

1. Duty Commissioner Notification Decision

Decision on notification of an application for resource consent under the Resource Management Act 1991



Restricted discretionary activity

Application Numbers:	LUC60290833 and WAT60291940 (BUN60081322)
Legacy Application Numbers	50405, P50405 and P50406
Applicant's Name:	Infinity Enterprises New Zealand Limited
Site Address:	12 Lakewood Court, Manukau Central
Legal Description:	Lot 4 DP 116472 identified on Certificate of Title NZ66B/244
Proposal:	<p>The clearance of all buildings on site and to construct and operate a hotel facility that contains 94 rooms and 76 serviced apartments. These activities span over 16 levels and includes two level of basement car parks.</p> <p>The development contains commercial and ancillary services which includes a function rooms, restaurant, gym, swimming pool, and professional/retail/café spaces.</p>

The resource consents are:

Land use consent (section 9 of the Resource Management Act 1991 (the Act) - LUC60290833

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- Rule E10.4(A4) requires discretionary activity consent for redevelopment of an existing impervious area greater than 50m² within the Stormwater Management Area Control, Flow 2 that does not comply with standards E10.6.1 or E10.6.4.1, with no hydrological mitigation proposed.

- Rule E12.4.1(A6) requires restricted discretionary activity consent for the area of land disturbance that is greater than 2,500m² with a total area of 5,000m² proposed.
- Rule E12.4.1(A10) requires restricted discretionary activity consent for the volume of land disturbance that is greater than 2,500m³ with a total volume of 6,300m³ proposed.
- Rule E27.4(A2) requires restricted discretionary activity consent for car parking spaces that do not comply with the minimum dimensions outlined in Table E27.6.3.1.1(T121) and Figure E27.6.3.1.1, and Standard and E27.6.3.1(1)(a). Cars parked within spaces 17 to 19 as it applies to casual users will be unable to undertake onsite manoeuvring if the adjacent car parks are occupied, or would have to reverse a distance of 30m to exit the car parking area on the ground floor before undertaking the onsite manoeuvre.
- Rule E27.4(A5) requires restricted discretionary activity consent to construct or use a vehicle crossing under Standards E27.6.4.1(3)(b) and E27.6.4.1(3)(c), Table E27.6.4.1.1(T141), which is subject to the motorway interchange control and having frontage to an arterial road, that being Redoubt Road.
- Rule E27.4(A2) requires restricted discretionary activity consent for not being able to meet the minimum formed access width requirement of 6m for two way movement when serving 10 or more parking spaces under Standard E27.6.4.3(b) and Table E27.6.4.3.2(T153), with a 5m wide access ramp proposed.
- Rule E27.4(A2) requires restricted discretionary consent for not being able to meet the maximum heavy vehicle access gradient of 1 in 8 under Standard E27.6.4.4(1), and Table E27.6.4.4.1(T158), with a gradient of 1 in 5 proposed for part of the western access ramp.
- variation control above natural ground level or existing ground level if a subdivision has been undertaken after the topography of the site changed). A height of 50.9m is proposed which exceeds the permitted height by Rule H13.4.4(A45) requires restricted discretionary activity consent to construct a new building.
- Rule C1.9.2 requires restricted discretionary consent for non-compliance with provision H13.6 that requires all restricted discretionary activities (as identified under H13.4.4(A45)) to comply with Standards H13.6.0 to H13.6.10.

The proposed development does not comply with the following:

- i. H13.6.1.2 allows a maximum building height of 27m (under the height 23.9m.
- ii. H13.6.2 relates to the recession planes where non-compliances are proposed along the northern boundary by a maximum vertical height of 40.0m over a maximum horizontal length of 21.2m, and along the eastern

boundary by a maximum vertical height of 31.9m over a maximum horizontal length of 21.2m.

- iii. H13.6.3 and Table H13.6.3.1(B2) require a minimum upper floor setback of 6m where the building exceeds a height of 27m. A setback of 2.5m is proposed along the eastern boundary.
- iv. H13.6.4(1) restricts maximum plan dimension of that part of a building tower above 27m to a maximum plan dimension of 55m. A plan dimension of 68.5m is proposed that exceeds the permitted dimension by 13.5m.
- v. H13.6.4(3) requires any part of the building above 27m to be at least 6m setback from any side or rear boundary. A 2.5m wide setback to the eastern boundary and 2m wide setback to the southern boundary are proposed.
- vi. H13.6.6(1) requires a minimum landscape buffer of 2m in width with a 0.5m (minimum) wide buffer proposed along the northern street boundary and the ground level car parking area.
- vii. H13.6.8(1), H13.6.8(2) and H13.6.8(3) relates to wind speeds for buildings over the height of 25m, and requires compliance with the categories relative to the intended use of the area. The proposal includes a low end Category D effect, which does not support the intended use of the area and no further technical reports were submitted.

Groundwater diversion consent (section 14) - WAT60291940

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- Rule E7.4.1(A20) requires discretionary activity consent for the dewatering associated with the proposed excavations that does not meet the permitted activity standard outlined in E7.6.1.6(2) with a water take period of more than 30 days proposed over the construction phase.
- Rule E7.4.1(A28) requires restricted discretionary activity consent for permanent diversion of groundwater caused by excavations that does not meet the permitted activity standards outlined in E7.6.1.10 within a high use stream management area.

The proposed groundwater diversion does not comply with the following:

- i. E7.6.1.10(2) restricts excavations extending below natural ground level by a maximum depth of 6m with a maximum excavation depth of 6.7m proposed.
- ii. E7.6.1.10(4)(a) and (b) require any permanent structure (i.e. those in place for more than 30 days) that physically impedes flow of groundwater to be less than 20m in length and less than 2m below natural groundwater level,

with the basement level walls extending up to 65m in length, up to 41m in width and up to 6.7m in depth.

Activity status

The overall activity status for this application is restricted discretionary. While the triggers for consent when bundled mean the application will be discretionary activity the protection of section 88A(1A) of the Act, allows the application to continue to be processed as an application for restricted discretionary activity given this was the activity status, when the application was first lodged.

Information Considered

I have read:

- The application, AEE and supporting documents;
- Section 92 responses;
- The Council report and recommendations on the consent application, including the amended officer's report; and
- Undertaken a site visit.

I am satisfied that I have sufficient information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on notification.

Background

This application has been referred to a Duty Commissioner to make a determination on notification only.

The application was lodged before the Resource Legislation Amendment Act 2017 RMA amendments came into effect and must therefore be considered as the RMA was pre 18th October 2017.

I acknowledge the consent environment includes the adjacent approved 17 storey building, but this was approved under a different and now out of date planning policy framework, where the AUP OP represents the current planning policy.

The officer's section 42A report recommends that the application should proceed on a notified basis because special circumstances exist. In essence, it is his view that the application represents a form of development significantly beyond what was anticipated by the AUP OP Business -Mixed Use Zone in terms of height, bulk and massing and therefore warrants public involvement in the decision making process.

As will be considered below, while I agree, I have significant concerns about the visual impact the proposal could have in the short, medium and long views. The officer's report refers to verbal comments (I assume by telephone) with Council's Landscape expert Ms Ainsley Verstraeten, expressing her concerns about the visual impacts of

this application. I agree with this and find it surprising why an application of this scale, with significant height and height to boundary infringements and the need of a thorough design assessment was not supported by a visual assessment. I am also surprised that such was not formally requested by council pursuant to s. 92 before a s.95 determination. I note for completeness that the Business - Metropolitan Centre Zone, which does provide for buildings of this height, has complementary controls to guide the building form, preventing 'slab' style building. No such controls exist in the Business - Mixed Use Zone, possibly because buildings of this height are not contemplated.

The s.95 pre-2017 RLAA,RMA amendments had four tests for notification. In essence, those being:

- A general underlying discretion (s.95(a)(1));
- Effects on the environment;
- Effects on affected persons; and
- Whether special circumstances exist that would warrant notification.

I raise this as, in my view, the application could have failed the adverse effects on the environment test, more, or likely to be more than minor. However, without a detailed visual assessment (evidence) from either the applicant, or the council, I cannot reach a firm view on this matter, save to acknowledge my concerns which were reinforced during my site visit. This is not a criticism of Ms Verstraeten as it appears that she was only asked for verbal comments. Moreover, I have concerns over the wind analysis which appears to have been a desk top opinion, without actually determining the degree of possible wind impacts. On this matter, my concern relates to whether the scale and/or design of the building may need to be changed to prevent an actual adverse wind environment, and this needing to be addressed as part of the assessment and consenting than left to wind tunnel testing being a condition of a consent.

I see no value in asking for this information now, as I agree with the officer's recommendation that the application should proceed on a notified basis, given that special circumstances exist. Requesting this information now would unlikely add value for the applicant towards a s.95 determination. However, while not coming to any view on the merits of the application, I believe that a detailed visual and wind assessment will be required for a hearing commissioner(s) to appropriately consider this application under s.104.

Public notification

Pursuant to section 95A (3) of the Act this application shall proceed on a publicly notified basis given that special circumstances exist which warrant public notification. These include:

- a) The proposal represents a building of significant height, bulk and massing substantially beyond what is anticipated in the Business-Mixed Use Zone, which are expressed in the Auckland Unitary Plan (OIP)'s objectives, policies, rules and expected environmental outcomes. The AUP OP provides for a height strategy across the Manukau metropolitan business centres, with buildings of the height proposed by this application only anticipated in the Business -Metropolitan Centre Zone, and buildings in the surrounding business zones of a far lesser height.
- b) Given the significant degree of infringement in building height, bulk and massing in this zone, public involvement would better inform decision making processes in achieving the purpose of the Act.
- c) The public should be provided the opportunity to formally comment on whether the integrity of this relevant set of AUP OP rules and strategy will be compromised so early on in the life of the AUP OP.
- d) Public notification is likely to elicit further information that should help in the assessment and consideration of the extent of any visual, amenity and wind effects from the proposed building.

Accordingly, this application shall proceed on a **PUBLICLY NOTIFIED** basis.



Dr Lee Beattie
Duty Commissioner
Date: 25 Feb 2018