

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2023] NZEnvC 241

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

BETWEEN NGĀTI TE ATA
(ENV-2023-AKL-000032)

Appellant

AND AUCKLAND COUNCIL

Respondent

AND GOLDING MEADOWS
DEVELOPMENTS LTD &
AUCKLAND TROTting CLUB INC

Private Plan Change Applicant

AUCKLAND TRANSPORT

NGĀTI TAMAOHO

Section 274 parties

Court: Environment Judge MJL Dickey sitting alone under s 279 of the Act

Date of Order: 8 November 2023

Date of Issue: 8 November 2023

CONSENT DETERMINATION

Ngāti Te Ata v Auckland Council



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

- (1) the appeal is allowed in part, to the extent that the Precinct provisions and Precinct Plan 1 are amended as set out in **Appendix 1** of this order; and
- (2) the appeal is otherwise dismissed.

B: Under section 285 of the RMA, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to an appeal by Ngāti Te Ata in relation to the Auckland Council's decision to approve Private Plan Change 74: Golding Meadows and Auckland Trotting Club Inc (**PC74**) to rezone approximately 82.66 ha of land in south-eastern Pukekohe from Future Urban Zone and Special Purpose – Major Recreation Facility Zone to a combination of Business – Light Industry Zone, Residential – Mixed Housing Urban Zone and Neighbourhood Centre Zone.

[2] The decision to approve (with modifications) PC74 (**the Decision**) is dated 15 December 2022. It was publicly notified on 26 January 2023.

[3] Ngāti Te Ata appealed the Decision on 10 March 2023 on the following grounds:

- (a) the Decision does not fully address their concerns and recommendations raised in the Cultural Impact Assessment (CIA) provided by Ngāti Te Ata for PC74;
- (b) PC74 did not ensure the adequate provisions of infrastructure in respect of the land being rezoned;
- (c) the Decision did not include adequate reasons regarding the issues and relief sought as raised in the submission by Ngāti Te Ata, and therefore there could be no certainty that the recommendations in the CIA would be achieved through the provisions of PC74;

- (d) the Decision did not represent the most appropriate way of exercising the Council's functions, having regard to the efficiency and effectiveness of other reasonably practicable options, and was not appropriate in terms of section 32 and other provisions of the RMA.

[4] Ngāti Te Ata sought the following relief:

- (a) provisions be included in PC74 to better reflect the relationship of Ngāti Te Ata and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga;
- (b) provisions be included in PC74 to better enable Ngāti Te Ata to exercise kaitiakitanga;
- (c) such provisions would include provision to uphold the mana of the people of Ngāti Te Ata and provide rangatiratanga over ancestral taonga.
- (d) such further or other relief as may be necessary to address the issues raised in the appeal, including any consequential relief as may be appropriate.

[5] Auckland Transport and Ngāti Tamaoho lodged notices of their intention to become parties to this appeal under s 274 of the RMA.

Agreement reached between the parties

[6] The parties to the appeal attended court-assisted mediation on 27 June 2023. Following mediation, the parties agreed that this appeal can be resolved by consent on the basis that several agreed amendments are made to the Pukekohe Golding Precinct provisions and Precinct Plan 1.

[7] The agreed amendments are set out in Appendix 1 and include the following:

- (a) the Description of the Precinct is to be amended in the Precinct provisions to refer specifically to the relationship of Ngāti Te Ata and Ngāti Tamaoho to the Precinct, including its place within the wider cultural landscape of Te Awanui O Taīkehu; and the identification of cultural values which need to be recognised and appropriately managed

through future development, which has the potential to contribute towards a revitalised cultural landscape;

- (b) Objective 7 is to be amended in the Precinct provisions, to include specific reference to the need to protect and enhance the cultural values of streams, wetlands and the significant ecological area within the Precinct;
- (c) a new objective is to be added to the Precinct provisions to recognise and provide for the cultural, spiritual and historic values held by Ngāti Te Ata and Ngāti Tamaoho, as well as their relationships with the cultural landscape, and to ensure that positive environmental outcomes are achieved for the health and wellbeing of the land, waterways and people (I4XX.13);
- (d) Policy 9 is to be amended in the Precinct provisions, to include reference to a treatment train approach;
- (e) three new policies are to be added to the Precinct provisions, under the new heading 'Cultural Values' (I4XX.3(17)-(19)) which promote:
 - (i) consultation with Ngāti Te Ata and Ngāti Tamaoho and the need to recognise and provide for the matters in sub-paragraph (c) above,
 - (ii) establishing a cultural narrative within the Precinct which responds to the values identified above; and
 - (iii) encouraging the provision of access for Ngāti Te Ata and Ngāti Tamaoho to waterways and their margins for cultural practices;
- (f) two new assessment criteria are to be added to the Precinct provisions, relating to the extent to which impacts of development on Māori cultural values are avoided, remedied or mitigated; and the extent to which adverse effects on archaeological features identified within the Precinct are avoided or mitigated;
- (g) the Special information requirements for the Riparian Planting Plan are to be amended in the Precinct Provisions, to include a requirement for that Plan to be prepared in consultation with Ngāti Te Ata and Ngāti Tamaoho;

- (h) a new Special information requirement has been added to the Precinct provisions, requiring an archaeological assessment to be prepared in consultation with Ngāti Te Ata and Ngāti Tamaoho, at the time of the first subdivision or earthworks application;
- (i) a new Special information requirement requiring evidence of consultation with Ngāti Te Ata and Ngāti Tamaoho has been added to the Precinct provisions;
- (j) Precinct Plan 1 is to be amended to include indicative ecological/green corridors along the streams.

Analysis of agreement reached under s 32AA of the RMA

[8] Section 32AA of the RMA requires a further evaluation for any changes to a proposal since the evaluation report for the proposal was completed.

[9] The parties prepared a s 32AA evaluation to identify that the parties have considered other reasonably practicable options, the risk of acting or not acting, and assessed costs and benefits. A summary follows.

Effectiveness and efficiency

[10] The changes do not reduce the effectiveness and efficiency of the approved precinct provisions.

[11] The amendments to the objectives are a more appropriate and effective means of ensuring alignment with the National Policy Statement – Freshwater Management and achieving the purpose of the RMA with respect to cultural, spiritual, and historic values, than what was contained in the Decisions' version.

Decision about the most appropriate option

[12] Key objectives of the Decisions' version of the Pukekohe Golding Precinct provisions are directed toward achieving the purpose of the Act including Objective (7) which requires protection and enhancement of the ecological values of streams, wetlands and the significant ecological area. However the Decisions' version of those provisions did not include express and direct acknowledgement of cultural,

spiritual and historic values held by Ngāti Te Ata and Ngāti Tamaoho both in a broad sense and expressly by reference to streams and wetlands.

[13] The amendments to the objectives (through changes to Objective (7) in relation to streams and wetlands, and the introduction of a new Objective (13) in relation to the wider relationship of Ngāti te Ata and Ngāti Tamaoho to the Precinct and the wider cultural landscape) are a more appropriate way to achieve the purpose of the Act by strengthening those objectives with respect to cultural, spiritual and historic values, than what was contained in the Decisions' version.

[14] Consequent on amendments to those objectives, the parties assessed reasonably practicable options in the context of identifying the most appropriate method of achieving those objectives. Those options were either to retain the Decisions' version of the methods sitting below the objectives (policies, assessment criteria and special information requirements) or make appropriate amendments to those methods. The parties agreed that the most appropriate solution, which is both efficient and effective, was to make further amendments to those policies, assessment criteria and special information requirements, to strengthen them. In that regard, the parties agreed the amendments proposed result in provisions which:

- (a) have a clear and direct link to the amended objectives (and amended Precinct description);
- (b) identify the cultural, spiritual and historic values held by Ngāti Te Ata and Ngāti Tamaoho and their relationships with the cultural landscape;
- (c) require consultation with Ngāti Te Ata and Ngāti Tamaoho and recognise and provide for their cultural, spiritual and historical values;
- (d) require resource consent applicants to specifically outline how stormwater will be managed through a treatment train approach at source before it is discharged to streams and wetland areas;
- (e) requires the establishment of a cultural narrative within the Precinct;
- (f) encourages the provision of access for Ngāti Te Ata and Ngāti Tamaoho to the waterways and their margins for the exercise of cultural practices;
- (g) introduce assessment criteria requiring consideration of the extent to which the effects of potential impacts of development on Māori cultural

values are avoided, remedied or mitigated; and the extent to which effects on archaeological values are avoided or mitigated; and

- (h) introduce special information requirements with respect to consultation, including specifically with reference to riparian planting, and a requirement for an archaeological assessment.

[15] The parties agree these changes provide a clear and consistent framework as to matters which must be appropriately engaged with in the context of cultural, spiritual and historic values held by Ngāti Te Ata and Ngāti Tamaoho. The provisions ensure that effects on those values will be assessed and addressed appropriately and comprehensively through a resource consenting process as development occurs over time.

[16] The parties agree the level of detail of the above assessment corresponds to the scale and significance of the changes.

Costs/Benefits

[17] With respect to the benefits and costs of the effects that are anticipated from the implementation of the provisions, the parties agree that from the perspective of potential effects on cultural values, the revised provisions will improve benefits in terms of the appropriate management of those effects, and reduce costs associated with their management by providing clearer and more robust direction as to how they are to be managed. From the perspective of other potential effects, the parties agree anticipated benefits arising from the revised Precinct provisions will remain unchanged in comparison to the Decisions' version and any costs resulting from the amendments are anticipated to be minimal.

Risk of acting or not acting

[18] The parties agree that this is not a situation where there is uncertain or insufficient information such that the risk of acting or not acting needs to be evaluated.

Consideration

[19] The Court has read and considered the notice of appeal dated 10 March 2023, and the joint memorandum of the parties dated 14 August 2023 and subsequent advice dated 13 October 2023 regarding the inter-relationship between assessment criteria and matters of discretion.

[20] The Court is making this order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 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.

[21] I am satisfied that the agreement reached is one that represents the various interests of the parties. It is clear the parties have considered other reasonably practicable options, the risk of acting or not acting, and assessed costs and benefits. I am of the view that the changes agreed will continue to provide for the effective and efficient administration of the plan provisions. I conclude the parties have taken a considered and balanced approach, and the agreed amendments are the most appropriate way to achieve the purpose of the Act and the objectives in the Plan. Overall, I consider the sustainable management purpose and the other relevant requirements of the Act are broadly met.

Orders

[22] Therefore the Court orders, by consent, that:

- (a) the appeal is allowed in part, to the extent that the provisions within the Precinct and Precinct Plan 1 are amended as set out in **Appendix 1**; and
- (b) the appeal is otherwise dismissed. This order resolves the appeal in its entirety; and

(c) there is no order as to costs.



MJL Dickey
Environment Judge

