

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2021] NZEnvC 137

IN THE MATTER OF

an application under s 292 of the
Resource Management Act 1991
(the Act)

BY

AUCKLAND COUNCIL

(ENV-2021-AKL-120)

Applicant

Court: Chief Environment Court Judge D A Kirkpatrick, sitting
alone under s 279(1)(b) of the Act

Hearing: On the Papers

Appearances: C Faesenkloet for Auckland Council **(the Council)**

Date of Decision: 8 September 2021

Date of Issue: 8 September 2021

**DECISION OF THE ENVIRONMENT COURT
ON APPLICATION FOR CORRECTION OF ERROR IN PLAN**

A: The Auckland Council is **directed** under s 292 of the Resource Management Act 1991 to correct the precinct plans for the I519 Long Bay Precinct of the Auckland Unitary Plan as follows:

- (a) In Precinct Plan 2, the area shown as sub-precinct C (Piripiri Point Protection Area) on the site at Lot 901 DP 533195 is to be shown as sub-precinct E (suburban neighbourhood north of Vaughans Stream); and



- (b) In Precinct Plans 1 and 3, the area of the Piripiri Point Protection Area is reduced so that it no longer applies to the site at Lot 901 DP 533195.

B: There is no order as to costs.

REASONS

Introduction

[1] Auckland Council applies under s 292 of the Resource Management Act 1991 (the **Act**) for a direction by this Court to amend Precinct Plans 1, 2 and 3 in the I519 Long Bay Precinct in the Auckland Unitary Plan (**AUP**). The amendment is sought to remedy a mapping mistake, defect or uncertainty relating to the application of sub-precinct C (Piripiri Point Protection Area) to a portion of a site at the northern end of Te Oneroa Way, Long Bay, legally described as Lot 901 DP 533195 (**the site**).

[2] The mistake was first identified when the Council received an application for subdivision for the properties at or near the northern end of Te Oneroa Way. The general planning maps in the AUP identified the site as being within the Long Bay precinct in sub-precinct E, providing for a suburban neighbourhood north of Vaughans Stream and zoned H3 Residential – Single House Zone. The precinct plans, however, and in particular Precinct Plan 2 which depicts all of the precincts, show a strip of land along the northern side of the site as being within sub-precinct C, which provides for the Piripiri Point Protection Area and zoned H1 Residential – Large Lot Zone.

[3] As well, Precinct Plans 1 and 3 of I519 Long Bay Precinct also indicate this part of the site as being partially within the Piripiri Point Protection Area. Plan 1 is a land use strategy plan, while Plan 3 is a plan showing additional controls in the precinct, so for present purposes these plans are secondary to Plan 2.

[4] What appears to have happened is that the precinct plans were made before any subdivision of this part of Long Bay for development purposes had occurred. Subsequent subdivision, including the creation of the site, has not followed the boundary indicated on the plan between sub-precincts C and E.

[5] Accordingly, the Council submits that the following changes are within the scope of s 292 of the Act and should be made:

- (a) The northern strip of the site should be changed from sub-precinct C to sub-precinct E on Precinct Plan 2; and
- (b) The Piripiri Point Protection Area should not be applied to the site on Precinct Plans 1 and 3.

[6] A representative for the landowner, Templeton Long Bay Limited, confirms that this is a mistake in the mapping of the I519 Long Bay Precinct.

Evaluation

[7] Section 292 of the Act provides:

292 Remediating defects in plans

- (1) The Environment Court may, in any proceedings before it, direct a local authority to amend a regional plan or district plan to which the proceedings relate for the purpose of—
 - (a) remedying any mistake, defect, or uncertainty; or
 - (b) giving full effect to the plan.
- (2) The local authority to whom a direction is made under subsection (1) shall comply with the direction without using the process in Schedule 1.

[8] The provision has been held to be a slip rule, available to remedy clear mistakes but not to be used to make a significant change.¹ Use of this power is

¹ *35 Limited v Auckland Council* [2018] NZEnvC 215, at 7; *Catholic Archdiocese of Wellington v Friends of Mount Street Cemetery* [2000] NZRMA 385.

not appropriate where third parties who may be affected are unable to participate.² The power is broadly discretionary, but it does not extend to determining whether particular plan provisions are adequate or appropriate.³

[9] The usual way to make a change to a plan is by way of the process set out in Schedule 1 to the Act. Clause 20A of that schedule, for instance, provides that a local authority can amend an operative policy statement or plan to correct any minor errors. However, a direction made under s 292 of the Act enables a plan to be corrected where a defect becomes apparent in a proceeding before the Court without the need to use the Schedule 1 process.

[10] In this matter, counsel for the Council notes that the Environment Court has made s 292 directions in the past for similar instances where Councils were to correct errors in planning maps in operative district plans. Counsel has also evaluated the benefit of rectifying the mistake through the process outlined in cl 20 of Schedule 1, but submits that it is not an appropriate avenue for this matter, as she does not consider the mistake to be a 'minor error'. Accordingly, the Council considers that a direction from the Court under s 292 of the Act would be consistent with previous case law and the most effective way to rectify the mistake.

[11] Having reviewed the application and the supporting affidavit of Ms Emma Burns, a policy planner at the Council, I accept that this is a clear case of a mistake in the application of sub-precinct C in the precinct plans. I also concur with counsel that the error is more than minor, so that a process under cl 20A of Schedule 1 is not appropriate in this instance. However, the proposed change is not so significant that it would be inappropriate to make a direction under s 292.

[12] Ms Burns notes that the general AUP map and the precinct plans of the

² *Oxford Charters Limited v Queenstown Lakes District Council* C 65/2000.

³ *Moriarty v North Shore City Council* [1994] NZRMA 433 (HC).

I519 Long Bay Precinct are inconsistent, with the former showing the northern portion of the site as being subject to sub-precinct E, and not sub-precinct C as the latter depict. I accordingly accept the submission that amending Precinct Plans 1, 2 and 3 in the I519 Long Bay Precinct so that the whole of the site is shown to be outside of sub-precinct C would not significantly change the AUP. Rather, this would be an appropriate process to ensure that Precinct Plans 1, 2 and 3 in the I519 Long Bay Precinct of the AUP are consistent with the general AUP map.

[13] The correction of the mapping of sub-precinct C in the precinct plans does not affect any third party. The landowner, Templeton Long Bay Limited, agrees that the Precinct Plans in the I519 Long Bay Precinct should be amended. In the Council's view, there are no other affected parties that need to be heard in relation to the proposal to correct the errors. It is apparent that the landowner is the primary party affected by the error, which only relates to the site. I am therefore satisfied that the application need not be notified to anyone else.

Decision

[14] For the foregoing reasons, I conclude that there is a mistake, defect or uncertainty in Precinct Plans 1, 2 and 3 of the I519 Long Bay Precinct of the Auckland Unitary Plan which should be remedied and that it is appropriate to use the power under s 292 of the Act to do so.

[15] I therefore **direct** the Council in the following terms:

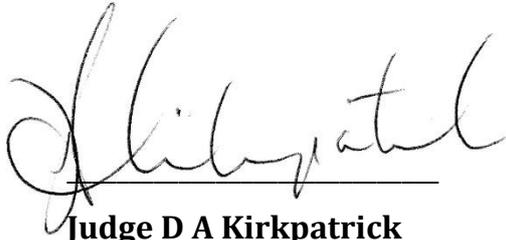
- (a) The Auckland Council is directed under s 292 of the Resource Management Act 1991 to correct the precinct plans for the I519 Long Bay Precinct of the Auckland Unitary Plan as follows:
 - (i) In Precinct Plan 2, the area shown as sub-precinct C (Piripiri Point Protection Area) on the site at Lot 901 DP 533195 is

to be shown as sub-precinct E (suburban neighbourhood north of Vaughans Stream); and

- (ii) In Precinct Plans 1 and 3, the area of the Piripiri Point Protection Area is reduced so that it no longer applies to the site at Lot 901 DP 533195.

[16] There having been no contest before the Court in relation to this matter, and consistent with the general practice in relation to proceedings relating to the preparation of plans, there is no order as to costs.

For the Court:



Judge D A Kirkpatrick
Chief Environment Court Judge

