

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2016-AKL

IN THE MATTER

of the Local Government Act (Auckland
Transitional Provisions) Act 2010
("LGATPA") and the Resource
Management Act 1991 ("RMA")

AND

IN THE MATTER

of an appeal under section 156(3) of the
Local Government (Auckland Transitional
Provisions) Act 2010

AND

IN THE MATTER

of Proposed Plan Hearing Topics 050 -
054 City Centre and business zones

BETWEEN

STRAND HOLDINGS LIMITED

Appellant

AND

AUCKLAND COUNCIL

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT BY STRAND HOLDINGS
LIMITED**

16 SEPTEMBER 2016

RUSSELL McVEAGH

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STRAND HOLDINGS LIMITED ("Strand Holdings") appeals against part of the decision of the Auckland Council ("**Council**") in respect of the Proposed Auckland Unitary Plan ("**Unitary Plan**").

Decision

1. Strand Holdings made a submission on the notified Unitary Plan.
2. Strand Holdings is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("**RMA**").
3. Strand Holdings received notice of the Independent Hearings Panel's ("**Panel**") recommendation on the Unitary Plan ("**Recommendation**") on 27 July 2016, and notice of the Council's decision on the recommendation ("**Decision**") on 19 August 2016.

Parts of the Decision that Strand Holdings is appealing

4. Strand Holdings appeals that part of the Decision relating to the Dilworth Terraces View Protection Plan ("**Viewshaft**").
5. Strand Holdings, concurrent to this appeal, has filed an application to the High Court for judicial review of the Panel's Recommendation. Through that application, Strand Holdings is challenging the Panel's failure to identify the relocation of the Viewshaft as being beyond the scope of submissions.
6. This appeal is made under section 156(3) of the Local Government (Auckland Transitional Provisions) Act 2010 on the basis that:
 - (a) The Panel's Recommendation to relocate the origin point of the Viewshaft was beyond the scope of submissions.
 - (b) Strand Holdings is unduly prejudiced by the relocation of the Viewshaft.

Grounds for appeal

7. Strand Holdings' grounds for appeal are that the Decision in relation to the Viewshaft:

- (a) will not promote the sustainable management of resources, will not achieve the purpose of the RMA, and is contrary to Part 2 and other provisions of the RMA;
- (b) will not meet the reasonably foreseeable needs of future generations;
- (c) does not manage the use of resources in a way that enables the community to provide for their social and economic well-being;
- (d) does not represent an efficient use and development of natural and physical resources;
- (e) does not avoid, remedy or mitigate the adverse effects on the environment; and
- (f) does not represent the most appropriate means of exercising the Respondent's functions, having regard to the efficiency and effectiveness of other available means and is therefore not appropriate in terms of section 32 and other provisions of the RMA.

Specific grounds for appeal

8. Without limiting the generality of the above, the specific grounds of appeal are:
- (a) Strand Holdings owns the land at 117-133 The Strand, Parnell, ("**Property**"). The Property includes the Saatchi & Saatchi Building and a carpark building.
 - (b) The Saatchi & Saatchi Building was scheduled as both a Historic Heritage Extent of Place and Historic Heritage Plan - 1889, NZ Loan and Mercantile Wool Store (The Strand Building Commercial) under the notified Unitary Plan.
 - (c) The Viewshaft will have significant adverse effects on the development potential of the Property:
 - (i) The height limit for the Property under the Business - Mixed-Use zone is 18m. The Viewshaft imposes a

lower height limit on the northern portion of the Property, ranging from 12m on the Property's frontage to The Strand to approximately 17m on the Property's north-western boundary. Resource consent as a non-complying activity is required to infringe the height limit imposed by the Viewshaft.

- (ii) The portion of the Property affected by the Viewshaft represents approximately half of the remaining part of the Property that is available for future redevelopment. The Saatchi & Saatchi Building, which occupies the majority of the Property, is included on the Historic Extent of Place and Historic Heritage Place schedules.
 - (iii) The overall result of the decision to relocate the Viewshaft is that the development potential of the Property is significantly less than under the Notified Plan. The Property was not affected at all by the Viewshaft under the notified Plan.
- (d) The Viewshaft is not the most appropriate method for achieving the corresponding Objective D20.2, which is that significant views to the Dilworth Terraces are protected. In particular:
- (i) The view to the Dilworth Terraces from The Strand is not significant and does not merit protection by way of the Viewshaft.
 - (ii) Resource consents for development on The Strand will prevent the Viewshaft from achieving the objective.
 - (iii) The costs of the Viewshaft to Strand Holdings are substantial, whereas the benefits to the public of retaining the Viewshaft are minimal.

Relief sought

9. Strand Holdings seeks:
- (a) that the Viewshaft be deleted in its entirety;
 - (b) such consequential or related relief as may be necessary to give effect to its concerns in this appeal; and
 - (c) costs.

Service

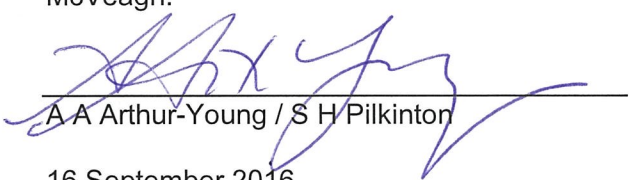
10. An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.

Attachments

11. Copies of the following documents are attached to this notice:
- (a) The relevant parts of the Recommendation.
 - (b) The relevant parts of the Decision.

STRAND HOLDINGS LIMITED by its solicitors and authorised agents Russell McVeagh:

Signature:


A A Arthur-Young / S H Pilkinton

Date:

16 September 2016

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TO: The Registrar of the Environment Court at Auckland.

AND TO: Auckland Council.

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

1. If you wish to be a party to the appeal, as per the requirements in Environment Court decision [2016] NZEnvC 153, within 15 working days after the period for lodging a notice of appeal ends you must:
 - (a) lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court by emailing unitaryplan.ecappeals@justice.govt.nz;
 - (b) serve copies of your notice on the Auckland Council on unitaryplan@aucklandcouncil.govt.nz; and
 - (c) serve copies of your notice on the appellant electronically.
2. Service on other parties is complete upon the Court uploading a copy of the notice onto the Environment Court's website.
3. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).
4. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

Advice

5. If you have any questions about this notice, contact the Environment Court in Auckland.

AUCKLAND UNITARY PLAN
INDEPENDENT HEARINGS PANEL

Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau

**Report to Auckland Council
Hearing topics 050-054**

City Centre and business zones

July 2016

6. Dilworth Terrace houses view protection plane

6.1. Statement of issue

Location of the origin point of the viewshaft to the Dilworth Terrace houses.

6.2. Panel recommendation and reasons

The Dilworth Terrace houses are a row of heritage buildings located at the top of an escarpment above The Strand, with access from Augustus Terrace. The protection of a viewshaft to the Dilworth Terrace houses was confirmed by the Planning Tribunal in its decision in *Body Corporate 97010 v Auckland City Council* (1992) 2 NZRMA 257 (PT). The location of the origin point of that viewshaft is on Quay Street just west of the intersection of The Strand and Tamaki Drive. The viewshaft has formed a part of the relevant district plan provisions since then. The viewshaft provision was included as part of the proposed Auckland Unitary Plan.

In the intervening years, development of the land between Quay Street and The Strand has reduced the extent to which people on Quay Street can obtain a view of the houses.

Ngati Whatua Whai Rawa Limited, which owns most of the land under the viewshaft, lodged a submission seeking that the viewshaft be reviewed, and that an alternative origin location on The Strand be explored. A number of other submitters, including the Dilworth Body Corporate and Heritage New Zealand Pouhere Taonga, sought retention of the existing viewshaft.

Detailed evidence was presented on this issue, both reviewing the existing viewshaft and exploring alternative locations.

Having considered all of the evidence and the submissions of the parties, the Panel considers that the existing viewshaft no longer serves its original purpose of providing a view of the historic Dilworth Terrace houses from Quay Street. Given the nature and extent of development along Quay Street, the Panel does not consider that moving the viewshaft along Quay Street would improve it. Instead, the Panel prefers the evidence presented by Ngati Whatua Whai Rawa Ltd's witness, Mr Gavin Lister, showing how a viewshaft with its origin relocated to The Strand would better serve the purpose of enabling people to see the frontages of the houses from a public place.

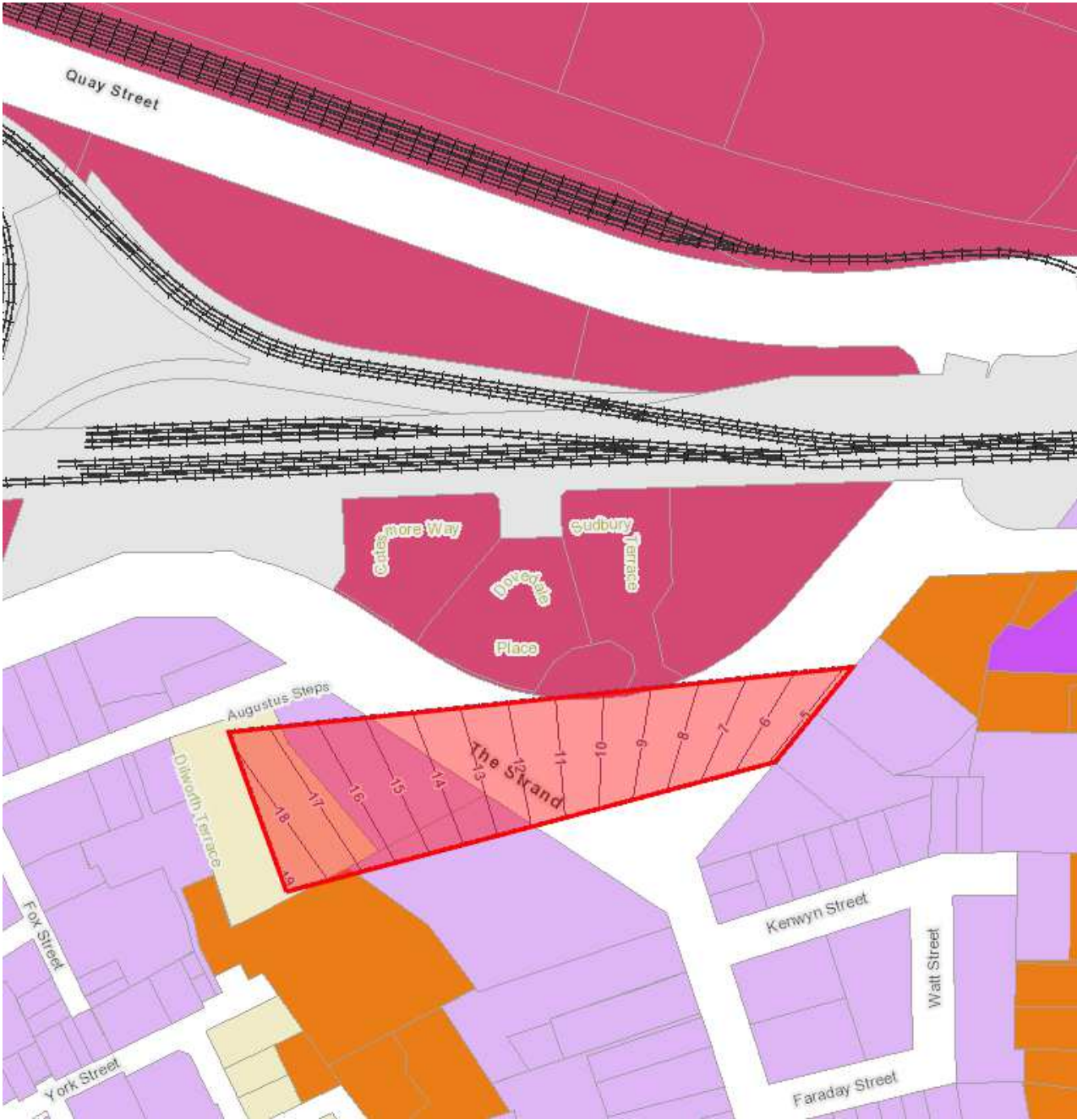
The Panel therefore recommends that the origin point of the viewshaft be relocated on The Strand, as shown in the revised viewshaft diagram accompanying the text of the Unitary Plan.

7. Management of effects and control of building work

7.1. Statement of issue

Control of building work and interior design by Unitary Plan provisions.

Panel's Recommendations Version Viewshaft



D20. Dilworth Terrace Houses Viewshaft Overlay

D20.1. Overlay description

The Dilworth Terrace Houses Viewshaft Overlay restricts the scale of development within the identified viewshaft to protect the view of the Dilworth Terrace houses from The Strand.

D20.2. Objective

- (1) Significant views to the Dilworth Terrace houses are protected.

D20.3. Policy

- (1) Restrict the scale of development to protect the view of the Dilworth Terrace houses from The Strand.

D20.4. Activity table

Table D20.4.1 Activity table specifies the activity status of development activities in the Dilworth Terrace Houses Viewshaft Overlay pursuant to section 9(3) of the Resource Management Act 1991.

Table D20.4.1 Activity table

Activity		Activity status
(A1)	Buildings	For the activity status of buildings refer to the underlying zone
(A2)	Buildings which do not comply with Standard D20.6.1	NC

D20.5. Notification

- (1) Any application for resource consent for an activity listed in Table D20.4.1 Activity table above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (2) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

D20.6. Standard

The activity listed in Table D20.4.1 must comply with the following standard.

D20.6.1. Height

- (1) The height of a building, including any structures on the roof of a building must not exceed the height limits identified on the Dilworth Terrace Houses Viewshaft Overlay planning maps.

D20.7. Assessment – controlled activities

There are no controlled activities in this section.

D20.8. Assessment – restricted discretionary activities

There are no restricted discretionary activities in this section.

D20.9. Special information requirements

There are no special information requirements in this section.

Auckland Council's Decision Version Viewshaft

