

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2017-AKL-000105**

**IN THE MATTER** of an application for Declarations  
**UNDER** sections 310 and 311 of the Resource Management Act 1991  
**BETWEEN** **AUCKLAND COUNCIL**, a duly established local authority under  
the Local Government (Auckland Council) Act 2009

**Applicant**

**AND** **JANINE BUDDEN**, Doctor, **MARK GITTOS**, Surgeon and  
**MICHAEL ROWE**, Accountant, all of Auckland, the **TRUSTEES  
OF THE LONDON PACIFIC FAMILY TRUST**, owner of 12  
Seymour Street, Ponsonby

**Respondent**

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**MEMORANDUM OF COUNSEL FOR AUCKLAND COUNCIL WITHDRAWING  
APPLICATION FOR DECLARATION A**

**Dated: 10 October 2017**

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**Instructing Solicitor:**

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**MAY IT PLEASE THE COURT:****Introduction**

1. By application dated 24 July 2017 Auckland Council (**Council**) sought 3 declarations pursuant to sections 310 and 311 of the Resource Management Act 1991 (**RMA**) (**Application**).
2. As set out at paragraph 6 of the memorandum of counsel dated 24 July 2017, which accompanied the application, Council has encountered challenges to its interpretation and administration of the Special Character Overlay – Residential (**SC Overlay**) in relation to the Residential – Single House Zone (**SHZ**). These challenges have been in the form of verbal and written complaints and, in one example, an application for judicial review initiated by neighbours to a development site. These neighbours claim that Council is incorrectly administering the Auckland Unitary Plan (Operative in Part) (**AUPOP**) which has resulted in them not being considered affected parties.
3. In response to this uncertainty between Council, the development community and potentially affected parties, Council filed the Application with the intention that the declarations sought would provide useful ongoing guidance to all parties as to the proper administration of the AUPOP.
4. Council sought three declarations. Declarations B and C specifically address the relationship between the SC Overlay and the SHZ, and the proper administration of those provision.
5. Declaration B addresses the question of whether, in circumstances where the proposed activity occurs on a site located within the SC Overlay and the SHZ, and the overlay and zone standards are infringed, should resource consents be required in respect of both the SC Overlay and the SHZ standard infringement.

6. Declaration C addresses the question of whether, in its assessment of restricted discretionary activities within the SC Overlay, Council is correctly limiting its assessment to the matters set out in the overlay, rather than a broader assessment of matters set out in the general rules or SHZ rules.
7. Declaration A is more broadly framed, and is formulated to provide more general direction as to the overall scheme of the AUPOP and the relationship generally between all overlays and corresponding provisions within other sections of the AUPOP. It is not focussed on any one overlay and was intended to have general application. Council intended that declaration A would assist it in respect of any administrative uncertainty that might arise in the future concerning any of the other overlays in the AUPOP.

#### **Declaration A**

8. Declaration A broadens out the scope of live issues considerably. It requires an analysis of all overlays within the AUPOP so that the Court can be fully appraised of all consequences arising from the making of declaration A. To that end the Court has appointed Amicus, Ms Jannisen, whose role is to *“consider the impact of the declarations on the interpretation and administration of all overlays within the unitary plan, and how the declarations might affect the rights and interests of resource users and interest groups who are not individually represented in this proceeding”*.<sup>1</sup>
9. Counsel for Council met with Ms Jannisen on 2 October 2017 to discuss the application, and in particular the depth and breadth of enquiry

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<sup>1</sup> paragraph 7, minutes of the Environment Court for prehearing conference held on 18 August 2017.

necessary to identify and address the consequences of declaration A in relation to all overlays within the AUPOP.

10. The enquiry is complex and wide ranging. This is largely due to the fact that each overlay within the AUPOP is unique and contains drafting which has been the subject of iterative amendments through the notification, hearings, mediation, recommendations and decision-making process. No single uniform structure exists within the overlay section of the AUPOP, which poses a difficulty in terms of assessing and making any general declaration.
11. For the impacts of declaration A across all overlays to be understood, a comprehensive analysis of each individual overlay is required. This is apparent not only from discussions with Ms Jannisen, but from a reading of the evidence filed to date. Once fully understood, it is likely that with the significant variation in drafting across all overlays, declaration A will require amendment to account for these variations.
12. The application has been allocated a three-day fixture commencing 13 December 2017. Based on current indications it is likely that a significant proportion of that time will be used to focus on the wider implications of declaration A. Given that this issue is secondary to Council's principal goal of achieving clarity in respect of the relationship between the SC Overlay and SHZ, pursuing declaration A is considered to be an inefficient use of the Court's and the parties' resources.
13. Against this background, Council has reconsidered the value of declaration A to it and all plan users. It has concluded that declaration A is unlikely to be granted in its current form, and if amended to account for the significant variations across all overlays, will potentially have limited value.
14. Accordingly, Council will not be pursuing declaration A further and its application for declaration A is withdrawn.

15. Instead, it will be undertaking an analysis of each overlay to determine whether it requires clarification and amendment, and if so, will consider formulating a plan change to give effect to those necessary amendments.

**Declarations B and C**

16. Council remains committed to pursuing declarations B and C, which deal with the relationship between the SC overlay and the underlying SHZ, and which will resolve the primary issue relating to the proper administration of the AUPOP.

**Dated** this 10<sup>th</sup> day of October 2017

The image shows two handwritten signatures in blue ink. The signature on the left is 'L F Muldowney' and the signature on the right is 'M Wakefield'. Both signatures are written in a cursive, flowing style.

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**L F Muldowney / M Wakefield**  
Counsel for Auckland Council