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

Decision No. [2018] NZEnvC 30

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal pursuant to s 120 of the Act
BETWEEN	AUCKLAND COUNCIL
	(ENV-2017-AKL-000105)
	Appellant
AND	JANICE BUDDEN, MARK GITTOS AND MICHAEL ROWE AS TRUSTEES OF THE LONDON PACIFIC FAMILY TRUST
	Respondent

Court: Principal Environment Judge L J Newhook
Environment Judge JJM Hassan
Environment Commissioner R M Dunlop
Environment Commissioner I M Buchanan

Hearing: at Auckland 13 and 14 December 2017

Appearances:
L Muldowney and M Wakefield for Auckland Council
A Galbraith QC and H C Andrews for HC Trust, Ollerton Trust and J Farmer QC
A Webb for London Pacific Family Trust
C Kirman and A Devine for Ministry of Education, Minister for Environment, and Housing NZ Corporation
D Minhinnick for Auckland International Airport Limited, Brookby Quarries Limited, Fulton Hogan Limited, Stevenson Group Limited and Winstone Aggregates (a division of Fletcher Concrete and Construction Limited)
R Enright for Wiri Oil Services Limited
S Janissen Amicus Curiae

Date of Decision: 15 March 2018

Date of Issue: 15 March 2018

THIRD DECISION

A: A declaration is made at [53].

B: Leave is reserved to seek amendment to that declaration in accordance with the directions at [54].

C: Directions are made at [54] for the Council to provide a progress report on its AUP analysis.

D: Costs are reserved, subject to the directions at [54].

REASONS

Introduction

[1] In our first interim decision in these declaration proceedings ('First Decision'),[1] the court determined that a declaration should be made in materially similar terms to that put to the court during the hearing (and which it termed the 'finally postulated declaration'). In our second interim decision of 23 January 2018 ('Second Decision'),[2] the court noted some drafting infelicities in the wording of the finally postulated declaration. We proposed for consideration alternative wording to address these concerns and invited further submissions.

[2] To recap, the finally postulated declaration would relevantly have read:

> Where a proposed activity is on a site located within both the Residential – Single House zone ("SHZ") and the Special Character Areas Overlay – Residential ("SCAR") of the partly operative Auckland Unitary Plan ("AUP") and requires a resource consent for a restricted discretionary activity in accordance with Activity Table D18.4.1 or, due to the infringement of a SCAR development standard pursuant to Rule C1.9(2):
>
> (a) It is a separate reason for resource consent pursuant to Rule C1.9(2) if the same activity infringes a SHZ development standard;

[3] The form of wording so proposed for the declaration in that Second Decision ('court's proposed declaration wording') was as follows:

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1 The court's first decision is *Auckland Council v Trustees of London Pacific Trust* [2017] NZEnvC 209 ('First Decision').

2 *Auckland Council v Budden and others and Trustees of the London Pacific Family Trust* [2018] NZEnvC 003.

> Where a proposed activity:
>
> (a) is on a site located within both the Residential – Single House zone ("SHZ") and the Special Character Areas Overlay – Residential ("SCAR") of the partly operative Auckland Unitary Plan ("AUP"); and
>
> (b) is classed as a restricted discretionary activity either under Activity Table D18.4.1 or, due to its non-compliance with a SHZ development standard, under Rule C1.9(2) –
>
> then the relevant SHZ, SCAR and General Rules (and any relevant objectives and policies) apply, in the processing and determination of any resource consent application for the proposed activity, without any gloss to the effect that the SCAR rules prevail or cancel out other rules.

[4] We note that, in our setting out of the above proposed declaration wording, we have corrected a minor formatting error in the Second Decision. As pointed out by Amicus, it appeared to show the words after the hyphen (commencing 'then the relevant SHZ, SCAR and General Rules …') as part of its para (b) rather than as words that follow from all preceding words, including (a) and (b).

[5] Further submissions were received from Auckland Council ('Council') the applicant for the original declarations,[3] HC Trust, Ollerton Trust and James Farmer ('Logan Terrace parties')[4], and Amicus.[5] The Ministry of Education, Minister for the Environment and Housing NZ Corporation ('Central Government interests') informed the court that they supported the position put by Amicus.[6]

Council's proposed changes

[6] The Council indicates support for the court's proposed declaration wording, but seeks the following changes to its para (b) (shown in <u>underlining</u> and ~~strike-through~~):

> (b) is classed as a restricted discretionary activity ~~either~~ under Activity Table D18.4.1 <u>and</u> ~~or~~, due to its non-compliance with a SHZ[7] development standard, under Rule C1.9(2) – then the relevant SHZ, SCAR and General Rules (and any relevant objectives and policies) apply, in the processing and determination of any resource consent

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3 Memorandum of counsel for Auckland Council, dated 2 February 2018.

4 Memorandum of counsel for HC Trust, Ollerton Trust and James Alfred Farmer, dated 5 February 2018.

5 Memorandum from Amicus Curiae in relation to the court's Second Interim Decision, dated 5 February 2018.

6 Email of Ms Devine as counsel for the Central Government s 274 parties to the Registrar, dated 5 February 2018. No submissions were received from the respondent.

7 These acronyms are as per our first and second decisions, referring to provisions in the partially operative Auckland Unitary Plan ('AUP'). SHZ stands for Single House zone. SCAR stands for 'Special Character Areas Overlay – Residential'.

> application for the proposed activity~~, without any gloss to the effect that the SCAR rules prevail or cancel out other rules~~.

[7] As for the suggested change to 'either' and 'and' (rather than 'or'), the Council explains that this is in view of the purpose of the declaration to address a proposed activity classed as a restricted discretionary activity ('RDA') under the SCAR and also under r C1.9(2) due to infringement of a SHZ performance standard.

[8] As for its suggestion to delete 'without any gloss', the Council explains that the triggering of consents under both the SCAR and SHZ requires an assessment against all of those relevant provisions. It records that it is the Council's view that this assessment should be without any question as to whether one assessment prevails over another.

[9] The Council makes the following observations about the court's proposed declaration wording:

> ... However, the proposed revised declaration wording leaves unresolved the question of whether due to its express language, D18.8.1.1(3) limits the application of general rule C1.9(3) in the assessment of the SCAR infringement in accordance with the limitation set out in rule C1.1(1).

[10] The Council acknowledges that, under the court's proposed declaration wording, even if SCAR discretion is limited to those matters in r D18.8.1.1(3), infringement of the SHZ standards would still bring into consideration the broader matters of discretion in r C1.9(3). However, it seeks the court's comment on the presently unresolved interpretation issue it raises.

[11] The Council also reports on its progress in its analysis of AUP overlays (a matter we return to later in this decision).

Logan Terrace parties' response

[12] The Logan Terrace parties oppose the Council's above proposed changes of wording. They submit that the Council's proposed replacement of an 'either or' construct to a cumulative 'and' construct in (b) would unduly restrict the ambit of the declaration. They submit that the court's choice of wording was deliberate and reflected what had been agreed between parties. Hence, they submit that it is inappropriate for the Council to now seek more confined wording. They oppose the Council's second proposed change as nullifying the very crux of the intended declaration on what is the central matter

of dispute, namely whether the Council is entitled to apply the SCAR provisions in a way that would see them prevail over or cancel out other AUP provisions. They refer to the comments counsel for the Council made during the course of the hearing to the effect that the Council's purpose is to get clear and specific direction from the court on this very issue.

[13] The Logan Terrace parties point out that (b) above of the court's proposed declaration wording is in error and should, instead read 'SCAR development standard'. They accept the court's observations concerning the wording of the finally postulated declaration. However, they raise concern about the reference to 'without any gloss to the effect that'. They say the reference to a 'gloss' could open up debate in the future as to whether or not the Council was imposing such a gloss.

[14] Therefore, they propose the following changes to para (b) of the court's proposed declaration wording (shown in underlining and ~~strike through~~):

> (b) is classed as a restricted discretionary activity either under Activity Table D18.4.1 or, due to its non-compliance with a ~~SHZ~~ SCAR development standard, under Rule C1.9(2) –
>
> then the relevant SHZ, SCAR and General Rules (and any relevant objectives and policies) apply, in the processing and determination of any resource consent application for the proposed activity, without ~~any gloss to the effect that~~ the SCAR rules prevailing over or cancelling out other rules.

Amicus' response

[15] Amicus records that she largely concurs with the Logan Terrace parties. In particular, Ms Janissen points out that, in putting forward the finally postulated declaration wording, the parties had intended to address a proposed activity that was a restricted discretionary activity (RDA) under both the SCAR rules (either pursuant to Activity Table D18.4.1 and/or r C1.9(2)) and under the SHZ rules (pursuant to r C1.9(2) (and possibly under Activity Table H3.4.1). Amicus respectfully submits that the wording changes sought by the Logan Terrace parties better reflect that position in more clearly covering the scenario where an activity is RDA under both the SCAR and SHZ rules (which she records was the very issue in dispute in the proceedings). Ms Janissen also observes that this same point of interpretation in other disputed planning applications is what prompted the Council to seek the court's guidance on the correct interpretative approach.

[16] Amicus submits that there is an important contextual reason why the declaration should retain reference to 'without any gloss to the effect …', or words to like effect. That is in the fact that the thrust of the Council's interpretative approach was that a gloss did exist, but to the contrary effect of what the court has found. Hence, Ms Janissen submits that it is important that the court's contrary finding be clearly expressed in the declaration wording. She submits:

> This will prevent any future uncertainty in that regard. For example, should those words be deleted, as proposed by the Council, a scenario could arise where a Council officer reads the wording and considers that there are no "relevant" SHZ or General Rules (or objectives and policies) to be applied, due to his/her view that the SCAR rules prevail over or cancel out other rules. Given that the aim of various parties in the declaratory proceedings was to correct that view, in my opinion there is significant merit in having that clearly expressed in the final declaration wording.

[17] For those reasons, Amicus supports the following wording:

> Where a proposed activity:
>
> (a) is on a site located within both the Residential – Single House zone ("SHZ") and the Special Character Areas Overlay – Residential ("SCAR") of the partly operative Auckland Unitary Plan ("AUP"); and
>
> (b) is classed as a restricted discretionary activity either under Activity Table D18.4.1, Activity Table H3.4.1, or, due to its non-compliance with a SHZ or SCAR development standard, under Rule C1.9(2) –
>
> then the relevant SHZ, SCAR and General Rules (and any relevant objectives and policies) apply, in the processing and determination of any resource consent application for the proposed activity, without ~~any gloss to the effect that~~ the SCAR rules prevailing over or cancelling out other rules.

[18] While there appears to be an inconsistency between the Amicus' submission referred to at [16] above and the wording she has proposed in the following paragraph, the substance remains the same. She proposes the removal of the reference to "the gloss" but on a basis that would not change the impact of the wording.

Discussion

[19] That summary shows that remaining differences between the parties are relatively narrow. We record that we do not interpret the Council's submissions as seeking to depart substantially from the reasoning in our First and Second Decisions nor

from the position it finally advanced in those earlier hearings. However, for the reasons given in our First and Second Decisions, and the following further reasons, we generally prefer the approaches of the Logan Terrace parties and Amicus.

[20] In particular, we agree that the Council's proposed wording changes would not properly accord with the findings in those decisions. As the Logan Terrace parties and Amicus point out, those findings were strongly informed by the positions ultimately put to the court by all parties. We also accept Amicus submissions as to the important contextual reason for the declaration to express a clear position against the gloss that the Council had, in its Practice Note, endorsed and applied (a gloss that our First Decision found invalid). On the other hand, we accept the submission of the Logan Terrace parties that this can be achieved in a slightly different way, as they have proposed (and Amicus endorses).

[21] We accept that para (b) of the court's proposed declaration wording was slightly errant in cross-referencing as the Logan Terrace parties and Amicus have pointed out. With one exception, we prefer Amicus' proposed approach to rectifying this. That exception concerns her suggestion to also reference Activity Table H3.4.1. From our preliminary reading of the provisions, it appears this activity table lists only two RDAs, namely for dairies and healthcare facilities up to a given Gross Floor Area (GFA). We presume Amicus is mindful of the potential for RDA applications to be made for those activities in relation to sites that are subject to both the SHZ and SCAR overlay. However, given that this change is not also sought by the other parties, and Amicus has not given further reasons, we find that the more appropriate course would be to not make a declaration as to this activity table at this time. Instead, we reserve leave for any party to seek this addition by memorandum filed in accordance with our directions herein (and for any party to oppose any such application, again in accordance with our directions).

Response to the Council's further interpretation question

[22] We return now to the further interpretation issue which the Council has invited the court to comment on. We observe that the question posed (and set out at [9] above) appears somewhat at cross-purposes. At its paragraph [6], the Council refers only to circumstances where there is infringement of SCAR standards, whereas in its following paragraph [7], the Council refers to "the infringement of the SHZ standards". However, bearing in mind our First and Second Decisions, we have taken paragraph [6] to record what the Council is seeking, namely comment on the approach to interpretation where there is infringement of SCAR standards only.

[23] Our following observations do not form part of our declaration. They are explicitly preliminary.

[24] In that spirit, parties (and Amicus) will observe that the court has explicitly noted several "live questions" on which we express only preliminary views not necessarily fully informed of all relevant AUP nuances. That is in the interests of natural justice, bearing in mind that the parties have not had an opportunity to respond to what the Council has invited the court to address. It also reflects the court's present view that such matters are not straightforward given the uncertain drafting of some key provisions. On that, an overriding qualification to all our observations is that we have not yet had the benefit of considered submissions on those provisions, given the lateness of the Council's inquiry about them. We cannot, therefore, be fully assured that we have been appraised of all relevant matters concerning the AUP insofar as this might bear on the interpretation questions put by the Council.

Applicable interpretation principles

[25] The Interpretation Act 1999 ('IA') applies to the interpretation of subordinate statutory instruments such as the AUP. Amongst other things, it directs that we ascertain the meaning of an enactment (including the AUP) from its text and in light of its purpose (s 5 (IA)). As we have previously noted, that is a contextual interpretation approach, according to the Court of Appeal decision in *Powell v Dunedin City Council.*[8] The immediate relevant context to consider includes related rules (and definitions), objectives and policies and explanatory text in the AUP. It occurs to us that a further part of that contextual interpretation is to interpret the relevant restricted discretionary activity ('RDA') rules according to the RMA's purpose for RDA classification, as specified in s 87A(3) RMA:

> (3) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a restricted discretionary activity, a resource consent is required for the activity and—

[8] *Powell v Dunedin City Council* (2005) 11 ELRNZ 144; [2004] 3 NZLR 721; [2005] NZRMA 174.

(a) the consent authority's power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted (whether in its plan or proposed plan, a national environmental standard, or otherwise); and

(b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.

[26] As we understand s 87A:

(a) RDA rules on assessment matters function to both prescribe and proscribe what is available for consideration when determining RDA applications; however

(b) that does not necessarily dictate that those assessment matters will be set out only in one set of assessment matter rules. Rather, depending on the intention of a plan, it is also possible for RDA assessment matters in one rule to be supplemented by RDA assessment matters in another rule. It comes back to what the particular plan intends in this regard. That issue is at the nub of the interpretation question put by the Council and arises because the relevant rules are not as clear as they desirably should be.

[27] The proper interpretation of RDA assessment matter rules is important. In particular, misinterpretation of relevant rules could result in error in either considering irrelevant matters or failure to consider relevant ones.

[28] We invite parties who may seek declarations under our directions to address those interpretation matters in their submissions.

RDA through infringement of SCAR standards only

[29] The Council's question can be broken into three when considering the scenario where the only infringement is of SCAR standards:

(a) are the assessment matters in D18.8.1.1(3) (and r 18.8.2.1 assessment criteria) self-contained such that they exclude the application of assessment matter rule C1.9(3) ('Interpretation 1')?

(b) alternatively, are both lists of assessment matters intended to apply ('Interpretation 2')?

(c) alternatively, if both lists of assessment matters are intended to apply,

should the assessment matters in D18.8.1.1(3) be treated as dominant ('Interpretation 3')?.

[30] Rule D18.8.1.1(3) relevantly specifies:

> The Council will restrict its discretion to all of the following matters when assessing a restricted discretionary resource consent application ...
>
> (3) for an infringement of any of the standards listed in Standard D18.6.1 Standards for buildings in the Special Character Areas Overlay – Residential:
>
> (a) the effects of the infringement of the standard on the streetscape and special character area context as outlined in the special character area statement; and
>
> Note 1
>
> Where more than one standard will be infringed, the effects of all infringements on the streetscape and special character context as outlined in the special character area statement will be considered together.
>
> (b) the matters for external alterations or additions to buildings or for the construction of a new building or relocation of buildings onto a site listed in D18.8.1.1(2) above.

There follows, in r D18.8.2, the relevant assessment criteria which are to be considered.

[31] Rule C1.9(2) and (3) need to be read together with r C1.1:

> **C1.1. General rules**
>
> (1) The rules in this chapter apply across the entire Plan except for the regional policy statement and where a rule specifically provides otherwise.
>
> (2) No person may undertake any activity in a manner that contravenes a rule in the Plan unless the activity is expressly allowed by a national environmental standard or a resource consent or is an existing use allowed by section 10 or section 20A of the Resource Management Act 1991.
>
> **C1.9. Infringements of standards**
>
> ...
>
> (2) An activity that is classed as a permitted, controlled or restricted discretionary activity but that does not comply with one or more of the standards applying to that activity is a restricted discretionary activity unless otherwise specified by a rule applying to the particular activity.
>
> (3) When considering an application for a resource consent for a restricted discretionary activity for an infringement of a standard under Rule C1.9(2), the Council will restrict its discretion to all of the following relevant matters:
>
> (a) any objective or policy which is relevant to the standard;

(b) the purpose (if stated) of the standard and whether that purpose will still be achieved if consent is granted;
(c) any specific matter identified in the relevant rule or any relevant matter of discretion or assessment criterion associated with that rule;
(d) any special or unusual characteristic of the site which is relevant to the standard;
(e) the effects of the infringement on the standard; and
(f) where more than one standard will be infringed, the effects of all infringements considered together.

[32] As r D18.8.1.1(3) specifies, it is concerned with infringement of any of the standards in r D18.6.1. Those standards concern matters such as building height, height in relation to boundary, yards, building coverage, landscape areas, maximum paved area and fences, walls and other structures.

[33] We observe that the same commencing words appear in both r D18.8.1.1(3) and r C1.9(3), namely:

> The Council will restrict its discretion to all of the following matters ...

[34] As these words are duplicated in both rules, without any qualifiers, there is ambiguity as to whether the matters in r D18.8.1.1(3) apply to the exclusion of those in r C1.9(3) or in addition to those matters.

[35] Adding to the mix is that General Rule C1.1(1) specifies that the General Rules (and hence r C1.9(3)) apply across the entire Plan except for the regional policy statement and "where a rule specifically provides otherwise".

[36] A live interpretation question is, therefore, whether r D18.8.1.1(3) "specifically provides otherwise". Given the ambiguity we have noted, in the wording of both r D18.8.1.1(3) and r C1.9(3), it would appear the answer to that question requires careful examination of related other rules, and relevant objectives and policies (which rules serve to implement).

[37] Part of that context is the related standards whose infringement triggers RDA classification. From our preliminary reading, we understand that the standards specified in r D18.6.1 are the only relevant SCAR standards for consideration in a scenario where the only issue is of non-compliance with SCAR standards. That is, r C1.9(3) simply intends to refer to those SCAR standards when it refers to "for an infringement of a

standard under Rule C1.9(2)". That is because r C1.9(2) does not specify any additional standards. Rather, it simply references back to infringement of "one or more of the standards applying to" any permitted, controlled and restricted discretionary activity.

[38] A live question is whether that would tend to suggest that, when the only infringement is of the SCAR standards D18.6.1, the only applicable assessment matters are those in r D18.8.1.1(3).

[39] However, having self-contained SCAR standards does not necessarily imply that the assessment matters are also self-contained. For example, it would not be unexpected for an assessment matter rule to require consideration of related objectives and policies. Yet r D18.8.1.1(3) makes no reference to policies, whereas C1.9(3)(a) references "any objective or policy which is relevant to the standard."

[40] Turning to the context of related objectives and policies, a further indicator of the drafting intention is whether the Chapter D18 objectives and policies are confined to the same themes as the D18.8.1.1(3) assessment matters or whether they extend further such as to encompass themes in the C1.9(3) assessment matters.

[41] We observe that there are in essence two relatively narrow themes in D18.8.1.1(3):

(a) effects of the infringement on streetscape and special character context as outlined in the special character area statement; and
(b) the matters in D18.8.1.1(2) (concerning external alterations or additions or new buildings), which similarly concern streetscape and special character context as well as effects on landscape and vegetation.

[42] Turning to r 18.8.2.1 on assessment criteria, while this is an extensive list, it can be observed to be predominantly focussed on the same themes of streetscape and special character (albeit, also referring to Policies D18.3(1) – (7) and to some extent also referring to the amenities of building occupants and the Building Act).

[43] Comparing this with Objective D18.2 and Policies D18.3(1) – (7), one can also observe a predominant emphasis on those same themes of streetscape and special character.

[44] We understand that it would also be relevant to consider the context of the introductory comments commencing Chapter D18. The section entitled D18.1 Background also appears to express an intention that the focus be on special character values, rather than broader values. We refer, in particular to the following statements:

> The Special Character Areas Overlay - Residential and Business seeks to retain and manage the special character values of specific residential and business areas identified as having collective and cohesive values, importance, relevance and interest to the communities within the locality and wider Auckland Region.
>
> Each special character area, other than Howick, is supported by a Special character area statement identifying the key special character values of the area. Assessment of proposals for development and modifications to buildings within special character areas will be considered against the relevant policies and the special character area statements and the special character values that are identified in those statements. Those values set out and identify the overall notable or distinctive aesthetic, physical and visual qualities of the area and community associations.

[45] Finally, we have considered the substance of the assessment matters listed in r C1.9(3). What can be observed is that, by contrast to the targeted environmental focus of the matters in D18.8.1.1(3), the matters are relatively much less directive. In essence, r C1.9(3)(a) – (f) do little more than to identify what might be considered obvious parts of the task of correctly understanding and applying the assessment matters in D18.8.1.1(3). That is, one would expect to take into consideration the objectives and policies that the assessment matter rule seeks to achieve (as per RMA s 76(1)). Similarly, it would seem obviously relevant to consider any purpose statement for the rules, special site characteristics and the effects of infringement.

[46] Therefore, we do not presently identify anything in r D18.8.1.1(3) (or any other provision) that "specifically provides" that the assessment matters in r C1.9(3) are not to be considered. On the other hand, as noted, we find that the nature of the matters in r C1.9(3) are not such as to add substantively to the focus of environmental consideration that r D18.8.1.1(3) directs be given.

[47] Drawing all that together, and without expressing any final view on these matters, we observe that our preliminary consideration of the assessment matter rules, in the context of related standards and the relevant objectives and policies leans in favour of Interpretation 3, namely that both lists of assessment matters are intended to apply, but

on the basis that the assessment matters in D18.8.1.1(3) are to be treated as dominant. The practical consequence of that is essentially that the focus will be on the streetscape and special character matters specified in D18.8.1.1(3), and this consideration will encompass the relevant contextual factors listed in C1.9(3)(a) – (f), concerning the direction given by Objective D18.2 and Policies D18.3(1) – (7) and the related purpose statements in the introduction to Chapter D18, the related assessment criteria in r D18.8.2.1, standards in r D18.6.1, special site characteristics and the effects of infringement of the relevant r D18.6.1 standards.

[48] We emphasise that these observations endeavour to assist on the question put by the Council, but do not form part of our declaration. We reiterate that they are preliminary observations. It may well be that there are nuances in the various AUP provisions that we have not yet properly considered, bearing in mind that the Council has asked this question late in the piece and, therefore, we have not yet had the benefit of fully informed submissions from all parties and Amicus.

[49] If a declaration on these broader rule inter-relationships is sought, an application should be made for this purpose so as to allow all parties to contribute to any such determination. Our directions allow for this.

Other matters

[50] The court acknowledges the Council's progress report on its continuing analysis of the interrelationship between AUP overlays and underlying zones. As per the Council's request, directions are made and amended such that the Council is given three months to file an associated final report on this.

[51] For the avoidance of doubt, at this stage, we leave open the possibility for our declaration at [53] to be supplemented in response to any memoranda filed in accordance with the directions at [54].

[52] As per the request of the Logan Terrace parties, costs are reserved pending the court's consideration of a report from the parties to be filed by Wednesday 28 March 2018 (extended from the requested reporting date in view of the time taken to issue this decision).

Declaration

[53] Therefore, the court declares:

Where a proposed activity:

(a) is on a site located within both the Residential – Single House zone ("SHZ") and the Special Character Areas Overlay – Residential ("SCAR") of the partly operative Auckland Unitary Plan ("AUP"); and

(b) is classed as a restricted discretionary activity either under Activity Table D18.4.1 or, due to its non-compliance with a SHZ or SCAR development standard, under Rule C1.9(2) –

then the relevant SHZ, SCAR and General Rules (and any relevant objectives and policies) apply, in the processing and determination of any resource consent application for the proposed activity, without the SCAR rules prevailing over or cancelling out other rules.

Directions

[54] It is directed:

(a) if any party seeks that the court make any further or amended declaration:
   (i) to include reference to Activity Table H3.4.1; and/or
   (ii) to address the interpretation question posed by the Council and addressed at [22]-[48] for the particular rules noted by the Council or any other rules

   the party must file and serve a memorandum requesting that and providing supporting submissions by Wednesday 28 March 2018;

(b) any party seeking to oppose any such amendment request must file a memorandum in opposition with supporting submissions by Friday 6 April 2018; and

(c) the Council will file an updating memorandum on progress with analysis of AUP overlays by Friday 27 July 2018;

(d) costs are reserved, with any application to be made by 28 March 2018. Any application is to be accompanied by a proposed timetable for replies.

Conclusion

[55] We record our thanks to Amicus, Ms Janissen, and to all counsel for their carefully considered submissions in these matters. We further record our apologies to Ms Andrews for the omission of her name from recorded appearances in our First and Second Decisions, due to an editing oversight.

For the court:

L J Newhook
Principal Environment Judge

J J M Hassan
Environment Judge

R M Dunlop
Environment Commissioner

I M Buchanan
Environment Commissioner