

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2023] NZEnvC 153**

IN THE MATTER OF an appeal under clause 14 of Schedule 1  
the Resource Management Act 1991

BETWEEN ARGOSY PROPERTY NO.1  
LIMITED

(ENV-2023-AKL-000031)

Appellant

AND AUCKLAND COUNCIL

Respondent

AND NORTH EASTERN INVESTMENTS  
LIMITED

Applicant

Court: Environment Judge MJL Dickey sitting alone under s 279 of the  
Act

Last case event: 21 July 2023

Date of Order: 24 July 2023

Date of Issue: 24 July 2023

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**CONSENT ORDER**

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A: Under section 279(1)(b) of the Resource Management Act 1991, the  
Environment Court, by consent, orders that:



- (1) the appeal is resolved in full, with PC71 to the Auckland Unitary Plan Operative in part approved with modifications as set out in Appendix A to this order; and
- (2) the appeal is otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

## REASONS

### Introduction

[1] This appeal concerns the decision of Auckland Council, made on 1 December 2022 (and publicly notified on 26 January 2023), to approve (with modifications) Plan Change 71 (**PC71**) to the Auckland Unitary Plan Operative in part (**AUP**).

### Background

[2] PC71 is a Council-initiated plan change and arose in response to the requirements of Policy 11 of the National Policy Statement on Urban Development 2020 (**NPS-UD**) to remove all car parking minimums, and provisions that had the effect of requiring car parking minimums, from the AUP. Policy 11 of the NPS-UD provides:

Policy 11: In relation to car parking

- (a) the district plans of tier 1, 2, and 3 territorial authorities do not set minimum car parking rate requirements, other than for accessible car parks; and
- (b) tier 1, 2, and 3 local authorities are strongly encouraged to manage effects associated with the supply and demand of car parking through comprehensive parking management plans.

[3] Clause 3.38 of the NPS-UD required the following to implement Policy 11:

- (1) If the district plan of a tier 1, 2, or 3 territorial authority contains objectives, policies, rules, or assessment criteria that have the effect of requiring a minimum number of carparks to be provided for a particular development, land use, or activity, the territorial authority

must change its district plan to remove that effect, other than in respect of accessible car parks.

- (2) Territorial authorities must make any changes required by subclause (1) without using a process in Schedule 1 of the Act.

...

[4] All AUP provisions which directly imposed a minimum requirement for car parking were removed by the Council via a non-Schedule 1 process and PC71 was notified on 24 February 2022 to make consequential amendments to the AUP that addressed issues and inconsistencies that had arisen following the removal of car parking minimums.

[5] The objective of PC71 was to:<sup>1</sup>

Give effect to Policy 11 of the NPS-UD

Address consequential technical amendments to the AUP and HGI Plan that are necessary to give effect to Policy 11 of the NPS-UD but fall outside the scope of non-Schedule 1 changes as described in clause 3.38 of the NPS-UD.

[6] PC71 sought to address the following issues: inconsistent text, the policy hierarchy in Chapter E27 Transport of the AUP, implied minimums, references to parking ‘requirements’ and ‘required parking’, references to ‘reduction in parking’ and improving clarity.<sup>2</sup>

[7] Through PC71, the operative text of Policy E27.3(6) was proposed to be amended. Prior to the amendment, the operative text of Policy E27.3(6) provided policy support for not limiting and not requiring carparking in certain areas for certain activities. This was necessary to support the different approach that had been taken in the AUP rules in respect of the requirements as to carparking minimums and maximums. As the minimums had been removed through the non-Schedule 1 process, this provision needed to be rationalised to reflect the amended rules in the

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<sup>1</sup> PC71 was notified alongside Plan Modification 14.

<sup>2</sup> Noting that as notified, PC71 sought amendments in respect of travel demand, but this component of PC71 was withdrawn by the Council.

AUP. The amended policy as a result of PC71 only related to limits on parking supply and no longer referenced minimums.

[8] By decision dated 1 December 2022 (and publicly notified on 26 January 2023), PC71 was approved with modifications by independent commissioners appointed by the Council.

### **Appeal**

[9] On 10 March 2023, the Appellant lodged with the Environment Court a notice of appeal against the Council's decision on PC71. It was the only appeal on PC71. The appeal was limited to the amendments to Policy E27.3(6) contained within PC71. This consent order relates to the entirety of that appeal.

[10] On 28 March 2023, North Eastern Investments Limited (**NEIL**) joined the appeal as an interested party under section 274 of the RMA. No other section 274 parties have joined this appeal.

### **Agreement reached**

[11] On 18 May 2023 the parties met to discuss the appeal. As a result of those discussions the parties reached agreement to settle the appeal in its entirety. In particular, the parties have reached agreement on amendments to Policy E27.3(6) of the AUP and the inclusion of a new Policy E27.3(6AA). The amended provisions are set out in **Appendix A** to this order.

### **Section 32AA evaluation**

[12] Section 32AA of the RMA requires a further evaluation for any changes to a proposal since the initial section 32 evaluation report and the decision. A section 32AA analysis has been prepared by the Council's planner, Ms Romhany, in support of the proposed amendments, and was attached to the joint memorandum of counsel dated 9 June 2023.

[13] Ms Romhany considered that the agreed wording of Policy E27.3(6) and Policy E27.3(6AA) is the most appropriate way to achieve the purpose of the RMA, including for the following reasons:

- (a) the agreed changes to Policy E27.3(6) and the proposed addition of Policy E27.3(6AA) provides a clearer framework for decision making enabling development to occur in a more efficient and sustainable manner; and
- (b) the proposed addition of Policy E27.3(6AA) encourages the use of public transport and active transport modes, for office activities, education facilities, and hospitals in the specified zones. This aligns with and achieves the purpose of the Act, as it encourages the sustainable management of natural and physical resources.

[14] The parties recorded their understanding that where Policy E27.3(6) and E27.3(6AA) refer to limits on parking and limiting the supply of parking, this is a reference to the parking rates provided in E27 Transport.

[15] The Court noted that the s32AA analysis makes reference to the NPS-UD and opines that the amendments give effect to it and requested advice from counsel on the point.

[16] The parties submitted that the amended policy direction is in accordance with, and gives effect to, Policy 11(a) of the NPS-UD.<sup>3</sup>

[17] The parties consider the amendment agreed retains the policy direction to provide limits on parking supply but removes the policy direction relating to parking minimums, in the specified zones for the specified activities. This change in policy direction aligns with the amended Table E27.6.2.3 Parking rates – area 1 of the AUP, which sets out maximum parking rates for office activities, education facilities and hospitals in the Business – Metropolitan Centre Zone, Business – Town Centre Zone, Business – Local Centre Zone and Business – Mixed Use Zone, but no longer includes parking minimums.

[18] The amendment agreed by the parties implements the direction in Policy 11 of the NPS-UD that the AUP must not set minimum carparking rate requirements, other than for accessible car parks. It does so through its provision of support for the

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<sup>3</sup> Joint memorandum of counsel in response to question from the Environment as to giving effect to the NPS-UD dated 21 July 2023.

AUP rule framework now applying to carparking supply following the removal of minimum parking requirements made in accordance with clause 3.38 of the NPS-UD.

[19] The amendment agreed by the parties also retains the reference to “flexible on-site parking” that was included in the operative text of Policy E27.3(6). Retaining the reference to flexible on-site parking gives effect to Policy 11 of the NPS-UD because the purpose of Policy 11 is to remove minimum car parking requirements so that developers have flexibility to choose the optimal mix of parking and floor space for new developments (within maximum parking limits).<sup>4</sup>

### **Consideration**

[20] The Court has now read and considered the memoranda of the parties dated 9 June 2023 and 21 July 2023.

[21] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties agree that the agreed amendments to Policy E27.3(6) and the insertion of a new Policy E27.3(6AA) resolve the appeal in full; and
- (c) 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.

[22] I conclude the parties have taken a considered approach, and the agreed amendments are the most appropriate way to achieve the purpose of the Act and the

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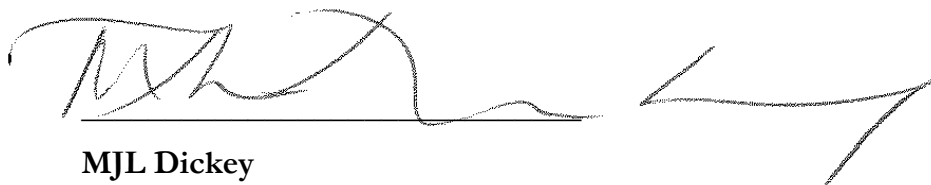
<sup>4</sup> Ministry for the Environment and Ministry of Housing and Urban Development *Regulatory Impact Statement: National Policy Statement on Urban Development* (22 May 2020) at 24; Ministry for the Environment *National Policy Statement on Urban Development 2020 – car parking fact sheet* (July 2020) at 1 and 2.

objectives in the Plan. Overall, I consider the sustainable management purpose and the other relevant requirements of the Act are broadly met.

### Order

[23] Therefore, the Court orders, by consent, that:

- (a) the appeal be resolved through the amendment of the provisions of PC71 by amending Policy E27.3(6) and the insertion of a new Policy E27.3(6AA) set out in **Appendix A** to this consent order;
- (b) the appeal is otherwise dismissed; and
- (c) there is no order for costs.



**MJL Dickey**  
**Environment Judge**



## APPENDIX A

Changes shown in underline are additions to the text of Policy E27.3 of the AUP  
Changes shown in strikethrough are deletions to the text of Policy E27.3 of the AUP

- ~~(6) Limit the supply of on-site parking for office activities, education facilities and hospitals in the Business – Metropolitan Centre Zone, Business – Town Centre Zone, Business – Local Centre Zone and Business – Mixed Use Zone (with the exception of specified non-urban town and local centres and the Mixed Use Zone adjacent to those specified centres) to encourage the use of public transport, walking and cycling trips and manage effects on the safe and efficient operation of the transport network.~~
- (6) Provide for flexible on-site parking in the Business – Metropolitan Centre Zone, Business – Town Centre Zone, Business – Local Centre Zone and Business – Mixed Use Zone (with the exception of specified non-urban town and local centres and the Mixed Use Zone adjacent to those specified centres) by not providing limits on parking for subdivision, use and development other than for office activities, education facilities and hospitals.
- (6AA) Encourage the use of public transport, walking and cycling trips and manage effects on the safe and efficient operation of the transport network by limiting the supply of on-site parking for office activities, education facilities and hospitals in the Business – Metropolitan Centre Zone, Business – Town Centre Zone, Business – Local Centre Zone and Business – Mixed Use Zone