

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

ENV- 2016 - AKL - 000194

IN THE MATTER of the Local Government (Auckland Transitional Provisions) Act 2010 and the Resource Management Act 1991

AND

IN THE MATTER of an appeal under section 156(1) of the Local Government (Auckland Transitional Provisions) Act 2010

BETWEEN **HIGHGATE BUSINESS PARK LIMITED**

Appellant

AND **AUCKLAND COUNCIL**

Respondent

SECTION 274 NOTICE BY STRIDE PROPERTY LIMITED and STRIDE HOLDINGS LIMITED TO BE PARTY TO PROCEEDINGS

Dated 5 October 2016

HEIMSATH ALEXANDER

— Barristers and Solicitors —

Ph: (09) 929 0500
Fax: (09) 379 5385
Email: bianca@halaw.co.nz
Solicitor: B Tree

Level 1, Shed 22
Princes Wharf, 147 Quay Street
P O Box 105884, Auckland City
Auckland 1143

To: **The Registrar
Environment Court
Auckland**

1. Stride Property Limited and Stride Holdings Limited (**Stride**) wishes to be a party to the following proceedings:
 - a. Highgate Business Park Limited (**HBPL**) v Auckland Council ENV-2016-AKL-000194.
 - b. The proceedings relate to the Silverdale North Precinct and the underlying zoning of the land bounded by Wainui Road, Colin Chester Drive and Highgate Parkway (**Highgate Business Park**)¹ in the Proposed Auckland Unitary Plan (**PAUP**).

2. Stride made submissions and further submissions on the subject matter of the proceedings (S 3863; FS 868). Stride is the owner and operator of the Silverdale Centre a shopping centre located within the Silverdale Town Centre zone of the PAUP.

3. Stride is a trade competitor in accordance with s308A of the Resource Management Act 1991 (**RMA**) in so far that the relief sought seeks to provide for retail activities in the Highgate Business Park. Pursuant to section 308C of the RMA, Stride is not seeking to join on the basis that it has an interest greater than the public generally, but in any event (subject to further clarification of relief sought) Stride is directly affected by the proceedings that adversely affect the environment and do not relate to trade competition or the effects of trade competition. Stride explains further that:
 - a. At the PAUP hearing HBPL sought two options for relief, including Option 1 to remove the Silverdale North Precinct from the Highgate Business Park and rely on the underlying zones of Local Centre and General Business².
 - b. Mr Philpott (economic) and Ms Carvill (planning) at the PAUP hearing gave evidence on behalf of Stride that the extent of commercial development that would be enabled in a 4ha Local

¹ Illustrated in Annexure A to the Notice of Appeal by HBPL.

² Legal submissions for HBPL presented to the Independent Hearings Panel, dated 15 March 2016, para 6.

Centre zone and a 14ha General Business zone (the large format retail zone) at Highgate Business Park would:

- i. have a significant adverse effect on the Silverdale Town Centre, beyond effects associated with trade competition; and
 - ii. these social and economic effects will have a direct effect on Stride as major landowner in the Silverdale Town Centre.
- c. The evidence provided by Mr Philpott and Ms Carvill were limited to matters that the Hearings Panel and Auckland Council could consider under sections 145 and 148 of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATP Act**). Although Stride is a trade competitor it does not mean that the expert evidence it provides has any less weight. A trade competitor is not precluded from raising and pursuing valid resource management concerns.³
4. Stride is interested in those parts of the proceedings that seek:
- a. Relief that is beyond the right to appeal pursuant to section 156 of the LGATP Act; and
 - b. Provisions that would enable development at Highgate Business Park that would have adverse effects on the Silverdale Town Centre beyond those associated with trade competition.

Relief Beyond Right to Appeal

5. The notice of appeal by HBPL includes the following relief:
- a. “Reinstatement, via an appropriate precinct in conjunction with suitable underlying zoning ...”;
 - b. “Locate and orientate the Neighbourhood Centre in a manner consistent with the Proposed Plan as notified”; and
 - c. “Be no less enabling than the provisions in the Operative Plan and the Proposed Plan as notified”.⁴

³ *Fletcher Challenge Energy v Waikato Regional Council*, Environment Court, 2 September 1998, A 109/98

⁴ Notice of Appeal by HBPL, para 9(c).


6. In the PAUP as notified Highgate Business Park was zoned General Business and Neighbourhood Centre.
7. Stride lodged a submission on the PAUP seeking:
 - a. Rezone the General Business zone (Silverdale North sub-precinct A) to Business Park or Light Industry (3863-59);
 - b. Rezone the Neighbourhood Centre (Silverdale North sub-precinct D) to Business Park or Light Industry (3863-62); and
 - c. Amend the Neighbourhood Centre (Silverdale North sub-precinct D) to 1ha in area (3863-60).
8. Submissions by The Urban Design Forum New Zealand (5277-171) and The New Zealand Institute of Architects (5280-173) also sought that Silverdale North sub-precinct A be rezoned from General Business to Light Industry.
9. The Independent Hearings Panel (**IHP**) recommendation:⁵
 - a. rezoned Silverdale North sub-precinct A from General Business to Light Industry;
 - b. retained the Neighbourhood Centre zone for Silverdale North sub-precinct D;
 - c. reduced the size of the Neighbourhood Centre zone to 1ha in area; and
 - d. relocated the Neighbourhood Centre to be approximately in the same position as the PAUP as notified.
10. Auckland Council accepted the recommendations of the IHP in respect of the points above.
11. The following decisions of Auckland Council which adopted the recommendations of the IHP are within scope of the PAUP as notified and relief sought in submissions, and pursuant to section 156 of the LGATP Act are not able to be appealed by HBPL in this Court:
 - a. the Light Industry zoning of Highgate Business Park; and
 - b. the size, location and zone of the Neighbourhood Centre.

⁵ Notice of Appeal by HBPL, Annexure C, page 192.

12. Furthermore, as a result of the Council's decision, it is not open for HBPL to seek relief that is no less enabling than the Operative Plan or the PAUP as notified.

Other Relief Sought

13. The relief sought by HBPL also seeks to "Enable the establishment of compatible and complementary activities in the immediate vicinity of the Neighbourhood Centre".⁶ This relief is vague, but appears to seek to effectively enlarge the size and range of activities in the centre. Stride opposes the relief sought in so far that it will, in conjunction with other activities sought to be enabled at Highgate Business Park, have an adverse effect on the Silverdale Town Centre beyond the effects of trade competition.
14. Stride agrees to participate in mediation or other alternative dispute resolution of the proceedings.



BJ Tree

Counsel for Stride Property Limited and
Stride Holdings Limited

Date 5 October 2016

Address for service of Stride Property Limited and Stride Holdings Limited:

C/O Heimsath Alexander
Level 1, Shed 22, Prince's Wharf, 147 Quay Street, Auckland
P O Box 105884, Auckland 1143
Attention: Bianca Tree
Telephone: 09 929 0507
Fax: 09 379 5385
Email: bianca@halaw.co.nz

⁶ Notice of Appeal by HBPL, para 9(c)(v).