

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO
TĀMAKI MAKURAU ROHE**

ENV-2019-AKL-

IN THE MATTER of the Resource Management Act 1991

A N D

IN THE MATTER of an appeal pursuant to section 120 of the RMA

BETWEEN Drive Holdings Limited

A N D Auckland Council

NOTICE OF APPEAL

21 October 2019

**ELLIS GOULD
LAWYERS
AUCKLAND**

REF: Douglas Allan/Julie Goodyer

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AUCKLAND

NOTICE OF APPEAL

To: **The Registrar
Environment Court
Auckland**

1. **Drive Holdings Limited ("the Appellant") appeals a decision dated 3 October 2019 ("the Decision") on its application ("the Application") pursuant to the Resource Management Act 1991 ("RMA") to demolish all existing buildings on the land at 75-79, 81-87, & 89-97 Tamaki Drive, 6, 8-10, 12 and 14 Patteson Avenue, 26, 28, and 30 Marau Crescent, Mission Bay ("the Site") and to construct a comprehensive development including:**
 - 1.1 Basement carparking, servicing, storage and circulation areas;
 - 1.2 Seven multi-level buildings; and
 - 1.3 Commercial (retail and food and beverage), entertainment (cinema) and residential activities.
2. The Application sought a range of land use consents and a groundwater diversion permit and was assessed collectively as a discretionary activity under the partly operative Auckland Unitary Plan ("Unitary Plan").
3. The Appellant is the applicant for the Application.
4. The Appellant received notice of the Decision on 7 October 2019.
5. The Decision was made by Auckland Council ("Council").
6. The whole of the Decision is appealed.
7. **The reasons for the appeal are as follows:**
 - 7.1 The Decision:
 - (a) Will not promote the sustainable management of resources and is otherwise inconsistent with the purpose and principles of the RMA; and
 - (b) Is inconsistent with sound resource management principles and practice.

7.2 The grant of the Application would:

- (a) Promote the sustainable management of resources and otherwise be consistent with the purpose and principles of the RMA;
- (b) Be appropriate with respect to the objectives, policies and other provisions of the Unitary Plan;
- (c) Be consistent with sound resource management principles and practice;
- (d) Enable the construction and operation of a mixed-use development that is appropriate for the Site and with regard to the existing and anticipated character of the adjacent Mission Bay area; and
- (e) Be appropriate and lawful in terms of Part 6 of the RMA.

In particular, and without derogating from the generality of the above:

7.3 The Site:

- (a) Is owned by the Appellant.
- (b) Has an area of 6530 m²;
- (c) Is zoned Local Centre pursuant to the Unitary Plan;
- (d) Is almost regular in shape with frontages to Tamaki Drive to the north, Patteson Avenue to the west and Marau Crescent to the south; and
- (e) Comprises the greater part of the Mission Bay Local Centre in the Unitary Plan.

7.4 The Application comprises approximately 35,000 m² gross floor area and includes the following key activities:

- (a) 2920 m² of retail (including food and beverage floor area, back of house areas and 425 m² of retail space in Basement 1 but excluding the balcony and plaza areas);

- (b) A 5-screen cinema complex with between 322 and 400 seats;
- (c) 100 apartments;
- (d) 266 car parking spaces at grade and in the 2 basement levels; and
- (e) Plant and services.

7.5 The Application gives effect to the following design philosophy:

- (a) The proposal reduces the potential for dominance, shading and adverse privacy effects on the residents along the southern side of Marau Crescent by providing a residential interface and by reducing the height of the structures along the Marau Crescent frontage from that enabled under the Unitary Plan.
- (b) Additional height is proposed along the Patteson Avenue and Tamaki Drive frontages given their significant distance from adjacent residential activities and to provide a visual focal point for the Mission Bay Centre at the Patteson Avenue / Tamaki Drive intersection. The height of the structures gradually increases to the north along Patteson Avenue and to the west along Tamaki Drive.
- (c) The highest floors along the Patteson Avenue frontage are set back from the road to reduce visibility and avoid any sense of dominance.
- (d) The eastern boundary with the Residential zoned properties complies with the height relation to boundary control and has been designed to minimise adverse effects.
- (e) To provide visual interest and to create a sense of scale consistent with the likely future built environment in the vicinity, the edges of the development are divided visually into a series of separate building blocks.

(f) The exterior architectural treatment, materials and colours create variety between the building blocks but in the context of a comprehensively designed development that exhibits common themes across the Site.

(g) Retail activities and in particular food and beverage activities have been placed along the Patteson Avenue and Tamaki Drive frontages including at the podium level to retain the existing characteristics of the Site and to maximise the relationship between those activities and the park and beach to the north.

(h) The cinema is placed in the centre of the Site, with access at the podium level, via stairs (and an escalator and lift) from both Patteson Avenue and Tamaki Drive. That access is shared with the residential apartments which are located at and above the podium level and along Marau Crescent at ground level. The residential apartments also have private access from the carparks.

(i) Carparking is located at ground level behind the commercial and residential activities at the street frontages and in two basement levels. Service functions are largely internalised to the Site. That avoids any frontage being dominated by service functions or carparking.

7.6 The proposal has a similar gross floor area to that of an alternative scheme which would comply with the height and other bulk and location standards for the Site (approximately 35,000 m²). The proposal involves the reallocation of building mass around the Site to maximise the quality of the development and minimise adverse effects on the most sensitive neighbouring properties.

7.7 The relevant Unitary Plan provisions (including the Local Centre zone provisions) represent a significant departure from the intensity and form of development anticipated under the previously operative district plan provisions for the Site and require consideration of the anticipated future planning outcomes

for the area, rather than maintaining and enhancing existing amenity and the current form and intensity of development.

7.8 In that context, the Appellant has:

- (a) Identified an appropriate scale of development for the Site by way of analysing the quantum that could reasonably be established in compliance with the zone height standards.
- (b) Minimised effects on the closest and most sensitive properties, including through a reduction in the height of structures along Marau Crescent below that which might reasonably be anticipated through the zone height standard.
- (c) Recognised that the Restricted Discretionary Activity status of additional height beyond the zone height standards is a method through which the Council can provide for innovative design that promotes better quality development and a better interface with the surrounding area, subject to a careful assessment.
- (d) Designed the buildings in such a way that they will only have a minimal adverse effect on the amenity of other residential and business properties in the vicinity, including those residential properties at the top of the Ronaki Road escarpment, which will:
 - (i) Maintain extensive views beyond and around the Site;
 - (ii) Benefit from the reduced height and focus on residential activity along the Marau Crescent frontage; and
 - (iii) As a consequence, continue to experience exceptionally high amenity.
- (e) Designed the buildings in such a way and proposed an adaptive management regime that will minimise risks in terms of inundation (including with regard to the

anticipated increase in risk over time as a consequence of climate change).

7.9 The Appellant opposes, inter alia, the following conclusions in the Decision:

- (a) The Decision takes an unnecessarily and inappropriately conservative approach to the interpretation and application of the objectives and policies of the Unitary Plan;
- (b) The Decision wrongly concludes that the taller elements of the development incrementally shift the Local Centre environment towards a Town Centre environment (paragraph 354);
- (c) The Decision wrongly interprets the argument put to it on behalf of the Appellant with respect to the centres hierarchy and height standards (paragraphs 373-375);
- (d) While the Decision correctly recognises the benefits of the design to Marau Crescent, it does not take those benefits into consideration (paragraph 383);
- (e) The Decision fails to assess the visual and urban design effects of the proposal with regard to the various viewing audiences;
- (f) The Decision focusses disproportionately on adverse effects on views from a small number of sites that will retain high amenity; and
- (g) The Decisions takes no or insufficient account of the manner in which the design strategy adopted by the Appellant will ensure that the proposal integrates appropriately with the surrounding environment while minimising adverse effects on the most sensitive parties.

7.10 The Decision correctly recognises that, inter alia:

- (a) Given the urban context of Mission Bay, the development will not have a significant impact on the beach/coastal environment (paragraph 355);
- (b) The proposal does not raise any specific issues or effects associated with the heritage or special character (paragraph 356);
- (c) The proposal is to be of a quality design in terms of form, materials and the like (paragraph 427);
- (d) Flooding and coastal inundation effects are appropriately addressed, minimised and managed (paragraphs 386-412);
- (e) Construction effects will be appropriately minimised and managed (paragraphs 413–417); and
- (f) The proposal would adequately minimise off-site traffic effects and would be consistent with the capacity of the local road network and the range of modal options available (paragraph 420).

7.11 While paragraph 443 of the Decision identifies that:

- (a) There may well be scope for some additional height on the Site;
- (b) The effects generated by the development sit close to the point of balance between being appropriate and inappropriate;
- (c) The commissioners have taken a conservative view of the scale and significance of the adverse effects generated in the context of their interpretation of the objectives and policies of the Unitary Plan;
- (d) The commissioners have formed the view that the proposal takes a step too far from the planned outcomes for the area; and

- (e) The commissioners' interpretation of the objectives and policies tipped the assessment of the effects from being appropriate to being inappropriate;

the Decision provides no guidance as to which aspects of the proposal might be deleted or amended in order to render it capable of being granted consent.

8. The following relief is sought:

- 8.1 That the Decision be reversed, and the Application granted in its entirety;
- 8.2 Such further or other relief as is appropriate in the circumstances; and
- 8.3 Costs.

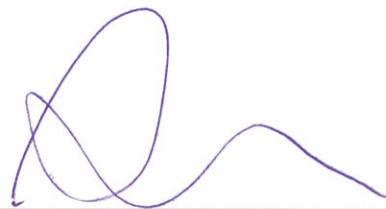
9. Attached to this notice are copies of the following documents:

- 9.1 **Annexure A** - A copy of key written aspects of the Application comprising:
 - (a) Covering letter;
 - (b) Form A application;
 - (c) Assessment of Effects on the Environment;
- 9.2 **Annexure B** - Key Plans and diagrams comprising:
 - (i) Block Plan;
 - (ii) Floor Plans;
 - (iii) Landscape Plan Ground Floor and Podium; and
 - (iv) Elevations – South, East, West and North.
- 9.3 **Annexure C** - A copy of the Decision;

9.4 **Annexure D** - a list of the names and addresses of persons to be served with a copy of this Notice.

Dated this 21st day of October 2019

Signed for and on behalf of Drive Holdings Limited
by its solicitors and duly authorised agents, Ellis Gould:



Douglas Andrew Allan/Julie Gaye Goodyer

Address for service of Appellant: The offices of **Ellis Gould** Solicitors, Level 17, The Vero Centre, 48 Shortland Street, Auckland (PO Box 1509, Auckland, 1140), DX CP 22003, Phone: 09 307-2172, Facsimile, 09 358-5215. Attention: DA Allan, email: dallan@ellisgould.co.nz, JG Goodyer, email jgoodyer@ellisgould.co.nz

Advice to recipients of copy of notice

How to become party to proceedings

You may be a party to the appeal if:

- (a) Within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) Within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

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.

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).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does **not** attach a copy of the relevant Application or the relevant Decision. These documents may be obtained, on request from the appellant.

Advice

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

ANNEXURE A

COPY OF KEY WRITTEN ASPECTS OF THE APPLICATION

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ANNEXURE B

KEY PLANS AND DIAGRAMS

ANNEXURE C

COPY OF THE DECISION

ANNEXURE D

LIST OF NAMES AND ADDRESSES OF PERSONS TO BE SERVED
WITH A COPY OF THIS NOTICE

ANNEXURE D
LIST OF NAMES AND ADDRESSES OF PERSONS TO BE SERVED WITH A COPY OF THIS NOTICE

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