

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2022] NZEnvC 219

IN THE MATTER OF an appeal under clause 14 of
Schedule 1 of the Resource
Management Act 1991

BETWEEN PORTS OF AUCKLAND LIMITED
(ENV-2022-AKL-000066)

Appellant

AND WAIKATO DISTRICT COUNCIL

Respondent

Court: Chief Environment Court Judge D A Kirkpatrick sitting alone
under s 279 of the Act

Date of Order: 2 November 2022

Date of Issue: 2 November 2022

CONSENT ORDER

A: Under section 279(1)(b) of the Resource Management Act 1991, the
Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to the clean version of amendments
as set out in Appendix A to this order; and
- (2) the appeal is resolved in its entirety.

Ports of Auckland Limited v Waikato District Council



B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This appeal relates to the decision of Waikato District Council (**WDC**) on the Proposed Waikato District Plan (**PDP**) in relation to provisions applicable within the Horotiu industrial park precinct (**PREC6**).

[2] On 17 January 2021 an independent hearing panel on behalf of WDC released Decision Report 21: Industrial Zones (**the Decision**). The Decision related to provisions for the General Industrial Zone (**GIZ**) and Heavy Industrial Zone (**HIZ**), as well as provisions for various industrial parks or precincts, including PREC6.

[3] On 28 February 2022 Ports of Auckland Limited (**the Appellant**) filed an appeal against the Decision. The appeal was in relation to the permitted land use activity rules and permitted land use building standards, which are set out at PREC6-R1-12, and PREC6-S5 respectively.

[4] Northgate Developments Ltd and Northgate Industrial Park Ltd (together referred to as **Northgate**) subsequently joined the appeal under s 274 of the Act.

Agreement reached

[5] All parties have engaged in settlement discussions which have resulted in an agreement that will resolve the appeal in its entirety and will partially resolve Topic 15: Land Use Provisions - Other Zones. However, other discrete parts of PREC6 remain subject to other ongoing appeals.

- [6] In its notice of appeal the Appellant sought the following relief:
- (a) amendment to permitted activity Rule PREC6-S5(a)(ii) Building Height¹ so that it allows for a 15m height over the 90% of the site, rather than 5m. The Decision accepted a building height of 15m (as notified), and so the reference to 5m in the decisions version of the PDP is an error; and
 - (b) inclusion of an additional permitted rule within PREC6 for a “Caretaker’s or security person’s residential unit”. The Decision accepted that this activity was consistent with the industrial zone functions, and a permitted rule was included in both the GIZ and HIZ. However, the GIZ rules do not apply within PREC6 so a standalone rule is required in order to provide for the activity within PREC6. The rule sought by the Appellant is identical to the rule for caretaker’s or security person’s residential units in the GIZ and HIZ provisions.

[7] The parties agree that the relief sought reflects conclusions reached in the Decision but not subsequently captured in the decisions version of the PDP. The parties therefore agree that the changes sought by the Appellant are necessary in order to give effect to the Decision. The parties considered these changes to be beyond the scope of clause 16 of Schedule 1 to the Act.

[8] The parties have agreed the appeal may be settled by consent in accordance with the amendments, namely:

- (a) changes to PREC6-S5(a)(ii) Building Height; and
- (b) inclusion of a new Land use activities rule PREC6-R13.

¹ Note that the land use provisions within the Horotiu industrial park precinct use the number convention ‘PREC’ however all other provisions in the precinct use the numbering convention ‘PREC6’.

Consideration

[9] The Court has now read and considered the notice of appeal dated 28 February 2022 and the joint memorandum of the parties dated 27 October 2022.

[10] The Court is satisfied that the agreed amendments are within the scope of the Appellant's submissions and appeal. The Court is further satisfied that the agreement reached reflects the conclusions reached in the Decision but not shown in the decisions version of the PDP. It appears that there was an oversight or error. The agreed changes give effect to the Decision.

[11] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

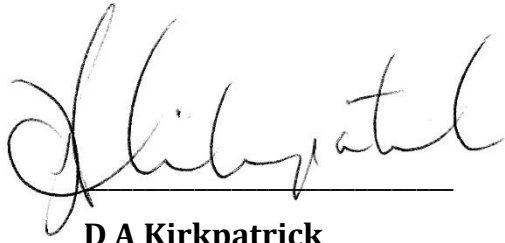
- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

Order

[12] The Court orders, by consent, that:

- (a) the appeal is allowed subject to the agreed clean version of amendments as set out in Appendix A to this order;
- (b) the appeal is resolved in its entirety; and

(c) there is no order as to costs.

A handwritten signature in black ink, appearing to read 'D Kirkpatrick', written over a horizontal line.

D A Kirkpatrick
Chief Environment Court Judge



Appendix A

Clean version of the agreed changes to PREC-S5 and insertion of new rule PREC6-R13 after rule PREC6-R12

PREC-S5	Building height	
(1) Activity status: PER	<p>Where:</p> <p>(a) A building or structure that is more than 400 metres from Horotiu Road and does not exceed a height measured from the natural ground level immediately below that part of the structure of:</p> <p style="margin-left: 20px;">(i) 25 metres; and</p> <p style="margin-left: 20px;">(ii) 15 metres over 90% of the site.</p> <p>(b) Rule GIZ-S3 does not apply.</p>	<p>(2) Activity status where compliance not achieved: RDIS</p> <p>Council's discretion is restricted to the following matters:</p> <p>(a) The extent to which visual amenity in the GRZ – General residential zone is maintained.</p>
PREC6-R13	Caretaker's or security person's residential unit	
(1) Activity status: PER	<p>Activity-specific standards:</p> <p>(a) Is located within an industrial building;</p> <p>(b) Does not exceed 70m² gross floor area; and</p> <p>(c) Accommodate no more than two people.</p>	(2) Activity status where compliance not achieved: DIS