

BEFORE THE ENVIRONMENT COURT

ENV-2017-AKL-000105

IN THE MATTER OF

an application for Declarations

UNDER

sections 310 and 311 of the Resource Management Act 1991

BETWEEN

AUCKLAND COUNCIL, a duly established local authority under the Local Government (Auckland Council) Act 2009

Applicant

AND

JANINE BUDDEN, Doctor, **MARK GITTOS**, Surgeon and **MICHAEL ROWE**, Accountant, all of Auckland, the **TRUSTEES OF THE LONDON PACIFIC FAMILY TRUST**, owner of 12 Seymour Street, Ponsonby

Respondent



**APPLICATION FOR DECLARATIONS PURSUANT TO SECTION 310
AND 311 OF THE RESOURCE MANAGEMENT ACT 1991**

Dated: 24 July 2017

Instructing Solicitor:

Mike Wakefield
Auckland Council

Email mike.wakefield@aucklandcouncil.govt.nz

Postal Private Bag 92300, Victoria Street West
Auckland 1142

LACHLAN MULDOWNEY

BARRISTER

Email lachlan@muldowney.co.nz

Postal PO Box 9169, Waikato Mail Centre,
Hamilton 3240

www.lachlanmuldowney.co.nz

Application for Declarations pursuant to section 310 and 311 of the Resource Management Act 1991

To: The Registrar, Environment Court, Auckland

And to: The persons directed to be served

1. Auckland Council (**Council**), established under the Local Government (Auckland Council) Act 2009, applies to the Environment Court for declarations under sections 310 (a), (c), and (h) of the Resource Management Act 1991 (**RMA**) in the following, or similar, terms:

(a) The overall scheme of the Auckland Unitary Plan (Operative in Part) (**AUPOP**) requires that the relationship between the provisions within an Overlay section (**Overlay**), and the provisions within other sections of the AUPOP is determined in the following manner;

(i) First by reference to any specific provisions within the AUPOP, and where no specific provisions exist or in the event of a conflict between specific provisions;

(ii) The provisions within an Overlay shall take precedence over corresponding provisions within other sections of the AUPOP which similarly control the land use addressed by Overlay provisions.

(Declaration A)

(b) In the context of the Height in Relation to Boundary (**HiRB**) standards included in the Residential - Special Character Overlay (**SC Overlay**) and the HiRB standards included in the Residential - Single House Zone (**SHZ**) of the AUPOP, the Council is properly carrying out its statutory functions under the RMA by requiring resource consent for activities that infringe the HiRB standards set out in the SC Overlay provisions only, and not the underlying SHZ provisions, regardless of whether the proposed activity infringes the HiRB standards in the SHZ.

(Declaration B)

- (c) In that same context, where a restricted discretionary activity infringes a rule or standard in the SC Overlay, the Council is correctly administering the AUPOP in accordance with section 87A(3) of the RMA by limiting its discretion to those matters prescribed in section D18.8.1 of the SC Overlay, and limiting the assessment criteria to that set out in section D18.8.2 of the SC Overlay, rather than applying any broader discretion and assessment criteria as may be prescribed for restricted discretionary activities in the general rules or zone rules.

(Declaration C)

Collectively **(Declarations)**

UPON THE GROUNDS:

1. Council is entitled to apply for the declarations sought pursuant to section 311(1) of the RMA;
2. Pursuant to section 6 of the Local Government (Auckland Council) Act 2009, Council is a unitary authority with functions, duties and powers under that Act, the Local Government Act 2002, and the RMA.
3. Pursuant to sections 30 and 31 of the RMA, Council has, inter alia, the following functions duties and powers for the purpose of giving effect to the RMA in its district and region:
 - (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region; and
 - (b) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.
4. In performing its functions under sections 30 and 31 of the RMA, Council has, pursuant to sections 60, 64 and 73 of the RMA, established the AUPOP which became operative in part on 15 November 2016.
5. In accordance with the requirements of section 9 of the RMA, Council has been administering the AUPOP such that no land use activity that

contravenes a rule in the AUPOP can occur unless authorised by a resource consent applied for under section 88 of the RMA.

6. In respect of all applications for resource consent under section 88, Council currently administers the AUPOP in a manner consistent with the declarations sought in this application.
7. The Council has been advised by certain potentially affected parties (neighbours and other land users) that they consider Council's current approach to the administration of the AUPOP to be unlawful and that this has and will continue to cause prejudice to them in the form of loss of amenity, loss of development rights and consequential financial losses.
8. The difference in opinion between Council and potentially affected parties in relation to the proper administration of the AUPOP has led to uncertainty within the development community which increases the likelihood of appeals against, or judicial review applications in respect of, Council decision-making, which in turn fails to optimise the achievement of the purpose of the RMA under section 5.
9. Council's administration of the AUPOP in a manner consistent with the declarations sought in this application is lawful.
10. The purpose of the RMA is best served by making the declarations sought.
11. Appearing in the affidavit of Lee Galuefa Ah-Ken dated 21 July 2017 filed herein.
12. Council attaches the following documents in support of this application:
 - (a) Affidavit of Lee Galuefa Ah-Ken.
 - (b) A list of names and addresses of parties proposed to be served with copies of this application and accompanying documents.

- (c) A memorandum of Counsel for Council seeking procedural directions.

Dated this 24th day of July 2017



L F Muldowney
Counsel for Auckland Council

M G Wakefield

Address for service of applicant:

Auckland Council
Private Bag 92300
Victoria Street West
Auckland 1142

Telephone: 021 873515

Email: mike.wakefield@aucklandcouncil.govt.nz

Contact person: Mike Wakefield

List of names and addresses of parties proposed to be served

1. The consent holder in respect of the Seymour example:
Kym and Craig Andersen
Address: 10 Seymour Street, Ponsonby

2. The neighbours in respect of the Seymour example (the Respondent):
Janine Budden, Mark Gittos and Michael Rowe (the Trustees of the London Pacific Family Trust).
Address: 12 Seymour Street, Ponsonby
c/- Alan Webb, Barrister, Quay Chambers

3. The consent holder in respect of the 21A Logan example:
AK Family Trustee Limited, Andrew Kot
Address: c/- Chris Walsh, The Development Collective

4. The neighbours in respect of the 21A Logan example (and Applicants for judicial review):
The HC Trust, The Ollerton Trust, James Farmer
Address: c/- Berry Simons, Solicitors

5. Transpower
Address: c/- James Gardner-Hopkins, Barrister

6. The Quarry Operators
Address: c/- Bal Matheson, Barrister