

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER of the Resource Management Act 1991 (**the Act**)

AND of appeals under Clause 14 of the First Schedule to the Act 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
(ENV-2019-AKL-000146)

AND TOFINI AUCKLAND LIMITED (AS SUCCESSOR TO AUCKLAND INDUSTRIAL PROJECTS LIMITED)
(ENV-2019-AKL-000158)

Appellants

AND AUCKLAND COUNCIL
Respondent

Principal Environment Judge L J Newhook sitting alone under s 279 of the Act
IN CHAMBERS at Auckland

CONSENT ORDER

- [A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:
- (1) the appeals are allowed subject to the amendments set out in this order;
 - (2) the appeals are otherwise dismissed.
- [B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

- [1] Viaduct Harbour Holdings Limited (**VHHL**) and Tofini Auckland Limited (**Tofini**) appealed part of a decision by Auckland Council (**the Council**) on proposed Plan Change 17: Improving consistency of provisions for the GIS Viewer (**PC 17**) to the Auckland Unitary Plan (Operative in Part) (**Unitary Plan**).
- [2] VHHL's and Tofini's appeals both relate to the site at 32 Market Place, Auckland Central (**the Site**). The Site is zoned Business - City Centre in the Unitary Plan and is also within the I211 Viaduct Harbour Precinct. The I211 Viaduct Harbour Precinct is comprised of Sub-precincts A to C, which apply to different areas of public and privately-owned land within the Precinct.
- [3] In summary, Sub-precinct A applies to land which is characterised by commercial land uses, and Sub-precinct C applies to land which is characterised by residential land uses. Sub-precinct B applies to publicly accessible coastal land and is not relevant to VHHL's and Tofini's appeals.
- [4] Prior to the notification of PC 17 the Site was located wholly within Sub-precinct C.
- [5] The Council's decision on PC 17 realigned the 1211 Viaduct Harbour sub-precinct boundaries to include the part of the Site occupied by a five-level building within Sub-precinct A, with the balance of the site including the Recreational Facilities remaining within Sub-precinct C.
- [6] VHHL's and Tofini's appeals sought that the boundaries of Sub-precinct A and sub-precinct C be amended so that the entirety of the site is within Sub-precinct A.
- [7] The parties have now agreed that the appeals can be resolved. In accordance with the Council's decision, the I211 Viaduct Harbour sub-precinct boundaries will be realigned to include the part of the Site occupied by the five-level building within Sub-precinct A, with the balance of the site including the Recreational facilities remaining within Sub-precinct C. The parties have agreed to a consequential amendment to the I211.10.1 Viaduct Harbour:



Precinct Plan 1 by including a new permitted activity rule specific to the Site, as follows:

Swimming, exercising and leisure activities in the part of the site legally described as Lot 4 Deposited Plan 317103 within Sub-precinct C by occupants of the site undertaking office activities.

- [8] In making this order the Court has read and considered the appeals and the joint memorandum of the parties dated 4 March 2020.
- [9] The Parc Bodies Corporate (BC321391, BC321390, BC336460, BC321389, BC321393, BC323876, BC336459), the Lumina Body Corporate (BC383524), and the Vibe Body Corporate (BC38969) have given notice of their intention to become parties to the appeals under s 274 of the Act and have signed the memorandum of the parties seeking this order.
- [10] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297 of the Act. The Court understands for present purposes that:
- 10.1 All parties to the appeals have executed the memorandum requesting the order.
- 10.2 All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act, including in particular Part 2.

Order

- [11] Therefore, the Court orders, by consent, that the I211.4.1 Activity Table for the I211 Viaduct Harbour Precinct in the Auckland Unitary Plan (Operative in Part) is amended to include a new permitted activity rule specific to the site at 32 Market Place as set out in **Appendix 1** to this consent order.
- [12] The appeals are otherwise dismissed.



[13] There is no order of costs.

DATED at Auckland this 20th day of March 2020



L J Newhook
Principal Environment Judge



Appendix 1

Amendments to the **I211.4.1 Activity table** (for the I211 Viaduct Harbour Precinct in the Auckland Unitary Plan (Operative in Part)) shown as underline:

Activity		CMA [rcp]	Land [dp]
Works in the coastal marine area			
(A1)	Maintenance or repair of existing seawalls, reclamations or drainage systems	P	NA
(A2)	Minor reclamation for the purpose of maintaining, repairing or upgrading a reclamation	RD	NA
(A3)	Reclamation or drainage not otherwise provided for	D	NA
(A4)	Declamation#	RD	RD
(A5)	Maintenance dredging	RD	NA
(A6)	Capital works dredging	RD	NA
Use and activities and associated occupation			
Residential			
(A7)	Dwellings and visitor accommodation within Sub-precinct C	NA	P
Commerce			
(A8)	Dairies, restaurants and cafes, hairdressers, drycleaning agents, retail and healthcare facilities on the ground floor of an existing building within Area A of Sub-precinct C	NA	RD
(A9)	Office activities within Sub-precinct C	NA	D
<u>(A9A)</u>	<u>Swimming, exercising and leisure activities in the part of the site legally described as Lot 4 Deposited Plan 317103 within Sub-precinct C by occupants of the site undertaking office activities</u>	<u>NA</u>	<u>P</u>



(A10)	Maritime passenger operations, excluding freight movement and storage#	P*	P
(A11)	Parking accessory to marine and port activities, maritime passenger operations and events within Te Wero Island and the Eastern Viaduct in sub-precinct B	P*	NA
(A12)	Parking that is not accessory to marine and port activities and maritime passenger operations and events on coastal marine area structures	NC*	NA
(A13)	Short-term parking (non accessory) within sub-precinct B	NA	RD
(A14)	Aquaculture activities	Pr	NA
Industry			
(A15)	Permanent refuelling facilities for boats	RD	RD
(A16)	Marine and port activities except for permanent refuelling facilities for boats	P	P
(A17)	Industrial activities not specified as a permitted or restricted activity	D*	D
Community			
(A18)	Artworks, open air markets, kiosks, stalls, displays, tables and seating within Waitemata Plaza and Market Square, including those used in association with food and beverage activities located on adjacent sites	NA	P
(A19)	Marinas	P	P
(A20)	Marina berths	P	N/A
(A21)	Community facilities#	P	P
(A22)	Public amenities	P*	P
(A23)	Activities within sub-precinct B and C listed in the City Centre zone activity table and not specified in this activity table	NC	NC



Development			
(A24)	Marine and port facilities within sub-precinct A or B	NA	RD
(A25)	Marine and port facilities located outside of sub-precinct A and B	P*	P
(A26)	Marine and port accessory structures and services, excluding new pile moorings	P	P
(A27)	Wave attenuation devices	RD	RD
(A28)	Observation areas, viewing platforms and boardwalks	RD	RD
(A29)	Pile moorings existing at 30 September 2013 including occupation and use by the vessel to be moored	P	NA
(A30)	New pile moorings established after 30 September 2013 including occupation and use by the vessel to be moored	RD	NA
(A31)	Maimai	NC	NC
(A32)	A bridge across the Viaduct Harbour	RD	RD
(A33)	Minor cosmetic alterations to a building that does not change its external design or appearance	P*	P
(A34)	New buildings, and alterations and additions to buildings not otherwise provided for	RD*	RD
(A35)	Coastal marine area structures or buildings not otherwise provided for	D	NA
(A36)	Development that does not comply with Standard I211.6.10(1)-(3) or I211.6.11(1)-(2)	NC	NC

