

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-**

**IN THE MATTER**

**of the Resource Management Act 1991**

**AND**

**IN THE MATTER**

**of an appeal under clause 14(1) of  
Schedule 1 of the Resource  
Management Act 1991**

**BETWEEN**

**Eden Epsom Residential Protection  
Society Incorporated**

Appellant

**AND**

**Auckland Council**

Respondent

**AND**

**Southern Cross Hospitals Limited**

Requestor

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**Notice of Appeal against a Decision on Proposed Plan Change 21 to the Auckland  
Unitary Plan**

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**Counsel for Appellant**

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## Notice of Appeal against a Decision on Proposed Plan Change 21 to the Auckland Unitary Plan

**To: The Registrar, Environment Court, Auckland**

1. The Eden Epsom Residential Protection Society Incorporated (**the Society**) appeals against a decision of Auckland Council on Plan Change 21, a private plan change sought by Southern Cross Hospitals Limited.
2. The Society made a submission on the plan change and is not a trade competitor for the purpose of s 308D of the Resource Management Act 1991.
3. The Society received notice of the decision on 28 May 2020.
4. The decision was made by Commissioners appointed by Auckland Council.
5. The Society appeals against the whole of the decision.
6. The reasons for the appeal are as follows:
  - (a) The majority decision erred in the following respects:
    - (i) Failing to have regard to the existing residential zonings applicable to the site under the Auckland Unitary Plan (**AUP**).
    - (ii) Failing to have regard to the existing pattern of residential zonings in the surrounding area.
    - (iii) Failing to have regard to the zone description for the Special Purpose – Healthcare Facility and Hospital zone (**SPHFH**) which states that the zone is to apply to “generally large, land extensive facilities” and to sites which “generally consist of extensive and substantial parking areas”.
    - (iv) Applying the SPHFH zone to the subject land which does not meet the zone description and is wholly unsuitable for a hospital of the scale and intensity enabled by the new zone.
    - (v) Approving PC 21 which would enable as permitted activities buildings to a height of 12 metres on Area 1 and 16 metres on Area 2 when existing and adjoining residential sites are not permitted to exceed 8 metres in height.
    - (vi) Approving PC 21 when it would enable buildings to a height of 25 metres as a restricted discretionary activity and to a height of greater than 25 metres as a fully discretionary activity.

- (vii) Concluding that restricted discretionary activity status would enable a "robust" assessment of amenity issues on proposals for buildings up to 25 metres in height.
- (viii) Concluding that a building of up to 16 metres in height as a permitted activity on Area 2 would be compatible in scale and design with the existing residential character of the area.
- (ix) Failing to take into account the decisions of the Environment Court in 1996 and 1997 in respect of the existing hospital on Area 1 which imposed strict conditions on scale and intensity of use of the site to ensure the hospital then proposed was compatible with the residential neighbourhood.
- (x) Approving PC 21 in the face of evidence from Southern Cross Healthcare Limited that it proposed to double the number of elective surgeries from 4,000 to 8,000 per annum and to establish an intensive care unit not previously permitted under the existing resource consent for Area 1.
- (xi) Approving the demolition of the two character houses at 151 and 153 Gillies Avenue and the removal of the special character area overlay on Area 2 contrary to the agreed evidence that the special character of the site arose from a number of interrelated characteristics and that to do so would have adverse effects on the special character area.
- (xii) Concluding that the retention of vestiges of the stone walls on part of Area 2 and the retention of a few trees would serve to mitigate the impact of the removal of the houses and the special character overlay.
- (xiii) Excluding from consideration the effects of granting PC 21 on the integrity of the AUP when the creation of a "spot zone" in a residential area would have obvious effects on the integrity of the residential zones generally and on special character overlay areas more broadly.
- (xiv) Erred in the approach adopted to s.32 of the Resource Management Act by failing to take into account the availability of existing zonings under the AUP in the central area which were suitable for hospitals and other healthcare facilities.
- (xv) Modifying the provisions of the SPHFH zone when to do so was outside the scope of submissions before the Commissioners.
- (xvi) Alternatively, modifying the provisions of the SPHFH zone when to do so effectively treated PC 21 as if it were an application for a resource consent, contrary to sound planning practice.
- (xvii) Failing to give adequate weight to the serious adverse effects of allowing PC 21, including:

- Domination, loss of privacy and shadowing effects on surrounding properties in Owens Road, Brightside Road, and Gillies Avenue.
  - The introduction of intensive commercial activity into a well-established residential area.
  - Excessive noise.
  - Light spill.
  - Traffic and parking effects in already overcrowded streets.
  - The impacts of construction activity over a lengthy period.
- (xviii) Excluding from consideration the extensive evidence called by the appellant Society about the impacts of the blasting of basalt necessary for the excavation of a major underground carpark and associated construction activities despite the Society's submission that these effects were relevant to the suitability of the site irrespective of a need for any subsequent application for resource consent.
- (b) The decision gave undue weight to the social benefits of hospital facilities.
- (c) The decision gave no or insufficient weight to:
- (i) The report under s.42A of the Resource Management Act by the Council's planner recommending that PC 21 be declined and the evidence of Council expert witnesses.
  - (ii) The view of the Albert-Eden Community Board that the application should be declined.
  - (iii) The overwhelming opposition to the application by submitters from the local community and the appellant Society, supported by the Society's expert witnesses who are not mentioned in the decision other than a brief reference to the evidence of Mr Brian Putt.
- (d) The decision is inconsistent with the Regional Policy Statement provisions of the AUP including:
- (i) Chapter B2 concerning the importance of providing for a quality compact urban form, and within that urban framework carefully distinguishing between development opportunity and historic heritage and character.
  - (ii) Development being limited spatially by the constraints imposed through Chapter B5 – Built Heritage and Character.

- (iii) Objectives which provide that adverse effects between social facilities and neighbouring land uses are avoided, remedied or mitigated.
  - (iv) Removal of the special character overlay is inconsistent with the RPS objectives and policies that require maintenance and enhancement of the character values of the area.
  - (e) The substitution of the Single House zoning and the Special Character Overlay, with the SPHFH zone will result in inappropriately scaled new institutional hospital buildings that will have adverse impacts on the surrounding residential areas.
7. The Society seeks the following relief:
- (a) That the plan change be declined; and
  - (b) Costs.
8. The following documents are attached to this notice:
- (a) A copy of the Society's submission and further submissions.
  - (b) A copy of the decision.
  - (c) A list of names and addresses of persons to be served with a copy of this notice.

Dated: 26<sup>th</sup> June 2020

  
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J M Savage  
Counsel for Appellant

Address for service:

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**Advice to recipients of copy of notice of appeal***How to become a 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, -

- (a) Within 15 workings after the period for lodging of the 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
- (b) 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 s 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

The copies of the documents listed in this appeal may be obtained from the appellant on request.

*Advice*

If you have any questions about this notice contact the Environment Court in Auckland.