

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

Decision No: [2018] NZEnvC 213

IN THE MATTER

of an appeal under the Resource Management Act 1991 and the Local Government (Auckland Transitional Provisions) Act 2010

BETWEEN

HOUSING NEW ZEALAND CORPORATION

(ENV-2016-AKL-0000238)

Appellant

AND

AUCKLAND COUNCIL

Respondent

Court: Environment Judge C J Thompson
Environment Commissioner K A Edmonds
Deputy Environment Commissioner R M Bartlett

THIRD AND FINAL DECISION OF THE COURT

Date of Decision: 30 OCT 2018

Date of Issue: 30 OCT 2018

- A: The appeal is allowed in part – see para [6] ff
B: Costs are reserved



Introduction

[1] In our second decision ([2018] NZEnvC 186) the Court offered the parties the opportunity to comment on the terminology and approach to special character areas we proposed to use in amendments to the Council's Decision.

[2] On 12 October 2018 Housing New Zealand Corporation advised that the amendments to the policies (B5.3.2) and explanation and principal reasons for adoption (B5.4) are acceptable from its perspective, in light of the Court's findings.

[3] In its memorandum of 19 October 2018 the Council sought the omission of the words "without being historic heritage under section 6(f) of the RMA" from the end of the explanation and principal reasons for adoption. It points out that the first part of the Court's proposed addition already explains that while historic heritage values may underlie the identification of special character areas, these areas are dealt with differently from significant historic heritage. The Council considers this explains and appropriately captures the distinction and the further phrase is unnecessary. Further, the Council states that there are no equivalent statutory references to Part 2 of the RMA in the other RPS chapters of the Unitary Plan and it would be unusual and incongruous.

[4] The Corporation's response on 23 October 2018 is that without the inclusion of the phrase in the explanation and principal reasons for adoption the amendments to the provisions leave open the ability for the Council to argue that section 6(f) is relevant to the consideration of these provisions. It considers the proceedings before us to be the fourth time the Council has brought these provisions before quasi-judicial (the Panel) and judicial bodies (Environment Court and High Court) for determination in relation to the Council's ability to consider section 6(f) matters when assessing applications under the special character provisions. The Corporation opposes the deletion of the phrase, expressing its wish to conclude litigation around this matter once and for all.

[5] We agree with the omission of the reference to s 6(f) of Part 2 sought by the Council. However, we conclude that the phrase still requires the qualification "without being historic heritage" to clarify the distinction between historical legacy and historic heritage, particularly given the reference in Policy B5.3.2(2).



Outcome

[6] The following amendments to the Unitary Plan are required: first, amend Issue B5.1 to read:

B5.1 Issues

3. Areas with special character should be identified so their particular character and amenity values can be maintained and enhanced.

[7] Amend Policy to read:

B5.3.2 Policies

- (1) Identify special character areas to maintain and enhance the character and amenity values of places that reflect patterns of settlement, development, building style and/or streetscape quality over time.
- (2) Identify and evaluate special character areas considering the following factors:
 - (a) physical and visual qualities: groups of buildings, or the area, collectively reflect important or representative aspects of architecture or design (building types or styles), and/or landscape or streetscape and urban patterns, or are distinctive for their aesthetic quality; and
 - (b) legacy including historical: the area collectively reflects an important aspect, or is representative, of a significant period and pattern of community development within the region or locality.
- (3) Include an area with special character in Schedule 15 Special Character Schedule, Statements and Maps.
- (4) Maintain and enhance the character and amenity values of identified special character areas by all of the following:
 - (a) requiring new buildings and additions and modifications to existing buildings to maintain and enhance the special character of the area;
 - (b) restricting the demolition of buildings and destruction of features that define, add to or support the special character of the area;
 - (c) maintaining and enhancing the relationship between the built form, streetscape, vegetation, landscape and open space that define, add to or support the character of the area; and
 - (d) avoiding, remedying or mitigating the cumulative effect of the loss or degradation of identified special character values.

[8] Amend explanation and principal reasons for adoption to read:

B5.4 Explanation and principal reasons for adoption ...

Special character areas include older established areas and places which may be whole



settlements or parts of suburbs or a particular rural, institutional, maritime, commercial or industrial area. They are areas and places of special architectural or other built character value, exemplifying a collective and cohesive importance, relevance and interest to a locality or to the region. Historic heritage values may underlie the identification of special character areas and make a contribution to the character and amenity values of such areas, but the special character areas are dealt with differently from significant historic heritage identified and protected in terms of the separate policy framework for identifying and protecting Historic Heritage in B5.2. The attributes of the character and amenity values and the environmental quality of a special character area, including buildings and streetscape, might be derived from its historical legacy without being historic heritage.

The identified character of these special character areas, should be maintained and enhanced by controls on demolition, design and appearance of new buildings and additions and alterations to existing buildings. It will also be important that the authorities responsible for the operation and maintenance of streets have proper regard for the appearance and quality of streets in special character areas, including in particular the presence of trees and other vegetation.

There are two key components in managing special character areas:

- identification and evaluation of areas with special character values and the maintenance and enhancement of the overall special character of an area from change by demolition, modification of existing building or development of new buildings which would be inappropriate in the context of the area; and
- supporting appropriate ongoing use and adaptive re-use to enable effective functioning and vitality of the areas.

Character area statements for special character areas are contained in Schedule 15 Special Character Schedule, Statements and Maps. These statements provide descriptions of the nature of the special character for each area and are an important reference in assessing any application for resource consent in that area.

Costs

[9] Costs are reserved but an application for costs is not encouraged.

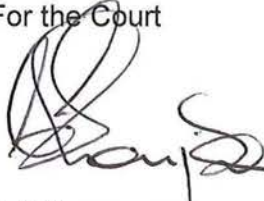
[10] Any application for costs should be made within 10 working days of this decision.



[11] Any responses to an application for costs should then be made within a further 10 working days.

Dated at Wellington this 30th day of October 2018

For the Court



C J Thompson
Environment Judge

