) A copy of the Appellant's submission (**Annexure B**).
- (c) A copy of the relevant part of the Decision (**Annexure C**).
- (d) A list of names and addresses of persons to be served with a copy of this Notice (**Annexure D**)

DATED at Auckland this 19th day of February 2009

SANFORD LIMITED by its solicitors and duly authorised agents Ellis Gould



D A Allan

ADDRESS FOR SERVICE: The offices of Ellis Gould, Solicitors, Level 31, 23-29 Albert Street, ANZ Centre, PO Box 1509, Auckland, DX CP22003, Auckland, Telephone: (09) 307-2172, Facsimile: (09) 358-5215

Advice to recipients of copy of notice of appeal

How to become a 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 and the decision (or part of 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.

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

And its telephone and fax numbers are:

Telephone: (09) 916 9091
Fax: (09) 916 9090

ANNEXURE A

The following amendments to the Change are sought pursuant to paragraph 8(a) above:

1. Amend Objective 25.3.3. to read:

"To provide for the use and development of Port Management Areas for appropriate non-port related activities . . . where these uses do not compromise or have significant adverse effects on the on-going retention and operation of port activities within the Port Management Areas and on adjacent land."

2. Add a new Policy 25.4.1A to read:

"Appropriate, convenient and adequate berthage facilities will be allocated to the exclusive use of the fishing industry in recognition of the functional need of that activity to have access to working berthage within the Port Management Areas."

3. Amend Rule 25.5.1 to read:

"Port Activities provided that the use of berthage along North Wharf, the southern face of the Western Viaduct Replacement Wharf and the western face of the Halsey Street Extension Wharf shall be limited to the fishing industry"

4. Amend Clause 25.6.1 to read:

"The ARC will liaise with the relevant territorial local authorities and Ports of Auckland Limited.

(a) To ensure the integration of landward development and infrastructure . . .

(b) *Regarding any future subdivision, use and development*

(c) *To ensure that appropriate, convenient and adequate berthage facilities are allocated to the exclusive use of the fishing industry in recognition of the functional need of that activity to have access to working berthage within the Port Management Areas.*

5. Add a new Anticipated Environmental Result 25.8.1A to read:

“Retention of port activities in and around the Port Management Areas including in particular retention of the fishing industry which has a functional need to have access to working berthage ”

6. Add a new Anticipated Environmental Result 25.8.1A to read:

“Retention of port activities in and around the Port Management Areas including in particular retention of the fishing industry which has a functional need to have access to working berthage.”

7. Amend the second paragraph in Clause 28.1.3 (“Viaduct Harbour to North Wharf”) to read as follows:

“The Viaduct Harbour has been the longstanding base for part of Auckland’s commercial fishing fleet ... and the fish market on Jellicoe Street. In the circumstance it is important that access for the fishing industry to berthage in this area is maintained and ensured into the future.”

8. Amend Objective 28.3.14A to read:

“To recognise North Wharf, the southern face of the Western Viaduct Replacement Wharf and the western face of the Halsey Street Extension Wharf together with the adjacent waterspace as an important and currently irreplaceable berthage and operational resource for the fishing industry and to provide for the continued occupation of that area by the fishing industry.”

9. Add a new Policy 28.4.21A regarding the Marine Events Precinct to read:

“Use and development of the Marine Events Precinct shall ensure that the Precinct and the associated coastal marine area continue to provide for efficient use of the area for port activities, including its use by the fishing industry. To that end berthage facilities on the southern face of the Western Viaduct Replacement Wharf and the western face of the Halsey Street Extension Wharf shall be allocated for the exclusive use of the fishing industry and maritime passenger transport in recognition of the functional need of those activities to have access to working berthage within the Marine Events Precinct.”

10. Amend Policy 28.4.22 regarding North Wharf to read:

“Use and development of North Wharf shall ensure that the wharf and the associated coastal marine area continues to provide for efficient use of the area for port activities, including its use by the fishing industry operations. To that end berthage facilities on North Wharf shall be allocated for the exclusive use of the fishing industry in recognition of the functional need of that activity to have access to working berthage within the Port Management Areas.”

11. Amend Clause 28.7.1 (Reasons) by adding the following passage:

“It is essential to provide certainty of berthage within and around the Port Management Areas for the fishing industry which has a functional need to have access to working berthage and which currently has no available alternative berthage opportunities ”

12. Add a new Clause 28.8.1A (Anticipated Environmental Results) to read:

“The retention of port activities in and around the Port Management Areas including in particular retention of the fishing industry which has a functional need to have access to working berthage.”

ANNEXURE B

Copy of the Appellant's submission

RESOURCE MANAGEMENT ACT 1991

SUBMISSION ON PROPOSED PLAN CHANGE 3 TO THE AUCKLAND REGIONAL
PLAN: COASTAL (WYNYARD QUARTER)

Clause 6 of First Schedule, Resource Management Act 1991

TO: Auckland Regional Council, c/- Ground Floor, 21 Pitt Street, Auckland

SUBMITTER: **Sanford Limited**, c/- Ellis Gould Solicitors at the address for service set out below

1. This is a submission on proposed Plan Change 3 to the Auckland Regional Plan: Coastal, which addresses management of the Coastal Marine Area in the vicinity of the Western Reclamation, Wynyard Wharf and the Viaduct Basin ("the Change").
2. The Change forms part of a package of planning measures developed by Auckland Regional Council in conjunction with Auckland City Council regarding the future development of the Western Reclamation and its environs (termed "*Wynyard Quarter*" in the plan changes) and the future use of waterspace in the Viaduct Harbour and in the immediate vicinity of the Western Reclamation, the Halsey Street Reclamation, the Halsey Street Extension Wharf and the Western Viaduct Replacement Wharf
3. The Submitter is an Auckland based member of the fishing industry and has operated from the Western Reclamation and the adjacent berthage for over 80 years. The Submitter has, together with other Auckland based members of the fishing industry, sought to have the regional and national role of the fishing industry together with its reliance upon berthage, operational port facilities and land based support services recognised in the relevant district and coastal planning instruments
4. This submission relates to the Change in its entirety. The Submitter is particularly concerned with the failure of the Change appropriately and adequately to respond to and provide for the existing fishing and marine industry activities and opportunities for growth and development of those activities
5. The reasons for the submission are as follows:
 - (a) The Change, as notified:

area within and around the Viaduct Harbour. The Change, in conjunction with the contemporaneous planning initiatives notified by Auckland City Council continues that process but does not provide appropriately and adequately for the industry to remain let alone for key participants to expand operations.

- (f) The operative provisions in the Coastal Plan provide some limited degree of assurance to the Auckland based fishing industry with regard to its ongoing presence. The proposed provisions weaken or seek to delete the statements in the Coastal Plan regarding the role of the fishing industry in the Viaduct Harbour area and the importance of the area to the industry, however:
- (g) The Change is summarised by Council as amending the Coastal Plan to, amongst other things:
 - (i) Update the descriptions of existing and expected activities in the vicinity of Wynyard Quarter
 - (ii) Include a new policy relating to a bridge between the Eastern Viaduct / Te Wero Island and Wynyard Quarter
 - (iii) Provide for a marine events centre on Halsey Street Extension Wharf, Western Viaduct Replacement Wharf and the adjacent water space, including an extension to the time limit for temporary events in the Viaduct Harbour
 - (iv) Provide for appropriate use and development of North Wharf (along Jellicoe Street)
 - (v) Manage future development and use of Wynyard Wharf for port, commercial, entertainment activities and public use.
 - (vi) Manage future use and development of the water area surrounding Wynyard Quarter, including for fishing and marine industries
 - (vii) Modify the noise limits for noise generated in the coastal marine area around Wynyard Quarter to clarify where the noise limits are to be measured and to permit an increased number of high noise events each year.

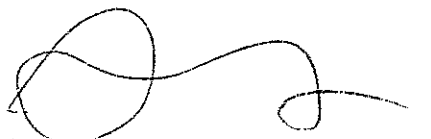
and use that area is compromised by the Auckland City Council's proposed provisions for the adjacent land. In the circumstances, these provisions are not adequately explicit with respect to the priority of fishing industry activities in the coastal marine area between the North Wharf, Wynyard Wharf and the Halsey Street Extension Wharf.

(n) The proposed provisions may have the effect of restricting the fishing industry to berthage areas that are not needed for events and gradually being pushed out of the area as the Western Reclamation and Halsey Street Reclamation are developed. In the circumstances, the Change is opposed in its entirety by the Submitter

6. The Submitter seeks that the Change be withdrawn or disallowed in its entirety
7. The Submitter wishes to be heard in support of its submission. If other parties make a similar submission, the Submitter would consider presenting a joint case with them at any hearing.

DATED this 20th day of August 2007

Sanford Limited, by its solicitors and
authorised agents, Ellis Gould



DA Allan

Address for service of the Submitter: The offices of Ellis Gould, Level 31, The ANZ Centre, 23-29 Albert Street, Auckland (PO Box 1509, Auckland) DX CP22003

