

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER of the Local Government (Auckland
Transitional Provisions) Act 2010
and the Resource Management Act
1991

AND of an appeal under s 156(3) of the
LGATPA

BETWEEN GREENWHALE HOLDINGS
LIMITED

ENV-2016-AKL-000220

Appellant

AND AUCKLAND COUNCIL

Respondent

Principal Environment Judge L J Newhook sitting alone under s 279 of the RMA
In Chambers at Auckland

CONSENT ORDER

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

- (1) the appeal is allowed subject to the amendments set out in this
order.
- (2) the appeal is otherwise dismissed.

[B] Under s 285 of the Resource Management Act 1991, there is no order as
to costs.



REASONS

- [1] This appeal is against a decision of the Auckland Council to accept recommendations of the Independent Hearings Panel on the Auckland Unitary Plan in respect of the Dilworth Terrace Houses Viewshaft Overlay. Specifically, the appeal relates to Auckland Council's decision to relocate the origin points of the Viewshaft to the eastern boundary of the properties at 145-155 and 165 The Strand.
- [2] In the notified Unitary Plan, the Viewshaft originated from identified locations on the eastern side of Quay Street. The Notified Viewshaft was "rolled-over" from the former Auckland District Plan: Central Area Section.
- [3] Following the Unitary Plan hearings, the Panel recommended that the origin points of the Viewshaft be relocated to the eastern boundary of the properties at 145-155 and 165 The Strand. The Auckland Council accepted this recommendation in its decision.
- [4] Greenwhale is the successor to Strand Holdings Ltd, which appealed that decision to the Environment Court under s 156(3) of the LGATPA. This section allows appeals to the Environment Court where the Council has accepted a recommendation of the Panel that was beyond the scope of submissions made on the Proposed Unitary Plan.
- [5] In its recommendations on the Viewshaft, the Panel did not identify the recommendation to relocate the origin points of the Viewshaft from Quay Street to The Strand as beyond the scope of submissions.
- [6] Accordingly, Strand Holdings filed a concurrent application in the High Court seeking judicial review of that decision. The High Court found that the recommendation to relocate the origin points of the Viewshaft was beyond the scope of submissions and should have been identified as such by the Panel.
- [7] The matter was therefore referred to the Environment Court for resolution pursuant to Strand Holding's appeal under s 156(3) of the LGATPA.



- [8] The appeal sought that the Viewshaft be deleted and such other consequential relief as may be necessary to give effect to the concerns set out in the appeal.
- [9] The parties have now reached an agreement that deletion of the Viewshaft from the Unitary Plan planning maps is appropriate and, as a consequence, Chapter D20 Dilworth Terrace Houses Viewshaft Overlay should also be deleted.
- [10] In making this order, the Court has read and considered the appeals and the joint memorandum of counsel in support of this Consent Order dated 5 April 2018.
- [11] The following parties gave notice of their intention to become a party to the appeals under s 274 of the RMA:
- (a) Body Corporate 97010.
 - (b) Centro Investments Limited.
 - (c) Ngati Whatua Orakei Whai Rawa Limited.
- [12] No other person has given notice of their intention to become a party.
- [13] By way of memorandum dated 5 April 2018, Body Corporate 97010 withdrew its notice of intention to become a party under s 274 of the RMA.
- [14] The Court is making this order under s 279(1)(b) of the RMA, such order being by consent, rather than representing a decision of the Environment Court or determination on the merits pursuant to s 297.
- [15] The Court understands for present purposes that:
- (a) all parties to the proceedings have executed the memorandum requesting this order; and
 - (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 RMA, including in particular Part 2.



Order

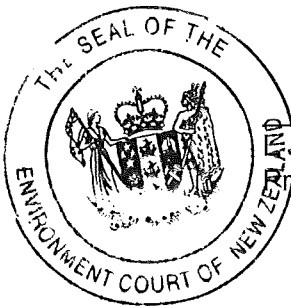
[16] The Court therefore orders, by consent, that the Auckland Unitary Plan be amended to:

- (a) delete the Dilworth Terrace Houses Viewshaft Overlay (**attached** as Appendix 1) from the Unitary Plan planning maps; and
- (b) delete Chapter D20 Dilworth Terraces Houses Viewshaft Overlay of the Unitary Plan.

[17] This order resolves the appeal in its entirety.

[18] There is no order for costs.

DATED at Auckland this 10th day of April 2018





J. Newhook
Principal Environment Judge

Appendix 1: Dilworth Terraces View Protection Overlay to be deleted

