

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO
TĀMAKI MAKAURAU ROHE**

ENV-2019-AKL-000

UNDER the Resource Management Act 1991 ("RMA")

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

BETWEEN **Tofini Auckland Limited (as successor to Auckland
Industrial Projects Limited)**

Appellant

A N D **Auckland Council**

Respondent

NOTICE OF APPEAL BY TOFINI AUCKLAND LIMITED

7 AUGUST 2019

**ELLIS GOULD
LAWYERS
AUCKLAND**

**Level 17 Vero Centre
48 Shortland Street, Auckland
Tel: 09 307 2172 / Fax: 09 358 5215
PO Box 1509
DX CP22003
AUCKLAND**

REF: Douglas Allan / Alex Devine

NOTICE OF APPEAL BY TOFINI AUCKLAND LIMITED

TO: The Registrar
Environment Court
AUCKLAND

AND TO: Auckland Council

1. Tofini Auckland Limited ("**the Appellant**") appeals against part of a decision of Auckland Council ("**the Council**") on proposed Plan Change 17: Improving Consistency of Provisions for the GIS Viewer ("**the Plan Change**") to the Auckland Unitary Plan – Operative in Part ("**Unitary Plan**").
2. The Appellant has a right to appeal the Council's decision to the Environment Court under clause 14 of Schedule 1 to the Resource Management Act 1991 ("**RMA**") as the successor in title to Auckland Industrial Projects Limited ("**AIPL**"). AIPL made a submission and further submission on the Plan Change in relation to the matter which is now appealed, being the adjustment of the boundary between Sub-precinct C and Sub-precinct A of I211 Viaduct Harbour Precinct ("**Precinct**") in relation to 32 Market Place, Auckland Central ("**Site**"). AIPL was the owner of the leasehold interest for the Site at the time of submissions to the Plan Change, and sold this interest to the Appellant prior to the hearing of the Plan Change. The Appellant recorded its position on the Plan Change in a letter to the Hearings Advisor prior to the Council hearing.
3. The Appellant is not a trade competitor for the purposes of section 308D of the RMA. In any event, the Appellant is directly affected by an effect of the subject of the appeal that:
 - 3.1 Adversely affects the environment; and
 - 3.2 Does not relate to trade competition or the effects of trade competition.
4. Notice of the decision that is being appealed, being the decision on the Plan Change ("**the Decision**"), was received by the Appellant on or about 27 June 2019.
5. The Decision was made by the Council.

6. The part of the Decision that is being appealed relates to the mapping of the boundary between Sub-precincts A and C of the Precinct at the Site.
7. The reasons for the appeal are as follows:
 - 7.1 Unless and until the mapping of the sub-precinct boundaries of the Precinct is amended in accordance with the relief sought below, the Plan Change will not:
 - (a) Promote the sustainable management of resources;
 - (b) Otherwise be consistent with Part 2 of the RMA;
 - (c) Be appropriate in terms of section 32 of the RMA; or
 - (d) Be consistent with the balance of the provisions of the Unitary Plan.

In addition, and without derogating from the generality of the above:

Background

- 7.2 The Site comprises a fee simple title and a leasehold title, and is legally described as Lot 4 Deposited Plan 317103. The Fee Simple interest is owned by Viaduct Harbour Holdings Limited (“VHHL”), with the Leasehold interest being owned by the Appellant.
- 7.3 The Site forms part of the Parc development complex, which comprises two commercial and nine residential properties.
- 7.4 The Site is occupied by a five-storey commercial building at the Market Place frontage (“**Office Building**”). At ground level to the rear of the Office Building is:
 - (a) A single storey building occupied by a private gym and ancillary facilities; and
 - (b) A landscaped area comprising a pool, a spa, and other landscape elements(collectively, “**the Recreational Facilities**”).

- 7.5 At basement level, the Site is utilised for carparking and storage areas which form part of the Parc complex but which are primarily used for and ancillary to the commercial office activities that take place in the Office Building.
- 7.6 The Site is zoned 'Business - City Centre' under the Unitary Plan and is subject to the Precinct. The Precinct is comprised of sub-precincts A to C:
- (a) Sub-precinct A has been applied to the commercial areas within the Precinct and enables and provides for a range of commercial and residential activities.
 - (b) Sub-precinct B has largely been applied at the margins of the Precinct (to the waters edge) and enables and provides for recreational needs.
 - (c) Sub-precinct C has generally been applied to the residential area within the Precinct and enables and provides for residential activities (including visitor accommodation). Commercial activities are not provided for as of right.
- 7.7 The Site is currently located wholly within Sub-precinct C in the Unitary Plan. The Plan Change as notified proposed amending the sub-precinct boundaries so that:
- (a) The part of the Site occupied by the Office Building would be included within Sub-precinct A; and
 - (b) The part of the Site occupied by the Recreational Facilities would remain within Sub-precinct C.
- 7.8 AIPL's primary submission sought that the Plan Change be accepted as notified. AIPL's further submission supported the relief sought by VHHL in its submission, being the reallocation of the sub-precinct boundaries so that the whole Site would be included within Sub-precinct A ("**the VHHL Submission**").
- 7.9 The Decision retained the sub-precinct boundaries notified in the Plan Change on the basis that:

- (a) The VHHL Submission cannot be considered “on” the Plan Change as there is a risk that persons who are potentially directly affected by the relief sought will have been denied an effective response.
- (b) The Recreational Facilities provide a service to the residential apartments and should remain within Sub-precinct C, which enables residential use.
- (c) There is a clear division of existing land uses.

Scope for the Submission

7.10 The relief sought in the VHHL Submission is within scope of the Plan Change and is available to the Court to be upheld:

- (a) While the Plan Change as notified proposed a specific change to the boundary between Sub-precinct C and Sub-precinct A, its scope was not limited to the specific location proposed in the Plan Change. By proposing a change to the boundary, the Council raised an issue with respect to the boundary’s appropriate location on and in the immediate vicinity of the Site.
- (b) The VHHL Submission supported the Plan Change insofar as it sought to rectify the boundary between the sub-precincts in relation to the Site but proposed a more appropriate boundary.
- (c) Accordingly, the VHHL Submission addressed:
 - (i) The same provision and Site as was raised in the Plan Change.
 - (ii) The change to the status quo advanced by the Plan Change.

7.11 The Council’s section 32 RMA assessment explicitly addressed an option of adjusting the sub-precinct boundary to align with the property boundaries. Council rejected that option but in doing so did not place reliance on a risk that other parties might be affected adversely by it. The change that VHHL sought to the

status quo (supported by AIPL) had therefore already been identified and assessed by the Council and was a legitimate alternative to the relief proposed in the Plan Change.

7.12 There is no practical risk that potentially affected persons have been denied an opportunity to play an effective role in the Plan Change process because:

- (a) Neighbouring residents are not affected by the relocation of the boundary between the sub-precincts in respect of the Site, and for that reason were not identified by Council as affected parties in terms of the Plan Change as notified.
- (b) The relocation of sub-precinct boundaries will not alter the tenure of those parts of the Site that were not originally subject to the Plan Change (i.e. the Recreational Facilities).
- (c) The relocation of sub-precinct boundaries will not alter the ability of neighbouring residents to use the Recreational Facilities. That ability arises from private contractual arrangements (including easements) which provide reciprocal rights of access in favour of all properties within the Parc development and which are unaffected by the location of the sub-precinct boundary.
- (d) The relocation of the sub-precinct boundaries will not alter management and maintenance rights and obligations relating to the Recreational Facilities. Those rights and obligations arise from private contractual arrangements which are unaffected by the location of the sub-precinct boundary.
- (e) There is no substantive difference between the Unitary Plan provisions governing Sub-precincts A and C on the Site in respect of:
 - (i) The ability to establish dwellings or visitor accommodation on the Site as a Permitted Activity;

- (ii) The Restricted Discretionary Activity consent status for a new building or an alteration or addition to an existing building;
 - (iii) The matters of discretion and criteria relevant to any application for a new building or an alteration or addition to an existing building; and
 - (iv) Bulk and location standards including height (Precinct Plan 3) and site intensity (Precinct Plan 4).
- (f) While offices are a Permitted Activity in Sub-precinct A and a Discretionary Activity in Sub-precinct C:
- (i) The existing buildings on the Site are already allocated to commercial activities;
 - (ii) Any additional office activity on the Site would not generate any additional adverse effects on adjacent residential activities other than (potentially) in terms of the effects generated by construction or alteration of a building, which will require Restricted Discretionary Activity consent under either of the sub-precincts.
- (g) While specified retail and service activities that are Permitted Activity in Sub-precinct A will require Restricted Discretionary Activity consent in Sub-precinct C, they would not generate any additional adverse effects on adjacent residential activities other than (potentially) in terms of the effects generated by construction or alteration of the building, which will require Restricted Discretionary Activity consent under either of the sub-precincts.
- (h) Accordingly, the relocation of sub-precinct boundaries in relation to the Site will in practice have no actual or potential effect on neighbouring residents:

- 7.13 The conclusion reached in the Decision as to the risk of denying potentially affected persons an opportunity to participate appears to have been founded on an erroneous understanding that the Recreational Facilities are owned by all 11 properties within the Parc development. This is incorrect. As the holder of the Leasehold interest, the Appellant owns both the Office Building and the Recreational Facilities.
- 7.14 Having regard to the above, no party can be said to be adversely affected by the relief such that they may reasonably have wanted to submit.

Inclusion of the Site within sub-precinct A

- 7.15 Including the entirety of the Site within Sub-precinct A:
- (a) Will provide for the efficient ongoing use of the Site;
 - (b) Appropriately reflects and enables the mix of activities which currently take place on the Site; and
 - (c) Will represent good planning practice with respect to the location of zone or precinct boundaries.
- 7.16 The Decision erroneously proceeded on the basis that there is a split land use on the Site, with the offices being commercial in nature and the Recreational Facilities being residential in nature. To the contrary:
- (a) The Recreational Facilities are accessible to the tenants of the Office Building and form part of the amenities of that Site. They are ancillary and integral to the commercial use of the Site.
 - (b) While the Recreational Facilities are available for the use by the surrounding residences, they are owned by the Appellant who have a leasehold interest in the Site and who operate the commercial building on the Site.
- 7.17 Including the entirety of the Site within Sub-precinct A better reflects the mix of activities which currently takes place on the

Site and it is appropriate and logical that the rules that apply to the Site should reflect the current and future mixed land use:

- (a) Sub-precinct C has a residential focus, but no residential activities currently take place on the Site.
- (b) The Recreational Facilities are ancillary to the commercial office activities on the Site and are available for tenants and their employees to use. They form an integral part of the commercial development on the Site.
- (c) Given that the offices and Recreational Facilities form an integrated package of commercial activities on the Site, it is desirable that the same planning controls apply to all parts of that package and to the Site as a whole.
- (d) Demarcating sub-precinct boundaries on the basis that current activities across the Site differ is inappropriate.
- (e) Good planning practice suggests that sub-precinct boundaries should follow a site boundary. The purpose of the Plan Change reflects this, being to “*ensure that zone and precinct boundaries follow road or property boundaries*”. The Decision is therefore at odds with the purpose of the Plan Change.
- (f) Accordingly, the application of Sub-precinct A to the Site in its entirety will:
 - (i) Provide for the efficient ongoing use of the Site;
 - (ii) Avoid ambiguity as to the ability to use the Recreational Facilities; and
 - (iii) Be consistent with good planning practice and the purpose of the Plan Change.

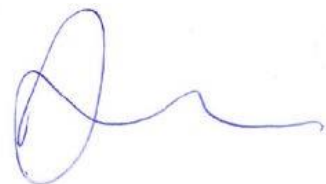
8. The Appellant seeks the following relief:

8.1 That the Decision subject to this appeal be disallowed in part;

- 8.2 That the boundaries of Sub-precinct A and Sub-precinct C be amended such that the entirety of the Site is included in Sub-precinct A, as shown in **Annexure A**.
 - 8.3 Such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this appeal; and
 - 8.4 Costs of and incidental to the Appeal.
9. The Appellant **attaches** the following documents to this Notice of Appeal:
- 9.1 A map identifying relief sought by the Appellant (**Annexure A**);
 - 9.2 A copy of the AIPL's Submission on the Plan Change (**Annexure B**);
 - 9.3 A copy of the AIPL's Further Submission on the Plan Change (**Annexure C**);
 - 9.4 A copy of the relevant parts of the Decision (**Annexure D**); and
 - 9.5 A list of the parties to be served with a copy of this appeal (**Annexure E**).

DATED at Auckland this 8th day of August 2019

TOFINI AUCKLAND LIMITED by
its solicitors and duly authorised
agents Ellis Gould



D A Allan / A K Devine

ADDRESS FOR SERVICE: The offices of Ellis Gould, Solicitors, Level 17 Vero Centre, 48 Shortland Street, PO Box 1509, Auckland, DX CP22003, Auckland, Telephone: (09) 307-21752, Facsimile: (09) 358-5215. Attention: Douglas Allan. dallan@ellisgould.co.nz.

Advice to recipients of copy of notice of appeal

How to become 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,—

- within 15 working days after the period for lodging a 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
- 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.

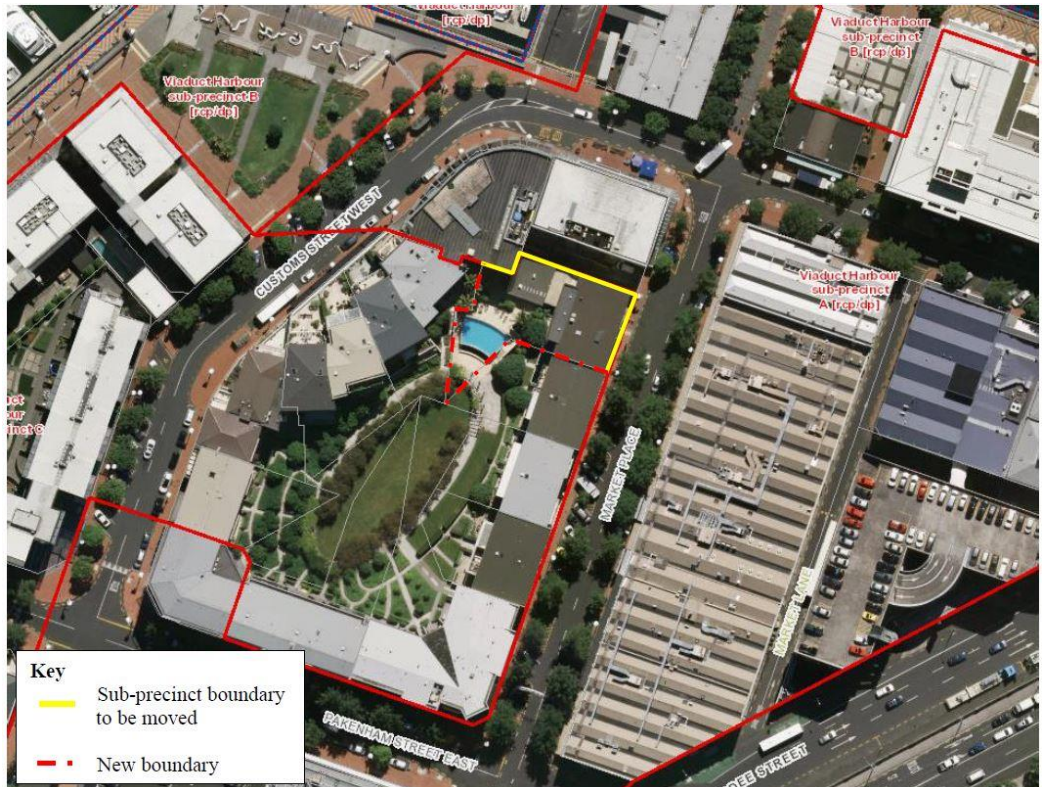
You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Annexure A

Relief sought by Tofini Auckland Limited



Annexure B

A copy of AIPL's original submission on the Plan Change

Submission on a notified proposal for policy statement or plan change or variation

Clause 6A of Schedule 1, Resource Management Act 1991
FORM 5



This plan change has limited notification under clause 5A(4)(b) of First Schedule, Resource Management Act 1991, making submissions under this clause limited to those given written notice of this plan change.

Send your submission to unitaryplan@aucklandcouncil.govt.nz or post to :

Attn: Planning Technician
Auckland Council
Level 24, 135 Albert Street
Private Bag 92300
Auckland 1142

For office use only
Submission No:
Receipt Date:

Submitter details

Full Name or Name of Agent (if applicable)

Mr/Mrs/Miss/Ms (Full Name) LAURENCE ANTHONY FLYNN

Organisation Name (if submission is made on behalf of Organisation)
AUCKLAND INDUSTRIAL PROJECTS LIMITED

Address for service of Submitter
PO BOX 68530, WELLESLEY STREET, AUCKLAND 1141
ATTN: LAURIE FLYNN, PROPERTY DEVELOPMENT MANAGER

Telephone: 09 373 5750 Fax/Email: laurence@wattsgroup.co.nz

Contact Person: (Name and designation, if applicable)

Scope of submission

This is a submission on the following proposed plan change / variation to an existing plan:

Plan Change/Variation Number PC 17

Plan Change/Variation Name Improving consistency of provisions in the Viewer of the Auckland Unitary Plan (Operative in Part)

The specific provisions that my submission relates to are:
(Please identify the specific parts of the proposed plan change / variation)

Plan provision(s) CHANGE FROM SUB-PRECINCT C TO SUB-PRECINCT A

Or
Property Address 32 MARKET PLACE, AUCKLAND CENTRAL

Or
Map PRECINCT PLAN 1

Or
Other (specify)

Submission

My submission is: (Please indicate whether you support or oppose the specific provisions or wish to have them amended and the reasons for your views)

I support the specific provisions identified above

I oppose the specific provisions identified above

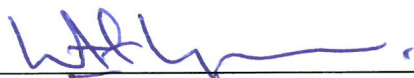
I wish to have the provisions identified above amended Yes No

The reasons for my views are:
THE PROPOSED CHANGE FROM SUB-PRECINCT C (RESIDENTIAL) TO SUB-PRECINCT A (COMMERCIAL) CORRECTS AN OVERSIGHT ERROR CONTAINED IN A SUBMISSION TO THE PROPOSED AUCKLAND UNITARY PLAN (continue on a separate sheet if necessary)

I seek the following decision by Council:

- 2.1 | Accept the proposed plan change / variation
- Accept the proposed plan change / variation with amendments as outlined below
- Decline the proposed plan change / variation
- If the proposed plan change / variation is not declined, then amend it as outlined below.

- I wish to be heard in support of my submission
- I do not wish to be heard in support of my submission
- If others make a similar submission, I will consider presenting a joint case with them at a hearing


Signature of Submitter
(or person authorised to sign on behalf of submitter)

3 / 12 / 19
Date

Notes to person making submission:
 If you are making a submission to the Environmental Protection Authority, you should use Form 16B.
 Please note that your address is required to be made publicly available under the Resource Management Act 1991, as any further submission supporting or opposing this submission is required to be forwarded to you as well as the Council.
 If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991.
 I could / could not gain an advantage in trade competition through this submission.
 If you could gain an advantage in trade competition through this submission please complete the following:
 I am / am not directly affected by an effect of the subject matter of the submission that:
 (a) adversely affects the environment; and
 (b) does not relate to trade competition or the effects of trade competition.

Annexure C

A copy of AIPL's original submission on the Plan Change

Contact details

Full name of person making a further submission: Laurence Anthony Flynn

Organisation name: Auckland Industrial Projects Limited

Full name of your agent: Laurie Flynn

Email address: laurence@wattsgroup.co.nz

Contact phone number: 021885154

Postal address:
PO Box 68530
Wellesley Street
Auckland 1141

Submission details

This is a further submission to:

Plan modification number: Plan change 17

Plan modification name: Improving consistency of provisions for the GIS Viewer

Original submission details

Original submitters name and address:
Viaduct Harbour Holdings Limited
PO Box 4492
Shortland Street
Auckland 1140

Submission number: #15

Do you support or oppose the original submission? I or we support the submission

Specific parts of the original submission that your submission relates to:
Point number 4.1 (15.2)

The reasons for my or our support or opposition are:
We agree that the entirety of the property situated at 32 Market Place is included in Sub-precinct A

I or we want Auckland council to make a decision to: Allow the whole original submission

Submission date: 14 March 2019

Attend a hearing

I or we wish to be heard in support of this submission: Yes

Would you consider presenting a joint case at a hearing if others have made a similar submission?
Yes

Declaration

What is your interest in the proposal? I am a person who has an interest in the proposal that is greater than the interest that the general public has

Specify upon which grounds you come within this category:

My employer owns the property

I declare that:

- I understand that I must serve a copy of my or our further submission on the original submitter within five working days after it is served on the local authority
- I accept by taking part in this public submission process that my submission (including personal details, names and addresses) will be made public.

Annexure D

A copy of the relevant parts of the Decision (Extracts)

57. Stephen Havill, Consultant Planner for the submitter confirmed that both properties are developed and all the on-site activities are operating, with the adjoining Summerset Retirement Village sharing access on to Hingaia Road. Mr Havill also confirmed that while there was an internal connection between the sites at 71 and 75, the Pararekau Road access would be insufficient to cope with all of the traffic generated. It was essential to maintain the two access points.¹²
58. Mr Havill also endorsed the reporting planner's comment that the AUP has other controls over access onto arterial roads.¹³
59. The Commissioners agree with the submitter for the following reasons:
- a. The sites are fully developed and operating, with two access points, one onto Hingaia Road and the other onto Pararekau Road.
 - b. The Vehicle Access Restriction Control would have no implications for the existing crossings and it is not intended to provide any more crossings, which led the Commissioners to question why it is supported by the Council officers.
 - c. Other provisions in the AUP control access onto arterial roads under E27.6.4 Access, with broad matters of discretion and assessment criteria that apply to a range of circumstances that are relevant to this site; including a new vehicle crossing, a new activity being established on a site, a change of use, or a new building or additions that require a resource consent.
 - d. The principle of consistency with Hingaia 3 Special Housing Area precinct provisions is outweighed by the above considerations.
60. **Viaduct Harbour Holdings Limited (VHHL)** appearing with **Auckland Industrial Projects Limited (AIPL)** was represented by Anthony Blomfield, Consultant Planner; Angela Bull and Lawrence Flynn.
61. Commissioner Macky recused herself from deliberations regarding submissions from VHHL due to a personal conflict of interest.
62. PC17 seeks to correct the mapping of sub-precinct boundaries of the I211 Viaduct Harbour Precinct as the sub-precinct boundaries at 32 Market Place, Auckland Central do not align with or reflect the split land use of the site. The property at 32 Market Place is currently located in sub-precinct C of I211 in the City Centre zone. Sub-precinct C has been applied to the residential area within the precinct in recognition of the high-quality residential environment within this development. However, as the reporting planner points out, the main building at 32 Market Place is currently used for commercial purposes, and this activity makes the building more suitable for inclusion within Viaduct Harbour sub-precinct A.

¹² Refer paragraph 3 of Mr Havill's evidence

¹³ Refer E27.6.4 (E27 Transport)



63. As a result, PC17 recommends correcting this issue by realigning the I211 Viaduct Harbour sub-precinct boundaries to include the part of the site which is used for commercial activities within sub-precinct A to reflect the split land use of the site.
64. Mr Blomfield provided an outline of the uses within the site, advising that the subject site forms part of The Parc development complex, which comprises 11 properties, two of which are occupied by commercial buildings (the subject site and the property at 136 Customs Street West)¹⁴, and the remaining nine properties, which are occupied by residential apartment buildings.¹⁵ Mr Blomfield also advised that a proportion of each of the 11 properties is occupied by amenity landscaping, which is accessible to each of the other properties as a central communal shared space.¹⁶ Commissioners Watson and Kurzeja confirmed these land uses in a site visit to the property.
65. We note that the submitters are supportive of the proposed amendment but seek a further amendment: that the entirety of the property at 32 Market Place is included in Sub-precinct A. This is on the basis that the approach being adopted by Council, to include only part of the site in the sub-precinct, is inconsistent with the stated objective of PC17, being to
- “ensure that zone and precinct boundaries follow road or property boundaries.”¹⁷*
66. The submitters also advised that the rear portion of the site/building is also utilised for a parking and storage area, ancillary to the commercial office activities within that part of the building at the front of the site. In addition, that part of the site which is

¹⁴ The property at 136 Customs Street West is already included in sub-precinct A (commercial)

¹⁵ And which are all included in sub-precinct C (residential)

¹⁶ Refer paragraph 2.2 of Mr Blomfield’s statement

¹⁷ Refer paragraph 18.6 of section 42A report.

occupied by landscaping and a pool is used by the tenants of the building on the subject site, as well as the residents of the wider Parc complex.

67. On that basis, the submitters consider it is not only more appropriate to adjust the sub-precinct A boundary to reflect the boundary of the 32 Market Place site, on which the primary activity is offices, but also to include the whole of The Parc in that sub-precinct.
68. The Commissioners agree with the reporting planner that the commercial building at 32 Market Place is incorrectly located within sub-precinct C, which provides for residential use, and this error should be corrected to locate the commercial building within sub-precinct A. We note that this exact situation occurs on the same property, in the south-west corner of the site at 136 Customs Street West, Auckland Central in relation to Mastercard House. This commercial building is located within sub-precinct A.
69. We then turned our minds to whether the remaining portion of the property, containing the private gym and sauna facility and the landscaped areas comprising the swimming pool and spa pool should also be included within sub-precinct A, as sought by the submitters.
70. We also considered that the request by the submitters to extend sub-precinct A to include the entire site at 32 Market Place, as opposed to just the commercial buildings, does require consideration with respect to scope. We note that this was not a matter that the reporting planner turned her mind to. Based upon legal advice provided in the Section 42 report¹⁸ we find that the submission is not “on” the plan change, as, despite the fact that Mr Blomfield has addressed the alteration of the *status quo* brought about by that change, this submission has not considered that there is a real risk that persons who are potentially directly affected by the additional changes proposed in the submission will have been denied an effective response to this additional change.
71. This is paramount to the submitter’s request as we note from the Section 42A report¹⁹ that the rear portion of the site containing the private gym and sauna facility is jointly owned by all 11 properties within the Parc development and is available for use by all nine of the residential body corporates and the two commercial building tenants within the Parc complex. In addition, the private pool and the building at the rear portion of the site are ancillary to the residential apartments.
72. We agree with the reporting officer that these uses provide a service to the residential apartments and should remain within sub-precinct C, which enables residential uses. This better supports the objectives and policies of I211 of the Viaduct Harbour Precinct namely:

¹⁸ Refer to sections 8.6 – 8.9 of section 42A report

¹⁹ Refer paragraphs 18.9 and 18.10 of the section 42A report.

- Objective I211.2.(7) – maintaining the residential character and amenity for permanent residents;
- Policy I211.3(11) – avoiding activities that adversely affect the residential character and related amenity; and
- Policy I211.3(12) – provide for permanent residents in sub-precinct C.

73. We further agree with the reporting planner that in this case the mis-alignment of the sub-precinct boundary with the property boundary is the most appropriate outcome, given the clear division of the existing land uses. We therefore reject the submissions of VHHL and AIPL.

SUMMARY OF OTHER SUBMISSIONS RECEIVED

74. In this section of the decision we briefly review submissions opposing aspects of PC17 where submitters did not appear or present evidence at the hearing. In other words, we have simply accepted the planner’s recommendation in the Section 42A report for those submissions in support of the plan change:

- **Yan Chen and Hongyan Lu** – with reference to 390B Richardson Road, Mt Roskill, the submitter supported the plan change, seeking to change the property’s zoning to Residential – Mixed Housing Urban zone. The planner recommended that the submission be accepted and the Commissioners confirm that recommendation.
- **Logan and Suzanne Billing** supported PC17 in relation to 107 Maraetai School Road, to keep Maraetai land size to 700sq.m and above. The planner recommended that the submission be accepted and the Commissioners confirm that recommendation.
- **Geoffrey’s Trust and JH Smale Trust** supported the plan change regarding the 1539 Smales 2 Precinct, sub-precincts A and B and the proposed rezonings. The planner recommended that the submission be accepted and the Commissioners confirm that recommendation.
- **Padlie-Hall Family Trust et al** accepted the plan change plan and specially the application of the Subdivision Variation Control Overlay to 1 Maraetai Coast Road, Clevedon, to increase the minimum lot size to 700sq.m. The planner recommended that the submission be accepted and the Commissioners confirm that recommendation. However, that part of the submission seeking any further increase in the minimum lot size for any development was recommended to be rejected, and the Commissioners confirm that recommendation as well.
- **Onehunga Future Investment Limited** supported the plan change as it affected 63-65 Victoria Street, Onehunga as the proposed Residential –

Annexure E

A list of the parties to be served with a copy of this Notice of Appeal

Submission Number	Submitter Name	Address for Service
N/A	Auckland Council	Manager – Litigation and Regulatory Services (christian.brown@aucklandcouncil.govt.nz)
15	Viaduct Harbour Holdings Limited	Ellis Gould Lawyers / Bentley & Co