

BEFORE THE QUEENSTOWN LAKE DISTRICT COUNCIL
AT QUEENSTOWN

IN THE MATTER of the Resource Management Act 1991
("the Act")

AND

IN THE MATTER of the Queenstown Lakes District
Council Proposed District Plan

AND

IN THE MATTER Submission and Further Submissions of
Man Street Properties Limited

SYNOPSIS OF LEGAL SUBMISSIONS OF MAN STREET PROPERTIES LIMITED

Dated the 29th November 2016

GTODD LAW

Level 3, 36 Shotover Street,
Queenstown 9300
(PO Box 124 Queenstown 9348)
P 03 441 2743
F 03 441 2976
Email: graeme@gtoddlaw.com
Counsel acting: G M Todd

GTODD law
LAWYERS & NOTARY PUBLIC

MAY IT PLEASE THE COMMISSIONERS

1. These submissions are made in support of a primary submission and further submissions filed by Man Street Properties Limited ("MSPL") in response to the notification of the Queenstown Lakes District Council Proposed District Plan ("Proposed District Plan").
2. Evidence relating to the submissions and further submissions will be given by Mr Timothy Williams, a qualified planner and urban designer.
3. MSPL is the owner of the Man Street Car Parking Building situated in Man Street in Queenstown. The building has been partly completed as an underground car park. Hereafter and in the evidence of Mr Williams, the roof of the car parking structure will be referred to as the Podium level. It is intended that in due course the Podium level will be developed for a commercial use.
4. In terms of the Queenstown Lakes District Council Operative District Plan ("Operative District Plan") the property forms part of what is known as the Queenstown Town Centre Transitional Zone, being the land contained within the block bounded by Man, Hay, Shotover and Brecon Streets.
5. The aforesaid mentioned block of land was somewhat surprisingly not included in the land the subject of Plan Change 50. I say surprisingly given the name and purpose of the zone and the fact that it was always intended that the more restrictive height regime for the Transitional Zone was intended to provide transition between the Queenstown Town Centre and the former residential area to the north of Man Street, and to protect the residential amenity and views of such land, which was of course, rezoned Town Centre Zone as part of Plan Change 50.
6. In terms of the Proposed District Plan, the land currently zoned Queenstown Town Centre Transitional Zone is proposed to be included in the Town Centre Zone as Precinct 1. It is proposed that in terms of rules governing the height of future development in the same the area is within what is known as Height Precinct 7.
7. Man Street Properties Limited filed a primary submission to the proposed re-zoning which supported the re-zoning per se, but opposed certain provisions of the zone. Mr William's evidence will concentrate on the primary matters of concern to MSPL.
8. MSPL supports the means by which height is to be measured on its site ie. being from a fixed masl level measured from the Podium.
9. MSPL suggests that such means of measuring height provides greater clarity and certainty given the development that has occurred within the block of land over time and the extent of difficulty in ascertaining original ground levels for sites within the block.

10. MSPL's submission suggested that height on all land within the Man, Hay, Shotover and Brecon Street block be controlled by reference to specified maximum masl levels for various parcels of land within the block which will generally provide for a step-up in height along Man Street from the east to the west.
11. MSPL also filed further submissions in support of primary submissions filed by Cowie (submission 20) and the New Zealand Institute of Architects, their southern branch and Southern Women (NZIA) (submission 238). Both of these submissions proposed that there should be greater height within the Queenstown Town Centre Zone than that proposed in the Proposed District Plan as notified.
12. MSPL also filed further submissions opposing submissions by Okkerse (submission 82) and Boyle (submission 417), both of which sought to restrict height in the Queenstown Town Centre to those limits currently provided in the Operative District Plan.
13. As previously noted, Mr Williams' evidence concentrates on matters of primary concern to MSPL and specifically responds to the evidence of Mr Church and Ms Jones relating to proposed height rules for Height Precinct 7 and in particular, how development subsequently undertaken which might comply with such height rules would impact on the potential for development of MSPL's site and how that development of MSPL's site might be undertaken given development from below would impact on views from the site as has been the case with the development of the Hamilton/Forsyth Barr House building.
14. Mr Williams will also address the impact of the duplicity of rules proposed specifically for the MSPL property in terms of site coverage and the requirement for view corridors proposed for the site.
15. I now wish to turn to addressing MSPL's concerns in respect to evidence to be presented to you in support of a submission filed by Well Smart Investments Limited ("Well Smart") and in particular, the evidence which is to be given before you in support of the same by its planner, Mr Ben Farrell.
16. Well Smart filed a primary submission relating to its land located at 65-67 Shotover Streets and 5-15 Hay Streets which is included within Height Precinct 7 to the west and south of MSPL's land.
17. Attached and marked with the letter "A" is a copy of its primary submission. The submission specifically supports the re-zoning of Well Smart's land and of particular relevance, the submission does not seek any additional decisions or changes to the zoning.
18. Well Smart did not file any further submissions.
19. Mr Farrell's evidence clearly seeks changes to the height rules for Height Precinct 7. Any development undertaken in accordance with such suggested rules would have adverse impact on views from the property owned by MSPL.

20. It is my submission to you that the Well Smart submission provides no scope for the evidence to be presented. It is clear law that supporting evidence cannot enlarge the scope of proceedings beyond matters pursued by the party to whom the evidence is supporting (*Hinton v Otago Regional Council* ENV C C005/04).
21. I note that my submission questioning the basis of the evidence filed and to be presented by Mr Farrell, is supported by the Council.

Graeme M Todd
Counsel for Man Street Properties Limited



SUBMISSION ON THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN

To: Queenstown Lakes District Council
Private Bag 50072
Queenstown 9348

Name of submitter: Well Smart Investment Holding (NZQN) Limited
(Submitter)

1. This is a submission on:

1.1 The Queenstown Lakes Proposed District Plan 2015 (the **Proposed Plan**).

1.2 The Submitter is the unconditional contracted purchaser of the properties at 65 to 67 Shotover Street and 5 to 15 Hay Street, Queenstown (the **Site**).

1.3 The Submitter could not gain an advantage in trade completion through this submission, and in any case is directly affected by the Proposed Plan.

2. The Submitter supports the zoning and controls of the Proposed Plan, as they relate to the Site.

2.1 The Submitter supports the Town Centre Zoning of the Site, and more particularly the removal of the Town Centre Transition Sub-Zone (the **TCTSZ**) that overlays the Site under the Operative Queenstown Lakes District Plan.

2.2 The Submitter is aware of Plan Change 50 to the Operative Queenstown Lakes District Plan (the Operative Plan) that rezones land to the north and west of the Site to Town Centre, and understands that Plan Change 50 will be adopted into the Proposed Plan once appeals are resolved. The Submitter is the successor of an appeal to the Environment Court on Plan Change 50 seeking the removal of the TCTSZ.

3 The Applicant's submission is that, with the adoption of the extended Town Centre Zone, the Proposed Plan will enable the appropriate expansion of the Town Centre.

3.1 The Site is presently located on the edge of the Town Centre zone, and under the Operative Plan is subject to the TCTSZ overlay, which introduces restrictive controls to protect the amenity of the neighbouring residentially zoned properties. Plan Change 50 to the Operative Plan alters the zoning of these neighbouring sites from residential to Town Centre, enabling a much greater density of development on these neighbouring sites, however failed to remove the TCTSZ which was rendered obsolete by the rezoning. The Proposed Plan redresses this situation.

3.2 The TCTSZ overlay, and the associated restrictive controls, have not been included in the Proposed Plan and the standard Town Centre controls otherwise apply to the Site. This will enable the appropriate intensive development of the Site, which will positively contribute to the amenity of the town centre and the wellbeing of the community.



4 The Submitter seeks the following decision:

- 4.1 That the Site remain Town Centre Zone with no additional controls imposed on development and use beyond those applied to other Town Centre zoned sites, and any such other consequential relief as is necessary to give effect to the submission.
- 4.2 The Submitter wishes to be heard in support of this submission and would be prepared to participate jointly with another submitter.

Signature: Well Smart Investment Holding (NZQN) Limited
by their authorised agent:

Paul Arnesen
Planning Focus Limited

Date: 23 October 2015

Address for service: Well Smart Investment Holding (NZQN) Limited
C/- Planning Focus Limited
PO Box 911361
Auckland 1142
Attention: Paul Arnesen

Telephone: (09) 379-5020

Facsimile: (09) 379-5021

Email: pa@planningfocus.co.nz

W. J. S. M. 082

Decision No. [2012] NZEnvC 082

IN THE MATTER of appeals under Clause 14 of Schedule 1 to the
Resource Management Act 1991

BETWEEN THURLOW CONSULTING ENGINEERS &
SURVEYORS LIMITED
(ENV-2010-AKL-000177)

Appellant

AND AUCKLAND COUNCIL (formerly North
Shore City Council)

Respondent

AND NEW ZEALAND TRANSPORT AGENCY

AND CDL LAND NEW ZEALAND LIMITED

AND AUCKLAND TRANSPORT

S274 parties

BEFORE THE ENVIRONMENT COURT

Hearing at: 29 - 31 August 2011

Court: Environment Judge M Harland

Commissioner R Howie

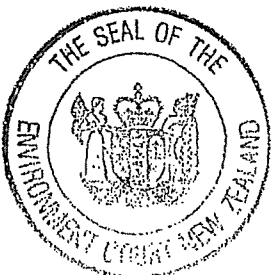
Commissioner M Oliver

Appearances: J Maassen for Thurlow Consulting Engineers & Surveyors Ltd

A Webb for CDL Land New Zealand Ltd

G Lanning & S Smith for Auckland Council & Auckland Transport
(s 274 party)

L Hinchey for New Zealand Transport Agency (s 274 party)



DECISION OF THE ENVIRONMENT COURT

A. The appeal is allowed to the extent that:

- i. The PC32 objectives and policies, including the upgrade policy (Policy 17A.2.4.2.1.1(4)), are confirmed; and
- ii. The trigger rule provisions (as variously proposed to be included in Rule 17A.5.2.2, Rule 9.4.10.11.1 (a) and Rule 9.4.10.12.1 (a)) are to be deleted; and
- iii. The Council is directed to amend the subdivision provisions applying to the parts of Areas A and B as identified on the Map at Appendix 17A/M to PC32 to be:
 - (a) Area A – Minimum Net Area: All sites – 1ha
 - (b) Area B – Minimum Net Area: All sites – 4,000m²
- iv. The Council is directed, if it wishes, to include an explanatory statement in the Plan indicating that further subdivision rights may be considered in the parts of Areas A and B, serviced by Fairview Avenue, and shown on the Map at Appendix 17A/M, once necessary road upgrading has been resolved and that this would require a change to the Plan (or similar).

B. Costs are reserved.



Introduction

[1] This appeal arises from Plan Change 32 (“PC32”), which amongst other things, sought to increase the development potential in two low-density residential areas (Areas A and B) in the Albany Structure Plan Area, in North Auckland, by reducing the minimum lot size. During the processing of the plan change it was confirmed that the existing roading network in the wider area was not adequate to cater for this increased development. The Council in its decision considered this roading issue to be critical and introduced a new rule to delay further development until improved roading was in place.

[2] The appellant, Thurlow Consulting Engineers & Surveyors Ltd (“Thurlow”), contends that the new rule in particular is too uncertain and unenforceable, and asks the Court to delete the additional subdivision rights. The Thurlow appeal included evidence from North-East Investments Ltd (“NEIL”) which owns land outside of the PC32 area, and it is through this land that a future road (Medallion Drive Extension¹) is identified. This future road, if constructed, was the preferred solution to the road constraints delaying the further subdivision potential. We were provided with an overview of the development proposed by NEIL for its site, which is likely to have a construction value of approximately \$100m. There are three land use applications before the Council representing the three core components of NEIL’s proposed development, being: intensive residential (notional site area 63,202m²); mixed use commercial/residential (notional site area 7,407m²); and Heritage East West apartment towers (two tower blocks, one of 8 stories with 32 units and one of 7 stories with 28 units). NEIL contends that development on its land can occur without the Medallion Drive Extension and that the Medallion Drive Extension is a public work. NEIL was concerned that the PC32 provisions linking the timing of development in Areas A and B with the future Medallion Drive Extension would adversely impact on the development of their land.

[3] The Council, Auckland Transport, and CDL Land Ltd (a party with land holdings in the affected low-density area) accept that further subdivision should be delayed until the roading limitations are resolved and ask for the plan change to be confirmed with the new rule or a similar trigger mechanism.

¹ In this decision we refer to the new roading as the “Medallion Drive Extension”. It is to be noted that it has also been referred to in various documents as “the realignment of Fairview Avenue “ and “the upgrade of Fairview Avenue”.



[4] New Zealand Transport Agency (“NZTA”) is interested because they do not want any changes to the roading network to adversely impact on the nearby Oteha Valley Road/State Highway 1 interchange. Their concern is to ensure that the timing of the release of any increased density of development is coordinated with a suite of appropriate roading works, but if that cannot be achieved then it is opposed to PC32.

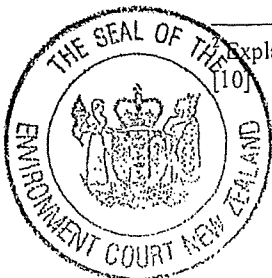
[5] The primary issue before the Court is whether or not the specific provisions in PC32 (in particular those referred to as “the upgrade policy” and “the trigger rule”) which seek to delay further development rights in parts of Areas A and B until the roading issues are resolved, are the most appropriate.

PC 32 Overview

[6] Albany in North Auckland has been an area of significant urban growth since the Albany Structure Plan was notified in 1996. Areas A and B were identified as low density areas on the steeper bush clad land along the northern part of the Structure Plan area. In 2008, following a review of the appropriateness of the zoning and the lot sizes in these low density areas, the Council notified PC32 to provide for some further subdivision rights whilst recognising the physical and environmental variations within the areas. It was proposed that the minimum lot size in Area A be reduced from 1ha to 4,000m², and from 4,000m² to 2,000m² in Area B. If an existing road was unable to satisfactorily accommodate the resultant increase or change in traffic volumes and movements, this further development was to be delayed.²

[7] A particular criticism made by a number of submitters to PC32 as notified, including NZTA and the Auckland Regional Council, was that no Integrated Transport Assessment (“ITA”) had been undertaken to determine the extent of the transport issues and the mitigation work needed in relation to the additional development rights. After the close of submissions the Council responded by commissioning an ITA report which was made available to submitters prior to the Council hearing. The ITA report confirmed the need for some essential road upgrading in the wider Albany area. The preferred road improvements included a new road, Medallion Drive Extension, which is outside the area included in PC32, but which is required before the additional development rights in parts of Areas A and B are taken up. The affected parts of Areas A and B are in the catchment serviced by Fairview Avenue. The Commissioners, in their decision for the Council,

²Explanatory note to the notified version of PC32, CB p.317 and Mr Reidy, evidence-in-chief, paragraph



acknowledged the roading limitations and amended PC32 by including an additional rule (“the trigger rule”) which was to have the effect of delaying the additional subdivision rights in the Fairview Avenue catchment until the Medallion Drive Extension had been completed. This rule implements a policy (“the upgrade policy”) which was included in the notified version of PC32.

[8] The Medallion Drive Extension is shown indicatively on the District Plan Map of “*Designations and Special Provisions*” as a “*preferred road*” but is not part of PC32. This notation is not a designation. We were told that this planning mechanism is used to encourage development which preserves the opportunities for structure plan roads to be constructed.³ The Medallion Drive Extension, linking Oteha Valley Road and Fairview Avenue, passes through the land owned by NEIL.

[9] We consider that the submitters’ criticisms of the Council’s preparation and processing of PC32, and in particular the lack of an adequate assessment of transport issues prior to notification of the plan change are well founded. We agree with the submissions by Mr Hinchey and Mr Maassen that further information on traffic effects should have been available before PC32 was notified. All parties may have benefitted from this information being available prior to notification. However in the circumstances the appropriate information was made available and was considered by all parties prior the Council hearing of submissions and decisions. It has been further considered in this hearing. Although this process was not ideal, we are satisfied that all parties have had a fair opportunity to consider the information and be heard on the matter.

The grounds of the appeal

[10] All matters in PC32 that were appealed have now been agreed with the exception of the parts of Thurlow’s appeal relating to the increased subdivision/development issue and the provisions relating to roading, in particular the Medallion Drive Extension.

[11] In opening submissions and throughout the hearing Mr Maassen (counsel for Thurlow) and in evidence Mr Farquhar (the owner through related companies of the NEIL land), both canvassed a wide range of matters, many of them relating to the proposed development of the NEIL land and the funding of, and the Council’s responsibilities for, infrastructure, particularly roading.

Mr Hudson, Evidence-In-Chief, paragraph [12].



[12] We accept that these are matters of genuine concern to NEIL and we suspect they reflect the historical relationship between NEIL and the Council. However we are conscious that this case relates to a plan change addressing the development potential within parts of Areas A and B of the Albany Structure Plan. We intend to limit our decision to the parts of Thurlow's notice of appeal that remain alive and also are within our jurisdiction. Mr Maassen, in opening submissions, identified the following as matters which remain alive at this hearing⁴:

- (a) Amend all objectives relating to infrastructure or transportation to make it plain with sufficient specificity that development depends on the territorial authority carrying out upgrade works on the transportation network including upgrading Fairview Avenue. (Notice of Appeal paragraph 7(b)).
- (b) Amend Rule 17A.5.2.2 so that it is precise and enforceable and precludes redevelopment in Albany Structure Plan Zone areas A and B until the territorial authority has achieved a specific transportation outcome (generally the upgrade of Fairview Avenue) and consequently delete any reference to the 'realignment of Fairview Avenue' such terms being undefined nonspecific and inappropriate as a transportation solution. (Notice of Appeal paragraph 7(c)).
- (c) Introduce methods addressing the following:
 - i. ...(withdrawn)
 - ii. The means by which the funding for construction of road upgrades will be achieved. (Notice of Appeal paragraph 7(e)).
- (d) Alternatively decline the plan change in its entirety. (Notice of Appeal paragraph 7(g)).
- (e) Any other relief the Court deems necessary including consequential relief arising from the specific relief set out above. (Notice of Appeal paragraph 7(h)).
- (f) Costs. (Notice of Appeal paragraph (i)).

[13] In response, Mr Lanning, for the Council, submitted:

It is not disputed that if the increase in density encouraged within the Fairview catchment Areas A and B was to occur prior to the improvement of the road link to Oteha Valley Road, then adverse effects on the environment are likely to occur. On the other hand, it is equally undisputed that if the Medallion Road extension was constructed those same adverse effects would be appropriately addressed.



Maassen Opening Submissions, paragraph 6 as amended on 29 September 2011

...

In my submission the approach taken in PC32 is the optimum planning solution. It clearly signals that the cumulative effect of smaller lots in the catchment is unsustainable until the roading upgrade is in place, and in doing so enables the Council to be robust in its assessment of cumulative traffic effects.

[14] The disputed matters relate primarily to the PC32 provisions referred to as the “upgrade policy” (Policy 17A.2.4.2.1.1 (4)) and the “trigger rule” (Rule 17A.5.2.2 and Rules 9.4.10.11.1(a) and 9.4.10.12.1(a)).

The legal framework

[15] PC32 is a Council initiated plan change and was notified on 15 May 2008. The relevant law to be applied is the Resource Management Act (“the Act”) as it existed before the 2009 Amendment Act came into force on 1 October 2009.

[16] The framework for consideration of plan changes begins with sections 72 to 76 and incorporates, by reference, sections 31 and 32. The list of relevant factors has been well documented in a series of recent cases, including *Long Bay-Okura Great Parks Society Incorporated v North Shore City Council*.⁵

[17] The statutory directions are now well settled and we do not propose to set out the lengthy passage from *Long Bay*. In summary, the Court is to assess whether the disputed policy and rule are the most appropriate for achieving the objectives of the plan and the purpose of the Act. Additionally in making a rule we are to have regard to effects on the environment of activities, particularly any adverse effects.

The parties’ positions

[18] In the Council’s decision version of PC32 the relevant provisions read:

17A.2.4 Design and Mobility

17A.2.4.1 Objective

To achieve a form and standard of design which will promote community safety and wellbeing, and choices for residents in respect of mobility.

17A.2.4.2 Policies

17A.2.4.2.1.1 Areas A and B

4. Any road upgrading required to mitigate the adverse effects of additional



Environment Court Auckland, A78/08, 16 July 2008.

traffic volume shall be completed before any additional development rights can be released.

Rules

9.4.10.11 Area A – Environmental Protection Area/Mixed Environmental

9.4.10.11.1 Albany Structure Plans: Environmental Protection Area

a) Site Area Requirements

Minimum Net Area: all sites – 4,000m²

Any additional development rights conferred by Plan Change 32 in the area serviced by Fairview Avenue (see Map – Appendix 17A M) shall not be able to be realised until the realignment of Fairview Avenue has been completed.

9.4.10.12 Area B – Large Lot Residential

9.4.10.12.1 Albany Structure Plans

a) Site Area Requirements

Area B: minimum area: all sites – 1,500m² (except Area B1)

Average site area: 2,000m² (except Area B1)

Area B1: minimum area: 1,000m²

Any additional development rights conferred by Plan Change 32 in the area serviced by Fairview Avenue (see Map – Appendix 17A M) shall not be able to be realised until the realignment of Fairview Avenue has been completed.

17A.5.2.2 Density

Development of more than one residential unit per site shall comply with table

17A.3

Any additional development rights conferred by Plan Change 32 in the area serviced by Fairview Avenue (see Map – Appendix 17A M) shall not be able to be realised until the realignment of Fairview Avenue has been completed.

[19] Mr Lanning submitted that the Council and Auckland Transport consider the decision version, with further changes suggested by Mr Reidy (or similar), represents the optimal planning solution from those available to the Court.

[20] Mr Reidy, the planning witness for the Council, accepted that the decision version rules should be amended so that they are precise and enforceable and discourage smaller lot sizes in the relevant parts of the Albany Structure Plan Areas A and B until the Medallion Drive Extension has been constructed and is open to public traffic. Relevantly his amended version⁶ reads:

1. Amend rule 9.4.10.11.1(a) to become:

9.4.10.11 Area A: Environmental Protection Area/Mixed Environmental

9.4.10.11.1 Albany Structure Plans: Environmental Protection Area

a) Site Area Requirements



Mr Reidy, evidence-in-chief, paragraphs 31 and 32 and Mr Lanning, Opening Submissions Attachment.

For the purpose of this rule the upgrade of Fairview Avenue is defined as:

- the extension of Medallion Drive to intersect with Fairview Avenue in general accordance with the route shown by the Indicative road on map (Map 13 – Designations and Special Provisions);
- the construction of the intersection of Medallion Drive and Fairview Ave;
- that the road and intersection be open to public traffic; and
- that the Medallion Drive extension is constructed to have an equivalent minimum traffic carrying capacity as a "Residential Collector" road as defined in the NSCC's Infrastructure Design Standards ((IDSM) Section 3, Transportation, North Shore City Council, Issue 10, 2009) or a "Traffic Route" as defined in Table 3 Appendix 121 of the District Plan.

Sites Located Within the Area Identified in Map Appendix 17A/M Prior to Fairview Ave Being Upgraded

Minimum Net Area: All sites - 1ha

Sites Located Within the Area Identified in Map Appendix 17A/M After Fairview Ave Has Been Upgraded

Minimum Net Area: All sites – 4,000m²

All Other Sites

Minimum Net Area: All Sites – 4,000m²

2. Amend rule 9.4.10.12.1(a) to become:

9.4.10.12. Area B: Large Lot Residential

9.4.10.12.1 Albany Structure Plans

(refer to Rule 9.4.10.11.1 for a definition of the upgrade of Fairview Ave)

a) Site Area Requirements

Sites Located Within the Area Identified in Map Appendix 17A/M Prior to Fairview Ave Being Upgraded

Minimum Net Area: All sites – 4,000m²

Sites Located Within the Area Identified in Map Appendix 17A/M After Fairview Ave Has been Upgraded

Minimum Net Area: All Sites – 1,500m² (Except Area B1)
Average Site Area – 2,000m² (except Area B1)

All Other Sites (Except Area B1)

Minimum Net Area: All Sites – 2,000m²



Area B1:

Minimum Area: 1,000m²

3. Delete from Rule 17A.5.2.2 the paragraph inserted by the decisions version that commences "*Any additional development rights conferred...*".

Evaluation*Relevant planning framework*

[21] Mr Reidy, for the Council, was the only planning witness to give evidence. He provided an analysis in terms of the relevant statutory documents, being the Regional Policy Statement and the District Plan (**the Plan**).⁷ There is a strong theme repeated throughout the Plan which seeks to ensure provision of the necessary infrastructure in advance of, or concurrent with, any subdivision, development or building work.

[22] The Plan contains district-wide objectives and policies relating to transportation and infrastructure. These are contained largely in Section 9 – Subdivision and Development, and Section 12 – Transportation. These sections were not subject to the plan change. The Albany Structure Plan (which is a part of the Plan) is to be read in the context of these operative district-wide objectives and policies.

[23] Mr Reidy highlighted Objective 9.3.3 Servicing Development and supporting Policies 1 and 7, which read:

Objective: To ensure that the servicing of new development is planned and implemented in an efficient manner and such as to avoid or mitigate any adverse environmental effects.

Policies

1. By requiring developers to avoid or mitigate the adverse effects of servicing subdivision and development.

7. By ensuring provision of the necessary Infrastructure in advance of, or concurrent with, any subdivision or building work.



Mr Reidy, evidence-in-chief, paragraphs 35 – 50 and Appendices 4 and 5.

[24] Another district-wide section of the Plan is Section 6.3 - Urban Growth Strategy. This includes Policy 3 which reads:

3. By enabling a differentiated pattern of residential development to emerge on the periphery that minimises impacts on environmentally sensitive landscapes and coastal estuaries, and occurs in an orderly manner and in a way that supports the development of proposed centres, and the efficient extension or upgrading of roads and utility services.

[25] Mr Reidy explained that the district-wide policy direction recognised that addressing the cumulative effects on the wider road network through the assessment of individual resource consents had not worked well in the past. Hence the Council had taken a firm stance and this was reflected in the Plan provisions. The operative district-wide provisions were in effect repeated in the Albany Structure Plan provisions, relevantly in Objective 17A.2.4.1, Policy 17A.2.3.2.1(3), and Policy 17A.2.4.2.1.1(4) (the upgrade policy). Mr Reidy noted that the PC32 provisions were consistent with the district-wide provisions. He considered that the PC32 objective was an appropriate way of achieving the purpose of the Act and that the policies were the most appropriate way to implement the objective.

The upgrade policy

[26] We agree with Mr Reidy's analysis as it relates to the objective and policies, including the upgrade policy. The PC32 provisions are consistent with numerous settled provisions already in the statutory documents, particularly the Plan, which seek to ensure that the servicing of new development is planned and implemented in an efficient manner and such as to avoid or mitigate any adverse environmental effects.

[27] Essentially, the upgrade policy restates the Plan's requirements that necessary infrastructure (in this case roading) be provided in advance of, or concurrent with, development in Areas A and B in Albany. In some ways it could be said that these provisions are unnecessary as they duplicate what is already in the operative sections of the Plan. However given the format of the Plan, which has the Albany Structure Plan details in a separate section, we consider that it is appropriate that such important broader policy matters be repeated where the Plan users will be more likely to read them. We find that the upgrade policy (Policy 17A.2.4.2.1.1 (4)) is the most appropriate for achieving the objectives of the Plan and that it should be retained.



The trigger rule

[28] The trigger rule, which was introduced in the decision version of PC32, sought to implement the upgrade policy, and related objectives and policies, in the specific context of the parts of Areas A and B that were considered to be within the Fairview Avenue catchment.

[29] It was agreed by all of the parties that road improvements need to be completed before further subdivision to smaller lots is enabled in the area identified as the Fairview Avenue catchment. Although several options for road improvements were evaluated, the four transportation experts agreed that the Medallion Drive Extension was the preferred option from a traffic management perspective.⁸ This was because it provides improved network connectivity and efficiency, and it achieves greater separation from the Oteha Valley Road/SH1 Interchange.

[30] The Plan objectives and policies are quite clear that any road upgrading required to mitigate the adverse effects of additional traffic is to be completed before, or concurrent with, any additional development rights being realised. However in this particular case there is considerable uncertainty surrounding several aspects of the road works required to provide for the additional subdivision potential in those parts of Areas A and B.

[31] The Medallion Drive Extension is shown as a “*preferred road*” on the Planning Map in the District Plan. The status of this notation is unclear and at best, can be described as indicative. Although Mr Lanning submitted that there was a linkage between the dotted lines on the map and the *assessment criteria* for any resource consent (subdivision), Mr Reidy said that the preferred road did not impact on the property in terms of any rule.⁹

[32] The Medallion Drive Extension road works affect NEIL’s land, which is outside of the PC32 area. These works will most likely be public works for which the Council will have responsibility as they are to service a wider area than just NEIL’s land. This seems to have been accepted by the Council although the works do not appear to be a high priority as the following background information and sequence of events shows:

⁸ Joint Statement of the Transportation Engineering Witnesses, 22 August 2012, paragraph 8, signed by Messrs I Clark, B Harries, B Hall and A Bell.
⁹ Mr Reidy, Transcript page 97, lines 13 and 14.

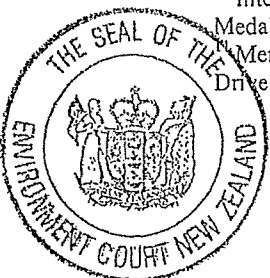


- (a) In opening submissions Mr Lanning confirmed that the Council was committed to the Medallion Drive Extension but there was no provision in the Council's Long Term Plan ("LTP") for its construction. He submitted that ideally the new road should be achieved in conjunction with any development of NEIL's land, but if that did not occur then there were other more direct options available to the Council and Auckland Transport, such as designation.
- (b) During the hearing, at the Court's request, Mr Lanning provided a memorandum in relation to the funding issues.¹⁰ He reconfirmed that there was no provision in the Long Term Plan or the Regional Land Transport Programme for the construction of the Medallion Drive Extension or any related land purchase. He indicated that the current 2011-12 Annual Plan contained funds which could be used for the design and legalisation work associated with the project.
- (c) Subsequently Mr Lanning filed a memorandum advising that Auckland Transport now had funding in place to enable it to proceed with a Notice of Requirement ("NoR") and also that it intended to commence parallel discussions with the land owner regarding acquisition of the land required, rather than await completion of the NoR process.¹¹
- (d) On the 3rd February 2012 Mr Lanning advised that there had been a delay in appointing a consultant to undertake a scheme assessment and assist with the NoR process but that Auckland Transport expected to have a contract in place by the end of February 2012.
- (e) On the 10th February 2012 Mr Maassen advised the Court by memorandum that NEIL had not been approached to negotiate the terms of acquisition of any part of its land for the road.

[33] In setting out this detail relating to the NoR and land acquisition we acknowledge that these are separate and independent processes from the current PC32 proceedings. They are not something over which this Court has any influence at this

¹⁰ Inter-party Memorandum by Auckland Council and Auckland Transport regarding funding of the Medallion Drive Extension, 30 August 2011.

¹¹ Memorandum by Auckland Council and Auckland Transport, Notice of Requirement for the Medallion Drive Extension, dated 19 December 2011.



stage. For example, any NoR will have to follow the relevant statutory procedures and at this stage there is no certainty as to the timing or outcome. We also recognise that any NoR and/or land acquisition are only the first steps towards the construction and completion of any road.

[34] Of direct relevance to these PC32 proceedings was the acknowledgement by all parties that the wording of the proposed trigger rule was uncertain. Thurlow was concerned that it was not performance based, enforceable or appropriate. Mr Reidy accepted Thurlow's concerns that the rule needed to be more precise and enforceable,¹² hence his suggested amended wording in which he sought to spell out what was meant by the words "*Fairview Avenue being upgraded*". His suggested amendments were not successful in the eyes of the other parties and this resulted in the further attempts by the parties to redraft amended versions of the rule during the hearing¹³ and after the close of the hearing.

[35] At the close of the hearing the Court invited the parties to attempt to reach agreement on suitable wording for the trigger rule. However in a Memorandum, dated 10 February 2012, Mr Lanning advised that without further guidance from the Court agreement between all parties as to the wording of the rule appeared unlikely.

[36] We agree with the parties that none of the versions of the rule provided to the Court achieve an acceptable level of certainty and effectiveness. Since the close of the hearing the parties and their experts have not been able to agree on an appropriate wording. In these circumstances it is not appropriate for the Court to provide the wording.

[37] The relevant objectives of the Plan, supported by the policies, are quite clear: any road upgrade required to mitigate the adverse effects of additional traffic volumes shall be completed prior to, or concurrent with, any additional development rights. In this case there is no dispute that the approximately 426 potential additional dwellings within the parts of Areas A and B in the Fairview Avenue catchment would create traffic volumes that need to be addressed through road upgrades. A trigger rule has not been able to be drafted to effectively address these adverse traffic effects and to assist the Council to carry out its functions. There are other methods available which the Council is



¹² Mr Reidy Evidence-in Chief, paragraph 30.
¹³ For example Exhibit 4 - Thurlow's suggested amendments dated 31 August 2011.

now actively considering and we note Mr Reidy's agreement, under cross-examination, that the Medallion Drive Extension should have been designated a long time ago.¹⁴

[38] We find the trigger rule to be too uncertain and not the most appropriate method to implement the policies and achieve the objectives of the Plan.

[39] Given the consensus that additional lots in the Fairview Avenue catchment should not be released until appropriate road upgrading is in place, we consider that it is premature to provide for that additional subdivision potential until an appropriate and workable solution has been found. Accordingly we find that the minimum subdivision standards for the affected areas should remain at 1ha and 4,000m² for those parts of Areas A and B respectively (as shown shaded on the map at Appendix 17A/M to PC32) until the necessary road upgrading has been resolved. Given the current circumstances, we consider that such rules limiting the subdivision rights are the most appropriate methods.

[40] When the necessary road upgrading, be it the Medallion Drive Extension or some other option, has been resolved and progressed to an appropriate stage of certainty, then it will be open to the Council, or other parties, to initiate a further plan change to provide for smaller lot sizes in the Fairview Avenue catchment.

Determination

[41] For the above reasons, we make the following determinations:

A. The appeal is allowed to the extent that:

- i. The PC32 objectives and policies, including the upgrade policy (Policy 17A.2.4.2.1.1(4)), are confirmed; and
- ii. The trigger rule provisions (as variously proposed to be included in Rule 17A.5.2.2, Rule 9.4.10.11.1 (a) and Rule 9.4.10.12.1 (a)) are to be deleted; and
- iii. The Council is directed to amend the subdivision provisions applying to the parts of Areas A and B as identified on the Map at Appendix 17A/M to PC32 to be:



The transcript page 98, line 8.

- (a) Area A – Minimum Net Area: All sites – 1ha
- (b) Area B – Minimum Net Area: All sites – 4,000m²

iv. The Council is directed, if it wishes, to include an explanatory statement in the Plan indicating that further subdivision rights may be considered in the parts of Areas A and B, serviced by Fairview Avenue, and shown on the Map at Appendix 17A/M, once necessary road upgrading has been resolved and that this would require a change to the Plan (or similar).

[42] Costs are reserved. Any party wishing to apply for costs must do so by written memorandum within 20 working days from the date of this decision, with the right of reply to be provided within a further 20 working days.

SIGNED at AUCKLAND this 3rd day of May 2012

For the Court

M Harland

Environment Judge M Harland

