

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2019-AKL-**

**IN THE MATTER** of an appeal pursuant to clause 14 of the First Schedule of  
the Resource Management Act 1991

**AND**

**IN THE MATTER** Of an appeal under clause 14 of Schedule 1 of the RMA  
against a decision of Auckland Council on proposed Plan  
Change 17 to the Auckland Unitary Plan (Operative in  
Part)

**BETWEEN** **TOFINI AUCKLAND LIMITED**

**APPELLANT**

**AND** **AUCKLAND COUNCIL**

**RESPONDENT**

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**NOTICE OF THE PARC (BODIES CORPORATE BC321391, BC321390,  
BC336460, BC321389, BC321393, BC323876, BC336459, LUMINA  
(BC383524) AND VIBE (BC378969) WISH TO BE PARTY TO PROCEEDINGS**

**29 AUGUST 2019**

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## NOTICE OF WISH TO BE PARTY TO PROCEEDINGS

**TO:** The Registrar  
Environment Court  
**Auckland**

### Introduction

1. The Parc Bodies Corporate (BC321391, BC321390, BC336460, BC321389, BC321393, BC323876, BC336459, Lumina Body Corporate (BC383524) and Vibe Body Corporate (BC378969) (**Bodies Corporate**) wish to be a party to these proceedings.
2. The Bodies Corporate support the decision of the Council and oppose the relief sought in Tofini Auckland Limited (**Tofini**) Notice of Appeal, dated 18 July 2019. The Bodies Corporate have an interest in all of the appeal.
3. The Bodies Corporate have an interest in the proceedings that is greater than the interest that the general public has. The reasons for this are outlined below at paragraphs 10-13.
4. The Bodies Corporate are not trade competitors for the purposes of section 308C of the Resource Management Act 1991. In any event, the Bodies Corporate are directly affected by an effect caused by the relief sought in the Notice of Appeal that does not relate to trade competition or the effects of trade competition.

### Background

5. Together, the Bodies Corporate represent 9 of the 11 buildings comprising the city block bounded by Pakenham Street East (to the south), Market Place (to the east), and Customs Street West (to the west and north) (**Block**). The other two buildings are:
  - (a) 136 Customs Street West, included in Sub-precinct A.
  - (b) 32 Market Place, included in Sub-Precinct C. As described in the Notice of Appeal, 32 Market Place comprises an **Office Building** and **Recreational Facilities** (a single storey building occupied by a private

gym and ancillary facilities and a landscaped area comprising a pool, spa and landscape elements).

6. The Recreational Facilities comprise a part of a large internal park in the middle of the Block (**Internal Park**). There are a series of covenants and encumbrances that regulate the control and use of the Internal Park (including the Recreational Facilities) by the occupiers of the Bodies Corporate, 136 Customs Street and 32 Market Place.
7. The Council's decision on proposed Plan Change 17 rezoned the Office Building from Sub-precinct C to Sub-precinct A. Tofini's Notice of Appeal seeks also to rezone the Recreational Facilities from Sub-precinct C to Sub-precinct A. The Bodies Corporate oppose this.

#### **Reasons for the Bodies Corporate opposing the appeal**

8. The Bodies Corporate opposes the relief sought by Tofini for the following reasons:
  - (a) the effects of the relief sought are not consistent with the relevant objectives and policies of the Auckland Unitary Plan (Operative in Part) (**AUP**);
  - (b) it does not comply with sections 74, 75, and 76 of the RMA;
  - (c) it does not meet the requirements to satisfy section 32 of the Act;
  - (d) it will not maintain and enhance amenity values and the quality of the environment;
  - (e) it is not consistent with the sustainable management of natural and physical resources and is otherwise inconsistent with the purpose and principles of the RMA;
  - (f) it will not meet the reasonably foreseeable needs of future generations;
  - (g) it will not enable people and communities to provide for their social, economic and cultural well-being; and
  - (h) it is not consistent with sound resource management practice.

9. Further, without derogating from the generality of the above, the relief sought in the appeal is inappropriate for the specific reasons outlined below.

***The Bodies Corporate have an interest in the proceedings greater than the general public***

10. The Bodies Corporate did not lodge a submission on proposed Plan Change 17 (PC17).
11. The Bodies Corporate have an interest in the proceedings greater than the interest of the general public. This is because the relief being sought by the appellant would directly affect the Bodies Corporate that have a registered interest in the Recreational Facilities subject to PC17.<sup>1</sup>
12. The Bodies Corporate have rights to use the Recreational Facilities, and the occupants of 32 Market Place have rights to use the Internal Park (which is located on the titles of the other buildings comprising the Block and not just the title for 32 Market Place), regulated through a series of covenants and encumbrances.
13. The Recreational Facilities form an important part of the Internal Park and contribute significantly to the amenity of the residents of the Bodies Corporate.

***The appeal is outside the scope of PC17***

14. PC17 as notified by the Council only proposed to rezone the Office Building on 32 Market Place. PC17 did not seek to rezone the Recreational Area that is shared by the Bodies Corporate, 136 Customs Street West, and the Office Building.
15. The relief sought in the appeal seeks to rezone the Recreational Area to Viaduct Harbour Sub-precinct A. This is outside the scope of PC17 because it goes further than PC17's intended purpose – to fix minor errors in the Plan. The relief sought would prejudice the reasonable interests of the Bodies Corporate. The Bodies Corporate did not contemplate that PC17 could result

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<sup>1</sup> *Purification Technologies Ltd v Taupo District Council* [1995] NZRMA 197 and *Mt Christina Ltd v Queenstown Lakes District Council* [2018] NZEnvC 190.

in a change to the sub-precinct that applied to the Recreational Facilities and accordingly did not lodge a submission on PC17.

***The relief sought is inconsistent with surrounding residential activities***

16. Rezoning the Recreational Facilities from Sub-precinct C to Sub-precinct A will change the planning controls that apply to the Recreational Facilities. In particular, Sub-precinct C specifically protects residential amenity:
  - (i) Objective I211.2(7): Maintain the residential character and amenity in Sub-precinct C as an attractive place for permanent residents.
  - (ii) Policy I211.3(11): Maintain the residential character and amenity values in Sub-precinct C by avoiding activities that adversely affect the residential character and its related amenity values.
  - (iii) Policy I211.3(12)(a): Provide for permanent residents in Sub-precinct C to maintain and enhance the character and vitality of the precinct.
17. There are no comparable objectives or policies that protect residential amenity in Sub-precinct A, the Viaduct Harbour Precinct generally or the Business – City Centre Zone in the AUP. The objectives and policies are important as they set the expectations for the land occupied by the Recreational Facilities, the purpose of which is to provide amenity to the residents of the Bodies Corporate.
18. The Recreational Facilities are also more appropriately included in Sub-precinct C as the objectives and policies specifically protect residential amenity, which is aligned to the purpose of the residential area.
19. In addition, while VHHL and Tofini Auckland Limited own the freehold and leasehold interests (respectively) in the Recreational Facilities, the use of the Recreational Facilities by the residents of the Bodies Corporate is secured by a number of covenants and encumbrances that apply to the titles of the properties comprising the Block. The use and enjoyment of the Recreational Facilities contribute significantly to the amenity of this area.

20. The Bodies Corporate agree with and support the Council's decision that the Recreational Facilities "are ancillary to the residential apartments" and that they "provide a service to the residential apartments and should remain within sub-precinct C, which enables residential uses."<sup>2</sup>

***The relief sought is not the most appropriate way to achieve the objectives of PC17***

21. As identified in the appeal, the rezoning of 32 Market Place is contrary to one of the objectives of the plan change ("*ensure that zone and precinct boundaries follow road or property boundaries*"<sup>3</sup>). However, the cadastral boundaries of properties in the Block are non-standard, and therefore we do not consider much weight can be attached to this objective in this particular case.
22. In any event, achieving the convenience of aligning property and precinct boundaries is secondary to the more substantive objectives of PC17, which ensure the integrity of the AUP and encourage proper planning practice to be followed. These other objectives, which are achieved by PC17, are:<sup>4</sup>
- (a) "*Ensure the zoning of the site is consistent with surrounding sites*".  
PC17 will ensure that the planning controls applying to the Recreational Facilities are consistent with the sites that surround it and that have rights to use it.
  - (b) "*Ensure the spatial application of zones and/or overlays have been applied correctly to the site, either wholly or partially*". Sub-precinct C is more appropriate for the Recreational Facilities than Sub-precinct A given the use of the Recreational Facilities is at a residential scale and used by the surrounding Bodies Corporate properties. In addition, this objective recognises (see underlined text above) that planning controls may not exactly align with property boundaries.

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<sup>2</sup> Decision of Auckland Council on proposed Plan Change 17, 20 June 2019.

<sup>3</sup> Proposed Plan Change 17, Section 32 Report, p4.

<sup>4</sup> Proposed Plan Change 17, Section 32 Report, p4.

- (c) *“Resolve identified inconsistencies in the mapping of controls and overlays”*. PC17 has included the Office Building within Sub-precinct A and the Recreational Facilities within Sub-precinct C. This has resolved inconsistencies between the existing land use and the relevant precincts that should apply.

23. The relief sought by Tofini would fail to achieve the three objectives above.
24. The Bodies Corporate consider the decision of the Hearing Panel on PC17 to be the most appropriate way to achieve the objectives of the plan change.

**Mediation/alternative dispute resolution**

25. The Bodies Corporate agree to participate in mediation or other alternative dispute resolution of the proceedings.

**DATED** this 29<sup>th</sup> day of August 2019

**The Parc Bodies Corporate  
Lumina Body Corporate and Vibe  
Body Corporate** by its solicitors  
and duly authorised agents  
MinterEllisonRuddWatts




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