

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO
TĀMAKI MAKAURAU ROHE**

ENV-2019-AKL-000

UNDER the Resource Management Act 1991 ("RMA")

IN THE MATTER of an appeal under clause 14 of Schedule 1 to the RMA
against a decision of the Auckland Council on proposed
Plan Change 17 to the Auckland Unitary Plan (Operative
in Part)

BETWEEN **Viaduct Harbour Holdings Limited**

Appellant

A N D **Auckland Council**

Respondent

NOTICE OF APPEAL BY VIADUCT HARBOUR HOLDINGS LIMITED

18 JULY 2019

**ELLIS GOULD
LAWYERS
AUCKLAND**

REF: Douglas Allan / Alex Devine

**Level 17 Vero Centre
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AUCKLAND**

NOTICE OF APPEAL BY VIADUCT HARBOUR HOLDINGS LIMITED

TO: The Registrar
Environment Court
AUCKLAND

AND TO: Auckland Council

1. Viaduct Harbour Holdings Limited ("**the Appellant**") appeals against part of a decision of Auckland Council ("**the Council**") on proposed Plan Change 17: Improving Consistency of Provisions for the GIS Viewer ("**the Plan Change**") to the Auckland Unitary Plan – Operative in Part ("**Unitary Plan**").
2. The Appellant has a right to appeal the Council's decision to the Environment Court under clause 14 of Schedule 1 to the Resource Management Act 1991 ("**RMA**") because the Appellant made submissions on the Plan Change in relation to the matter which is now appealed, being the adjustment of the boundary between Sub-precinct C and Sub-precinct A of I211 Viaduct Harbour Precinct ("**Precinct**") in relation to 32 Market Place, Auckland Central ("**Site**").
3. The Appellant is not a trade competitor for the purposes of section 308D of the RMA. In any event, the Appellant is directly affected by an effect of the subject of the appeal that:
 - 3.1 Adversely affects the environment; and
 - 3.2 Does not relate to trade competition or the effects of trade competition.
4. Notice of the decision that is being appealed, being the decision on the Plan Change ("**the Decision**"), was received by the Appellant on or about 27 June 2019.
5. The Decision was made by the Council.
6. The part of the Decision that is being appealed relates to the mapping of the boundary between Sub-precincts A and C of the Precinct at the Site.
7. The reasons for the appeal are as follows:

- 7.1 Unless and until the mapping of the sub-precinct boundaries of the Precinct is amended in accordance with the relief sought below, the Plan Change will not:
- (a) Promote the sustainable management of resources;
 - (b) Otherwise be consistent with Part 2 of the RMA;
 - (c) Be appropriate in terms of section 32 of the RMA; or
 - (d) Be consistent with the balance of the provisions of the Unitary Plan.

In addition, and without derogating from the generality of the above:

Background

- 7.2 The Site comprises a fee simple title and a leasehold title, and is legally described as Lot 4 Deposited Plan 317103. The Fee Simple interest is owned by the Appellant, with the Leasehold interest being owned by Tofini Auckland Ltd (“**TAL**”).
- 7.3 The Site forms part of the Parc development complex, which comprises two commercial and nine residential properties.
- 7.4 The Site is occupied by a five-storey commercial building at the Market Place frontage (“**Office Building**”). At ground level to the rear of the Office Building is:
- (a) A single storey building occupied by a private gym and ancillary facilities; and
 - (b) A landscaped area comprising a pool, a spa, and other landscape elements
- (collectively, “**the Recreational Facilities**”).
- 7.5 At basement level, the Site is utilised for carparking and storage areas which form part of the Parc complex but which are primarily used for and ancillary to the commercial office activities that take place in the Office Building.

- 7.6 The Site is zoned 'Business - City Centre' under the Unitary Plan and is subject to the Precinct. The Precinct is comprised of sub-precincts A to C:
- (a) Sub-precinct A has been applied to the commercial areas within the Precinct and enables and provides for a range of commercial and residential activities.
 - (b) Sub-precinct B has largely been applied at the margins of the Precinct (to the waters edge) and enables and provides for recreational needs.
 - (c) Sub-precinct C has generally been applied to the residential area within the Precinct and enables and provides for residential activities (including visitor accommodation). Commercial activities are not provided for as of right.
- 7.7 The Site is currently located wholly within Sub-precinct C in the Unitary Plan. The Plan Change as notified proposed amending the sub-precinct boundaries so that:
- (a) The part of the Site occupied by the Office Building would be included within Sub-precinct A; and
 - (b) The part of the Site occupied by the Recreational Facilities would remain within Sub-precinct C.
- 7.8 The Appellant sought by way of its submission ("**the Submission**") that the sub-precinct boundaries be reallocated so that the whole Site would be included within Sub-precinct A.
- 7.9 The Decision retained the sub-precinct boundaries notified in the Plan Change on the basis that:
- (a) The Submission cannot be considered "*on*" the Plan Change as there is a risk that persons who are potentially directly affected by the relief sought will have been denied an effective response.

- (b) The Recreational Facilities provide a service to the residential apartments and should remain within Sub-precinct C, which enables residential use.
- (c) There is a clear division of existing land uses.

Scope for the Submission

7.10 The relief sought in the Submission is within scope of the Plan Change and is available to the Court to be upheld:

- (a) While the Plan Change as notified proposed a specific change to the boundary between Sub-precinct C and Sub-precinct A, its scope was not limited to the specific location proposed in the Plan Change. By proposing a change to the boundary, the Council raised an issue with respect to the boundary's appropriate location on and in the immediate vicinity of the Site.
- (b) The Submission supported the Plan Change insofar as it sought to rectify the boundary between the sub-precincts in relation to the Site but proposed a more appropriate boundary.
- (c) Accordingly, the Submission addressed:
 - (i) The same provision and Site as was raised in the Plan Change.
 - (ii) The change to the status quo advanced by the Plan Change.

7.11 The Council's section 32 RMA assessment explicitly addressed an option of adjusting the sub-precinct boundary to align with the property boundaries. Council rejected that option but in doing so did not place reliance on a risk that other parties might be affected adversely by it. The change that the Appellant sought to the status quo had therefore already been identified and assessed by the Council and was a legitimate alternative to the relief proposed in the Plan Change.

7.12 There is no practical risk that potentially affected persons have been denied an opportunity to play an effective role in the Plan Change process because:

- (a) Neighbouring residents are not affected by the relocation of the boundary between the sub-precincts in respect of the Site, and for that reason were not identified by Council as affected parties in terms of the Plan Change as notified.
- (b) The relocation of sub-precinct boundaries will not alter the tenure of those parts of the Site that were not originally subject to the Plan Change (i.e. the Recreational Facilities).
- (c) The relocation of sub-precinct boundaries will not alter the ability of neighbouring residents to use the Recreational Facilities. That ability arises from private contractual arrangements (including easements) which provide reciprocal rights of access in favour of all properties within the Parc development and which are unaffected by the location of the sub-precinct boundary.
- (d) The relocation of the sub-precinct boundaries will not alter management and maintenance rights and obligations relating to the Recreational Facilities. Those rights and obligations arise from private contractual arrangements which are unaffected by the location of the sub-precinct boundary.
- (e) There is no substantive difference between the Unitary Plan provisions governing Sub-precincts A and C on the Site in respect of:
 - (i) The ability to establish dwellings or visitor accommodation on the Site as a Permitted Activity;
 - (ii) The Restricted Discretionary Activity consent status for a new building or an alteration or addition to an existing building;

- (iii) The matters of discretion and criteria relevant to any application for a new building or an alteration or addition to an existing building; and
 - (iv) Bulk and location standards including height (Precinct Plan 3) and site intensity (Precinct Plan 4).
- (f) While offices are a Permitted Activity in Sub-precinct A and a Discretionary Activity in Sub-precinct C:
- (i) The existing buildings on the Site are already allocated to commercial activities;
 - (ii) Any additional office activity on the Site would not generate any additional adverse effects on adjacent residential activities other than (potentially) in terms of the effects generated by construction or alteration of a building, which will require Restricted Discretionary Activity consent under either of the sub-precincts.
- (g) While specified retail and service activities that are Permitted Activity in Sub-precinct A will require Restricted Discretionary Activity consent in Sub-precinct C, they would not generate any additional adverse effects on adjacent residential activities other than (potentially) in terms of the effects generated by construction or alteration of the building, which will require Restricted Discretionary Activity consent under either of the sub-precincts.
- (h) Accordingly, the relocation of sub-precinct boundaries in relation to the Site will in practice have no actual or potential effect on neighbouring residents:

7.13 The conclusion reached in the Decision as to the risk of denying potentially affected persons an opportunity to participate appears to have been founded on an erroneous understanding that the Recreational Facilities are owned by all 11 properties within the Parc development. This is incorrect. As the holder of the

Leasehold interest, TAL owns both the Office Building and the Recreational Facilities.

- 7.14 Having regard to the above, no party can be said to be adversely affected by the relief such that they may reasonably have wanted to submit.

Inclusion of the Site within sub-precinct A

- 7.15 Including the entirety of the Site within Sub-precinct A:
- (a) Will provide for the efficient ongoing use of the Site;
 - (b) Appropriately reflects and enables the mix of activities which currently take place on the Site; and
 - (c) Will represent good planning practice with respect to the location of zone or precinct boundaries.
- 7.16 The Decision erroneously proceeded on the basis that there is a split land use on the Site, with the offices being commercial in nature and the Recreational Facilities being residential in nature. To the contrary:
- (a) The Recreational Facilities are accessible to the tenants of the Office Building and form part of the amenities of that Site. They are ancillary and integral to the commercial use of the Site.
 - (b) While the Recreational Facilities are available for the use by the surrounding residences, they are owned by TAL who have a leasehold interest in the Site and who operate the commercial building on the Site.
- 7.17 Including the entirety of the Site within Sub-precinct A better reflects the mix of activities which currently takes place on the Site and it is appropriate and logical that the rules that apply to the Site should reflect the current and future mixed land use:
- (a) Sub-precinct C has a residential focus, but no residential activities currently take place on the Site.

- (b) The Recreational Facilities are ancillary to the commercial office activities on the Site and are available for tenants and their employees to use. They form an integral part of the commercial development on the Site.
- (c) Given that the offices and Recreational Facilities form an integrated package of commercial activities on the Site, it is desirable that the same planning controls apply to all parts of that package and to the Site as a whole.
- (d) Demarcating sub-precinct boundaries on the basis that current activities across the Site differ is inappropriate.
- (e) Good planning practice suggests that sub-precinct boundaries should follow a site boundary. The purpose of the Plan Change reflects this, being to “*ensure that zone and precinct boundaries follow road or property boundaries*”. The Decision is therefore at odds with the purpose of the Plan Change.
- (f) Accordingly, the application of Sub-precinct A to the Site in its entirety will:
 - (i) Provide for the efficient ongoing use of the Site;
 - (ii) Avoid ambiguity as to the ability to use the Recreational Facilities; and
 - (iii) Be consistent with good planning practice and the purpose of the Plan Change.

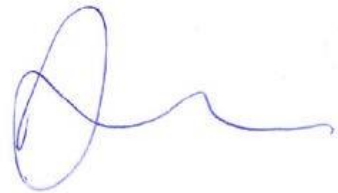
8. The Appellant seeks the following relief:

- 8.1 That the Decision subject to this appeal be disallowed in part;
- 8.2 That the boundaries of Sub-precinct A and Sub-precinct C be amended such that the entirety of the Site is included in Sub-precinct A, as shown in **Annexure A**.
- 8.3 Such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this appeal; and

- 8.4 Costs of and incidental to the Appeal.
9. The Appellant **attaches** the following documents to this Notice of Appeal:
- 9.1 A map identifying relief sought by the Appellant (**Annexure A**);
- 9.2 A copy of the Appellant's Submission on the Plan Change (**Annexure B**);
- 9.3 A copy of the relevant parts of the Decision (**Annexure C**);
- 9.4 A list of the parties to be served with a copy of this appeal (**Annexure D**).

DATED at Auckland this 18th day of July 2019

VIADUCT HARBOUR HOLDINGS LIMITED by its solicitors and duly authorised agents Ellis Gould



D A Allan / A K Devine

ADDRESS FOR SERVICE: The offices of Ellis Gould, Solicitors, Level 17 Vero Centre, 48 Shortland Street, PO Box 1509, Auckland, DX CP22003, Auckland, Telephone: (09) 307-21752, Facsimile: (09) 358-5215. Attention: Douglas Allan. dallan@ellisgould.co.nz.

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 or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Annexure A

Relief sought by Viaduct Harbour Holdings Limited



Annexure B

A copy of the Appellant's original submission on the Plan Change

**SUBMISSION ON PLAN CHANGE 17 TO THE AUCKLAND UNITARY
PLAN – IMPROVING CONSISTENCY OF PROVISIONS FOR THE GIS
VIEWER
UNDER CLAUSE 6 OF THE FIRST SCHEDULE,
RESOURCE MANAGEMENT ACT 1991**

To: Auckland Council
Private Bag 92300
Victoria Street West
Auckland 1142

Submission on: Plan Change 17 Improving Consistency of Provisions for the
GIS Viewer

Name: Viaduct Harbour Holdings Limited (VHHL)

Address: Level 5
16 Viaduct Harbour Ave
Viaduct Harbour 1010

1. Introduction

- 1.1. Viaduct Harbour Holdings Limited (“**VHHL**”) is the owner of the fee simple interest in approximately 14 hectares of land located in the southern parts of the Viaduct Harbour and Wynyard Precincts, immediately to the north of Fanshawe Street. This land is occupied by extensive commercial office, food and beverage and residential activities, together with brownfields land that is prime for redevelopment of a similar nature (“**the VHHL Land**”). The VHHL Land is identified by blue shading on the plan attached as **Annexure 1**.
- 1.2. As a substantial land owner in the Viaduct and Wynyard precincts, VHHL has been involved in the master planning of both precincts to create a high amenity mix of commercial office, residential and hospitality uses with high quality public spaces and a focus on the unique connection to the Auckland waterfront. VHHL has actively participated in plan change processes, and more recently the Auckland Unitary Plan, over the last 20 years to ensure a co-ordinated approach to the development of this part of the City’s waterfront.
- 1.3. VHHL is concerned with any proposed changes to the provisions of the Auckland Unitary Plan (AUP) which could adversely affect development opportunities within the VHHL Land.
- 1.4. The VHHL land includes a number of properties in the Viaduct Harbour of Auckland’s CBD, including the property at 32 Market Place (“**the site**”).
- 1.5. The site comprises a parcel of land (legally described as Lot 4 DP 317103), which is occupied by a 5-storey building with basement parking levels. The building is occupied by commercial (office) tenancies located to the front of the site, and a storage and parking area within a building to the rear of the site. The site also includes a portion of a common landscaped area to the rear, which forms part of the landscaped

courtyard associated with the balance of the development (The Parc) of the block contained by Market Place, Customs Street West and Pakenham Street East. The landscaped area (and pool) is accessible to the tenants of the commercial building on the site, and forms part of the amenities of the site.

- 1.6. The site is zoned ‘Business – City Centre’ under the Auckland Unitary Plan (Operative in part) (“AUP”). The site is subject to the ‘Viaduct Harbour Precinct – Sub-precinct C’ (“**Sub-precinct C**”).
- 1.7. Auckland Council proposes to introduce a change to the AUP, by way of changes to the ‘AUP viewer’ to amend the spatial mapping of zones, controls, overlays and precincts.
- 1.8. This proposed change seeks to amend the boundaries of Sub-precinct C and Sub-precinct A of the Viaduct Harbour Precinct, as they relate to the site. The changes proposed do not correspond to the property boundary, or the nature of activity approved and occurring from the site.

2. Scope of Submission

- 2.1. VHHL’s submission relates to:
 - a. the site at 32 Market Place, Auckland CBD, the land of which is owned by VHHL; and
 - b. the mapping of Sub-precinct C of the Viaduct Harbour Precinct as it affects the site.
- 2.2. VHHL, as the owner of the land at 32 Market Place, was served notice of PC17.

3. Submission

- 3.1. The Council’s section 32 report (“**s32 Report**”) defines the purpose of the plan change, as follows (emphasis added in underline to highlight the purpose of PC17 in relation to precincts):¹

The scope of PC 17 is limited to addressing the mapping anomalies over 212 sites (outlined in section 6 of this report) that are compromising the ability of plan users to efficiently interpret the AUP. PC 17 is limited to amending technical mapping issues to ensure the subject provisions give effect to the objectives and policies of the AUP. In relation to the AUP Viewer, the following matters are included within the scope of PC 17:

- *ensure the zoning of the site is consistent with surrounding sites;*
- *ensure the spatial application of zones and/or overlays has been applied correctly to the site, either wholly or partially;*
- *ensure that zone and precinct boundaries follow road or property boundaries;*
- *resolve identified inconsistencies in the mapping of controls and overlays; and*

¹ ‘Proposed Plan Change 17 (PC17) Improving consistency of provisions in the Viewer of the Auckland Unitary Plan (Operative in Part) Section 32 Evaluation Report’, Auckland Council, Section 2.2, page 14.

- *resolve identified inconsistencies in the mapping of zones, overlays or precincts on certain sites within the Waitakere Ranges.*

PC 17 does not seek to alter the current policy direction of the plan. It will not alter the outcomes of the objectives and policies nor will it seek to add new objectives and policies.

- 3.2. PC17 seeks to amend the boundaries of Sub-precinct C and Sub-precinct A of the Viaduct Harbour Precinct, as they relate to the site. In summary, Sub-precinct A provides for a range and mix of activities. Sub-precinct C, conversely, seeks to maintain residential character and amenity and has been applied to landholdings which are predominantly occupied by residential activities, while enabling some commercial and commercial service activities.
- 3.3. Overall, the Viaduct Harbour Precinct provides for a range of activities, including residential and commercial activities. In sub-precinct A, the precinct largely relies on the provisions of the underlying Business – City Centre zone, which provides for residential and commercial (and other) activities as permitted activities. In Sub-precinct C, the precinct provisions provide for dairies, restaurants and cafes, hairdressers, dry-cleaning agents, retail and healthcare facilities on the ground floor of an existing building within Area A of Sub-precinct C, and require discretionary activity consent for office activities.
- 3.4. In respect of the site, the mapping of the sub-precincts is such that the site is included in Sub-precinct C, with the land to the north being within sub-precinct A, as shown in Figure 1.
- 3.5. The s32 Report states that the boundaries of the sub-precincts (as they now exist) were based on incorrect planning evidence presented during the Proposed Auckland Unitary Plan hearings process on behalf of a submitter (the owner of the building on the site), and that the evidence incorrectly included the site in Sub-precinct C. As the s32 Report (for PC17) correctly identifies, the subject site is occupied by commercial activity, and no residential activity occurs within the site. In this respect, the ongoing use and development of the site is not properly provided for by the Viaduct Harbour Precinct.
- 3.6. The s32 Report identifies the anomalous position of the sub-precinct boundary. In this respect, the s32 Report identifies two options to correct the error:²
 - *The first option is to remove the entire site from sub-precinct C and include it in sub-precinct A. This enables the site boundary and the sub-precinct boundary to align with each other. However, part of the site forms part of the grounds for The Parc residential apartments and therefore should remain within sub-precinct C.*
 - *The second option is to include only that part of the site which is used for commercial activities in sub-precinct A, leaving the remaining part of the site within sub-precinct C. This will create a misalignment between the site boundary and sub-precinct boundary. However, this is considered appropriate because it reflects the split land use of the site. It is noted that AIPL indicated in their correspondence in 2016 and 2017 that they are happy for the sub-precinct boundary to follow*

² ‘Proposed Plan Change 17 (PC17) Improving consistency of provisions in the Viewer of the Auckland Unitary Plan (Operative in Part) Section 32 Evaluation Report’, Auckland Council, page 68.

the land use, i.e. only the commercial building is removed from sub-precinct C.

- 3.7. The preferred option contained in the s32 Report in respect of adjusting the sub-precinct boundaries is to include the front portion of the site within Sub-precinct A and to leave the balance of the site as Sub-precinct C, as shown in Figure 2 below.
- 3.8. Such an approach is inconsistent with the stated objective of PC17, being to “ensure that zone and precinct boundaries follow road or property boundaries”.

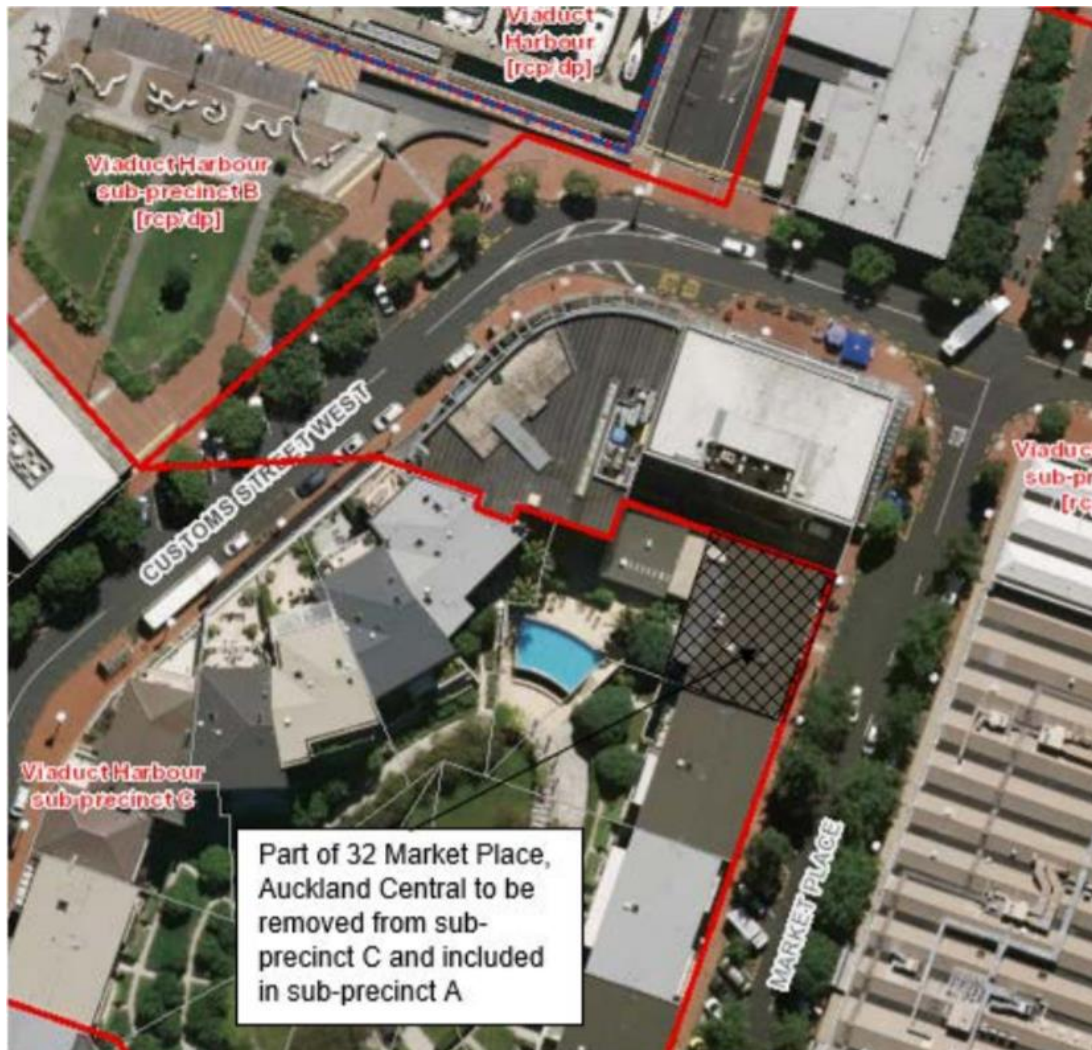


Figure 1. Proposed adjustment to Sub-precinct A and Sub-precinct C (Source: s32 Report, page 66).

- 3.9. The s32 Report incorrectly identifies the front portion of the site as being used for commercial activity only. The rear portion of the site/building is also utilised for parking and storage area, ancillary to the commercial office activities within that part of the building at the front of the site. That part of the site which is occupied by landscaping and pool is used by tenants of the building on the subject site, as well as being used in common with various tenants of other buildings within the wider ‘Parc’ complex.
- 3.10. With respect to the above, it is more appropriate to adjust sub precinct A to reflect the boundary of the site, on which the primary activity is offices, to enable and continue

to provide for activities approved and established, and those enabled consistent with those provided for by Sub-precinct A. Such an approach is preferred and more pragmatic and practical, than attempting to draw an arbitrary line across the property to distinguish which parts of the building/site can be used in association with activities provided for in Sub-precinct A, including the extent of basement carparking/loading.

4. Relief sought

4.1. VHHL seeks the following relief:

- a. That the boundaries of Sub-precinct A and Sub-precinct C be amended such that the entirety of the property at 32 Market Place, Auckland CBD is included in Sub-precinct A, as shown in Annexure 2;
- b. Any other consequential amendments required to give effect to the relief sought.

5. Conclusion

5.1. VHHL wishes to be heard in support of this submission.

5.2. If others make a similar submission, consideration would be given to presenting a joint case with them at any hearing.

Viaduct Harbour Holdings Limited

Signature

by its planning and resource management consultants and authorised agents Bentley & Co. Ltd



Craig McGarr

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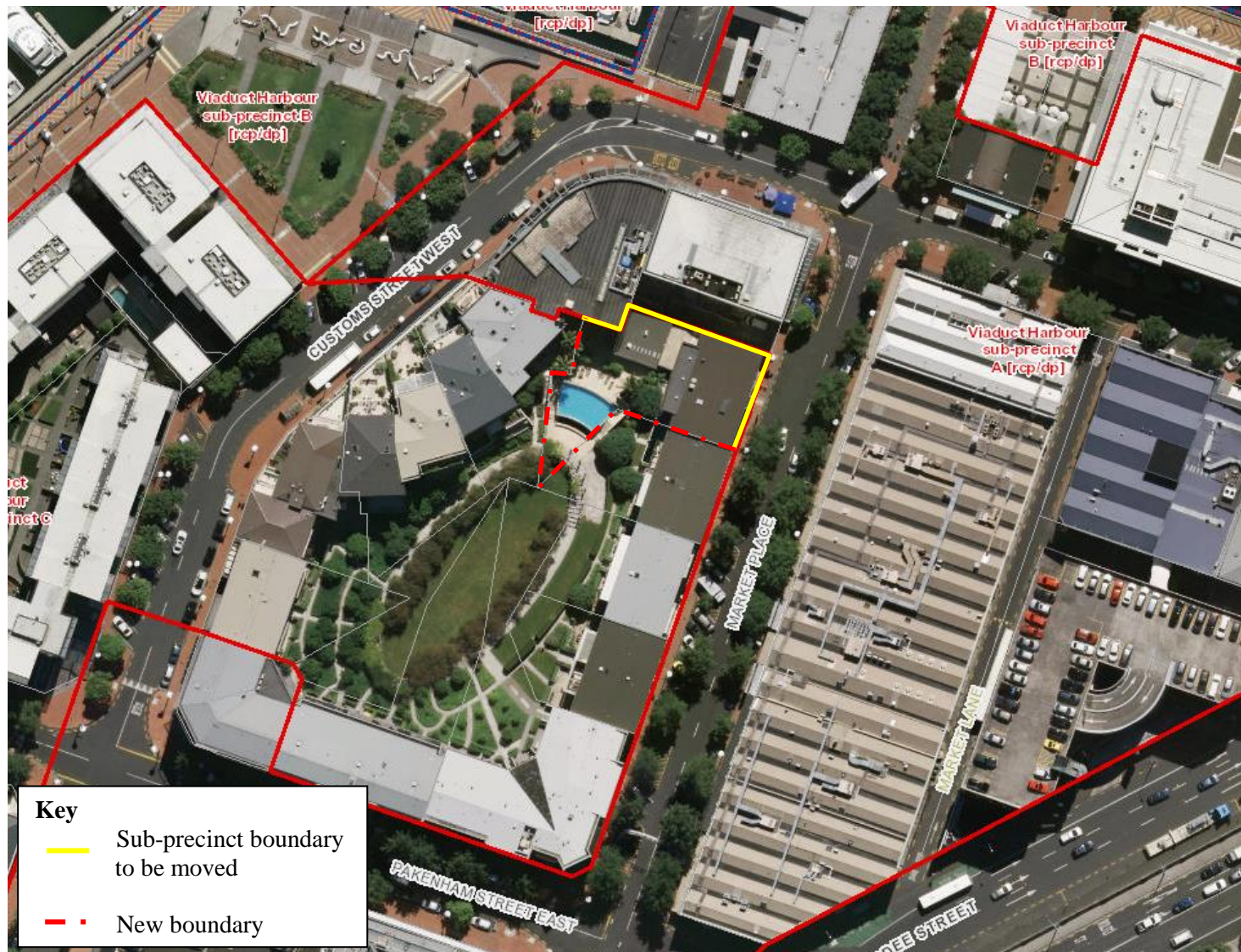
Email:

cmcgarr@bentley.co.nz

ANNEXURE 1 – VHLH Land Holdings



ANNEXURE 2 – Relief Sought by Viaduct Harbour Holdings Limited



Annexure C

A copy of the relevant parts of the Decision (Extracts)

57. Stephen Havill, Consultant Planner for the submitter confirmed that both properties are developed and all the on-site activities are operating, with the adjoining Summerset Retirement Village sharing access on to Hingaia Road. Mr Havill also confirmed that while there was an internal connection between the sites at 71 and 75, the Pararekau Road access would be insufficient to cope with all of the traffic generated. It was essential to maintain the two access points.¹²
58. Mr Havill also endorsed the reporting planner's comment that the AUP has other controls over access onto arterial roads.¹³
59. The Commissioners agree with the submitter for the following reasons:
- a. The sites are fully developed and operating, with two access points, one onto Hingaia Road and the other onto Pararekau Road.
 - b. The Vehicle Access Restriction Control would have no implications for the existing crossings and it is not intended to provide any more crossings, which led the Commissioners to question why it is supported by the Council officers.
 - c. Other provisions in the AUP control access onto arterial roads under E27.6.4 Access, with broad matters of discretion and assessment criteria that apply to a range of circumstances that are relevant to this site; including a new vehicle crossing, a new activity being established on a site, a change of use, or a new building or additions that require a resource consent.
 - d. The principle of consistency with Hingaia 3 Special Housing Area precinct provisions is outweighed by the above considerations.
60. **Viaduct Harbour Holdings Limited (VHHL)** appearing with **Auckland Industrial Projects Limited (AIPL)** was represented by Anthony Blomfield, Consultant Planner; Angela Bull and Lawrence Flynn.
61. Commissioner Macky recused herself from deliberations regarding submissions from VHHL due to a personal conflict of interest.
62. PC17 seeks to correct the mapping of sub-precinct boundaries of the I211 Viaduct Harbour Precinct as the sub-precinct boundaries at 32 Market Place, Auckland Central do not align with or reflect the split land use of the site. The property at 32 Market Place is currently located in sub-precinct C of I211 in the City Centre zone. Sub-precinct C has been applied to the residential area within the precinct in recognition of the high-quality residential environment within this development. However, as the reporting planner points out, the main building at 32 Market Place is currently used for commercial purposes, and this activity makes the building more suitable for inclusion within Viaduct Harbour sub-precinct A.

¹² Refer paragraph 3 of Mr Havill's evidence

¹³ Refer E27.6.4 (E27 Transport)



63. As a result, PC17 recommends correcting this issue by realigning the I211 Viaduct Harbour sub-precinct boundaries to include the part of the site which is used for commercial activities within sub-precinct A to reflect the split land use of the site.
64. Mr Blomfield provided an outline of the uses within the site, advising that the subject site forms part of The Parc development complex, which comprises 11 properties, two of which are occupied by commercial buildings (the subject site and the property at 136 Customs Street West)¹⁴, and the remaining nine properties, which are occupied by residential apartment buildings.¹⁵ Mr Blomfield also advised that a proportion of each of the 11 properties is occupied by amenity landscaping, which is accessible to each of the other properties as a central communal shared space.¹⁶ Commissioners Watson and Kurzeja confirmed these land uses in a site visit to the property.
65. We note that the submitters are supportive of the proposed amendment but seek a further amendment: that the entirety of the property at 32 Market Place is included in Sub-precinct A. This is on the basis that the approach being adopted by Council, to include only part of the site in the sub-precinct, is inconsistent with the stated objective of PC17, being to
- “ensure that zone and precinct boundaries follow road or property boundaries.”¹⁷*
66. The submitters also advised that the rear portion of the site/building is also utilised for a parking and storage area, ancillary to the commercial office activities within that part of the building at the front of the site. In addition, that part of the site which is

¹⁴ The property at 136 Customs Street West is already included in sub-precinct A (commercial)

¹⁵ And which are all included in sub-precinct C (residential)

¹⁶ Refer paragraph 2.2 of Mr Blomfield’s statement

¹⁷ Refer paragraph 18.6 of section 42A report.

occupied by landscaping and a pool is used by the tenants of the building on the subject site, as well as the residents of the wider Parc complex.

67. On that basis, the submitters consider it is not only more appropriate to adjust the sub-precinct A boundary to reflect the boundary of the 32 Market Place site, on which the primary activity is offices, but also to include the whole of The Parc in that sub-precinct.
68. The Commissioners agree with the reporting planner that the commercial building at 32 Market Place is incorrectly located within sub-precinct C, which provides for residential use, and this error should be corrected to locate the commercial building within sub-precinct A. We note that this exact situation occurs on the same property, in the south-west corner of the site at 136 Customs Street West, Auckland Central in relation to Mastercard House. This commercial building is located within sub-precinct A.
69. We then turned our minds to whether the remaining portion of the property, containing the private gym and sauna facility and the landscaped areas comprising the swimming pool and spa pool should also be included within sub-precinct A, as sought by the submitters.
70. We also considered that the request by the submitters to extend sub-precinct A to include the entire site at 32 Market Place, as opposed to just the commercial buildings, does require consideration with respect to scope. We note that this was not a matter that the reporting planner turned her mind to. Based upon legal advice provided in the Section 42 report¹⁸ we find that the submission is not “on” the plan change, as, despite the fact that Mr Blomfield has addressed the alteration of the *status quo* brought about by that change, this submission has not considered that there is a real risk that persons who are potentially directly affected by the additional changes proposed in the submission will have been denied an effective response to this additional change.
71. This is paramount to the submitter’s request as we note from the Section 42A report¹⁹ that the rear portion of the site containing the private gym and sauna facility is jointly owned by all 11 properties within the Parc development and is available for use by all nine of the residential body corporates and the two commercial building tenants within the Parc complex. In addition, the private pool and the building at the rear portion of the site are ancillary to the residential apartments.
72. We agree with the reporting officer that these uses provide a service to the residential apartments and should remain within sub-precinct C, which enables residential uses. This better supports the objectives and policies of I211 of the Viaduct Harbour Precinct namely:

¹⁸ Refer to sections 8.6 – 8.9 of section 42A report

¹⁹ Refer paragraphs 18.9 and 18.10 of the section 42A report.

- Objective I211.2.(7) – maintaining the residential character and amenity for permanent residents;
- Policy I211.3(11) – avoiding activities that adversely affect the residential character and related amenity; and
- Policy I211.3(12) – provide for permanent residents in sub-precinct C.

73. We further agree with the reporting planner that in this case the mis-alignment of the sub-precinct boundary with the property boundary is the most appropriate outcome, given the clear division of the existing land uses. We therefore reject the submissions of VHHL and AIPL.

SUMMARY OF OTHER SUBMISSIONS RECEIVED

74. In this section of the decision we briefly review submissions opposing aspects of PC17 where submitters did not appear or present evidence at the hearing. In other words, we have simply accepted the planner’s recommendation in the Section 42A report for those submissions in support of the plan change:

- **Yan Chen and Hongyan Lu** – with reference to 390B Richardson Road, Mt Roskill, the submitter supported the plan change, seeking to change the property’s zoning to Residential – Mixed Housing Urban zone. The planner recommended that the submission be accepted and the Commissioners confirm that recommendation.
- **Logan and Suzanne Billing** supported PC17 in relation to 107 Maraetai School Road, to keep Maraetai land size to 700sq.m and above. The planner recommended that the submission be accepted and the Commissioners confirm that recommendation.
- **Geoffrey’s Trust and JH Smale Trust** supported the plan change regarding the 1539 Smales 2 Precinct, sub-precincts A and B and the proposed rezonings. The planner recommended that the submission be accepted and the Commissioners confirm that recommendation.
- **Padlie-Hall Family Trust et al** accepted the plan change plan and specially the application of the Subdivision Variation Control Overlay to 1 Maraetai Coast Road, Clevedon, to increase the minimum lot size to 700sq.m. The planner recommended that the submission be accepted and the Commissioners confirm that recommendation. However, that part of the submission seeking any further increase in the minimum lot size for any development was recommended to be rejected, and the Commissioners confirm that recommendation as well.
- **Onehunga Future Investment Limited** supported the plan change as it affected 63-65 Victoria Street, Onehunga as the proposed Residential –

Annexure D

A list of the parties to be served with a copy of this Notice of Appeal

Submission Number	Submitter Name	Address for Service
N/A	Auckland Council	Manager – Litigation and Regulatory Services (christian.brown@aucklandcouncil.govt.nz)
2	Auckland Industrial Projects Limited	laurence@wattsgroup.co.nz
	Tofini Auckland Limited	alex@rolleproperty.co.nz