

DRAFT

Resource Consent Appeals: Status Report 12 April 2018

File No.:

Purpose

1. To provide an update of all current resource consent appeals lodged with the Environment Court.

Executive summary

2. This report provides a summary of current resource consent appeals to which the Auckland Council is a party. It updates our report of 27 February 2018 to the Regulatory Committee.
3. If committee members have detailed questions concerning specific appeals, it would be helpful if they could raise them prior to the meeting with Robert Andrews (phone: 353-9254) or email: robert.andrews@aucklandcouncil.govt.nz) in the first instance.

Recommendation/s

That the Regulatory Committee:

- a) receive the Resource Consents Appeals: Status Report 12 April 2018.

Comments

4. As at 29 March 2018, there are 20 resource consent appeals to which Auckland Council is a party. These are grouped by Local Board Area geographically from north to south as set out in **Attachment A**. Changes since the last report and new appeals received are shown in bold italic text.
5. The principal specialist planners - resource consents, continue to resolve these appeals expeditiously. In the period since preparing the previous status report, there have been four new appeals and seven appeals has been resolved.
6. Two appeals relate to an application by Fulton Hogan Limited to expand the size and operation of the Clevedon Quarry at 546 McNicol Road Clevedon. Both the applicant's appeal and the appeal by a submitter Clevedon Protection Society relate to conditions of consent rather than its grant. The main area of contention for the Society is around truck management and their numbers, speed, noise, hours and road parking and safety. The applicant opposes the restriction of truck movements on Saturday afternoons and the matters over which council has retained discretion to review the conditions of the consent.
7. The appeal by Auckland Council (Community Facilities) is against the Council's refusal of consent to construct a seawall, walkway and accessory structures at the Orewa Beach Esplanade Reserve.
8. A further appeal is to the refusal of a retrospective consent for a garage constructed within the front yard of a residential property in Gulf View Road, Murrays Bay.

Consideration

Local board views and implications

9. Not applicable.

DRAFT**Māori impact statement**

10. The decision requested of the Regulatory Committee is to receive this progress report rather than to decide each appeal.
11. The Resource Management Act 1991 includes a number of matters under Part 2, which relate to the relationship of Tangata Whenua to the management of air, land and water resources. Maori values associated with the land, air and freshwater bodies of the Auckland Region are based on whakapapa and stem from the long social, economic and cultural associations and experiences with such taonga.

Implementation

12. Environment Court appeal hearings can generate significant costs in terms of commissioning legal counsel and expert witnesses and informal mediation and negotiation processes seek to limit these costs. Although it can have budget implications, it is important that Auckland Council, when necessary, ensure that resource consents maintain appropriate environmental outcomes and remain consistent with the statutory plan policy framework through the appeal process.

Attachments

No.	Title	Page
A	Current Resource Consent Appeals as at 29 March 2018	

Signatories

Authors	Robert Andrews - Resolutions Team Manager
Authorisers	Ian Smallburn - General Manager Resource Consents Penny Pirrit - Director Regulatory Services

RODNEY – Local Board Area (3 APPEALS)

Appellant	Albert Road Investments Limited	Received	7 June 2017
References	ENV-2017-AKL-00075 Council – SUB60069647		
Site address	102 Hudson Road, Warkworth.		
Other parties	None		
Description	Appeal by the applicant against council's decision to refuse to allow subdivision of a 2800m2 lot around the existing dwelling on site from the balanced land of 1.315ha at 102 Hudson Road, Warkworth.		
Iwi comments	No cultural values assessments prepared with the application that was processed on a non-notified basis.		
Status	Court has issued an evidence timetable: appellant evidence 1 September, council evidence 6 October, and appellant rebuttal evidence 27 October. Two days of hearing time reserved for either week of 27 November or 4 December 2017. Evidence preparation occurring under above timetable is now complete and the matter has been set for hearing on the week starting 19 February 2018. <i>The appeal proceeded to a 2 day hearing 19-20th February 2018. Decision has been reserved.</i>		

Appellant	Kumeu Property Limited	Received	3 April 2017
References	ENV-2017-AKL-044 Council – L68001, REG68001, REG68002, REG68003 & REG68004		
Site address	455 Taupaki Road, Taupaki		
Other parties	Jennifer Mein, AF Soljan Family Trust, CM Soljan Family Trust and Soljans Estate Winery, MG Brajkovich Family Trust and Kumeu River Wines Limited, Kumeu-Huapai Residents & Ratepayers Association Inc., and Frances A Vuksich.		
Description	Appeal by an applicant against council's decision to refuse consent to establish and operate an aged care facility with on-site servicing, with 102 hospital beds and 157 assisted living beds at 455 Taupaki Road, Taupaki.		
Iwi comments	Nga Maunga Whakahii o Kaipara – “no risk to the mauri of the land or water table given the proposed onsite storm water options (rain gardens) and waste management systems”. Accidental discovery protocol, opportunity to bless the site before earthworks, and opportunity to submit names for facilities and open spaces recommended.		
Status	Parties to advise court by 5 May 2017 whether they agree to mediation. Appeal currently 'on hold' pending outcome of mediation set down for 29 June 2017. The applicant post mediation is considering an alternate design of that will be the subject of a further mediation set down on 9 th August 2017. Second mediation held with no agreement reached. Appellant has confirmed that they wish to proceed to hearing with an alternate design. The court has issued a timetable for evidence exchange, with a hearing date. Evidence currently being prepared. All evidence exchanged and court hearing set. The appeal proceeded to a 5 day hearing 12-16 th February 2018 with the neighbour and resident group parties		

	actively involved. <i>The Court released its interim decision on 8 March granting consent to the revised 2-level 114 resident design. The parties have been given 2 months to finalise details of the plans and conditions.</i>
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Appellant	Matakana Coast Trail Trust	Received	9 March 2017
References	ENV-2017-AKL-020 Council – SLC66696, REG66698 & REG66699		
Site address	Multiple sites located in and around Moir Hill Road, Ahuroa.		
Other parties	None.		
Description	Appeal by a submitter against the council's decision to grant consent to a 207-lot rural-residential subdivision and rehabilitation (including revegetation and weed and pest management) of approximately 1,375 ha of the 1,508 ha site with associated vegetation clearance, earthworks, streamworks, stormwater discharge and wastewater disposal. Appeal specifically relates to the lack of a condition requiring a walking and cycle path to be provided through the site.		
Iwi comments	CIA provided by Ngati Manuhiri. Applicant to work with Ngati Manuhiri to develop an iwi liaison framework to enable their recommendations to be considered during the detailed design process and during physical works on site.		
Status	Applicant does not wish to participate in mediation. Joint memorandum filed with the Court with proposed timetable for a hearing; extended by two weeks with appellant evidence 16 June, applicant and council evidence 30 June, appellant reply evidence 14 July. Court hearing held 7 to 11 August 2017. The Court released an interim decision on 1 September that determines that a connecting walking and cycling trail between Dorset and Watson Roads should be provided. Parties will need to agree conditions on how this is to be achieved and have agreed to a court assisted conferencing session on 6th November 2017. <i>Still in the process of finalising conditions following the conferencing session.</i>		

Hibiscus and Bays - Local Board Area (2 APPEALS)

Appellant	Andrew Hegman	Received	20 March 2018
References	ENV-2018-AKL-000049 Council - LUC60309866		
Site address	7B Gulf View Rd, Murrays Bay, North Shore		
Other parties	No		
Description	Appeal by the applicant against council's decision to refuse consent for a garage within the front yard.		
Iwi comments	Not applicable.		
Status	New appeal. Court directions encouraging mediation or otherwise a pre-hearing conference with report by council by 31 May 2018.		

Appellant	Auckland Council (Community Facilities)	Received	22 December 2017
References	ENV-2017-AKL-00075 Council – SUB60069647		

Site address	<i>Orewa Beach Esplanade Reserve, between Kohu Street and Marine View</i>
Other parties	<i>Four 274 parties</i>
Description	<i>Appeal by the applicant against council's decision to refuse consent to the construction of a seawall, walkway and accessory access structures at the Orewa Beach Esplanade Reserve, between Kohu Street and Marine View.</i>
Iwi comments	<i>Cultural values assessments were prepared by Ngati Manuhiri and Ngai Tai Ki Tamaki that confirmed conditional support for the application. The environment is highly modified and accidental discovery protocols are sought. The application was publically notified and no submissions from Iwi were submitted.</i>
Status	<i>Court has heard from the parties and issued a minute on 22 February 2018 setting down the matter for a pre-hearing on jurisdiction over the right to appeal and determining that an amicus curiae should be appointed. Affidavits have been request these have been prepared for the pre-hearing set for 9 April 2018.</i>

UPPER HARBOUR - Local Board Area (1 APPEALS)

Appellant	Scanlon, New Kiwis Limited & The Swim Centre Limited v Auckland Council	Received	27 January 2017
References	ENV-2017-AKL-009 Council – SUB60032697		
Site address	364, 378, 382, 404 Upper Harbour Drive & 128 Albany Highway, Greenhithe		
Other parties	None.		
Description	Appeal by submitters against the granting of subdivision consent for 44 residential lots.		
Iwi comments	Ngati Whatua Orakei Iwi Authority – Neutral. Main reasons for concern were discharge of stormwater, removal of trees, and earthworks. Recommended cultural monitoring by NWO, use of Accidental Discovery Protocol, and cultural heritage induction for all contractors involved.		
Status	Appeal reported to the Regulatory Committee on 12 April 2017. Mediation held 20 April 2017 and 25 May 2017, where the parties could not reach agreement regarding access design, landscaping and other matters. <i>In a court report of 29 September the applicant and appellant have asked for more time to develop revised plans and resolutions to outstanding issues. A further mediation may be set.</i>		

HENDERSON-MASSEY – Local Board Area (1 APPEAL)

Appellants	New Zealand Retail Property Group Limited	Received	17 August 2017
References	ENV-2017-AKL-000120		
Site address	79-85 Fred Taylor Drive, Westgate		
Other parties	Holy Resurrection Russian Orthodox Church (Applicant for associated land use consent); Auckland Transport		
Description	Appeal against conditions of resource consent LUC600619881 and subdivision		

	consent SUB60039017 requiring that the consent holder shall upgrade the frontage of the site (berm/footpath). The consent allows for a 2-lot subdivision creating a 7,000m2 site for a church.
Iwi comments	None.
Status	<i>Mediation held 4 October 2017. The appellant is considering whether to proceed to a court hearing.</i>

ALBERT-EDEN –Local Board Area (3 APPEALS)

Appellant	Sai 1 Trust v Auckland Council	Received	16 February 2018
References	ENV-2018-AKL-000011 Council – LUC60310360		
Site address	325 Mount Albert Road, Mount Roskill		
Description	Appeal against a decision on a s357 objection to the rejection of a resource consent for processing under s88 of the RMA. The application that was rejected was for the construction of an extension to an existing building to provide an additional unit on the site.		
Iwi comments	As the application was not accepted for processing no assessment of iwi issues has been undertaken. In the initial s88 check for completeness of the application no requirement for a Cultural Impact Assessment or iwi or Treaty matters have been raised.		
Status	New appeal lodged on 16 February 2018. <i>No Court directions received yet.</i>		

Appellant	View West Limited v Auckland Council	Received	29 September 2017
References	ENV-2017-AKL-000151 Council – R/LUC/2016/2243, LUC60114213		
Site address	31 Esplanade Road, Mount Eden		
Description	Appeal against a hearing commissioner's decision to refuse resource consent for the demolition of the St James Church Hall, a Category B Historic Heritage building, located at 31 Esplanade Road, Mt Eden. The hall was constructed in the 1880's and is currently subject to a Dangerous Building Notice which has seen it fenced off and unused for the past five years. It sits beside the Category B St James Church that has consent to be re-purposed into four residential apartments.		
Iwi comments	The application did not trigger any requirement for a Cultural Impact Assessment, attract submissions from Iwi or raise Treaty issues.		
Status	Court directions received on 24 October 2017. The Court requires a response by 7 November as to whether parties agree to mediation. Mediation scheduled for Wednesday, 14 th February 2018. Mediation occurred. <i>Parties agreed a timeline for an alternative proposal to be developed that would see the building retained and re-used.</i>		

PUKETAPAPA –Local Board Area (1 APPEAL)

Appellant	Jayashree Limited v Auckland Council	Received	7 December 2017
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References	ENV-2017-AKL-000181 Council – R/LUC/2016/2243, LUC60114213
Site address	34 White Swan Road, Mount Roskill
Description	Appeal against a decision on a s357 objection to the rejection of a resource consent for processing under s88 of the RMA. The application that was rejected was for the legalisation of four units on the site.
Iwi comments	As the application was not accepted for processing no assessment of iwi issues has been undertaken. In the initial s88 check for completeness of the application no requirement for a Cultural Impact Assessment or iwi or Treaty matters have been raised.
Status	Court directions received on 11 December 2017. The Court has joined this appeal with other existing Environment Court proceedings for this site and another site owned by the appellant (i.e. ENV-2017-AKL-000133 building consent abatement notice appeal to cease the use of the property (34 White Swan Road, Mount Roskill) as a boarding house and ENV-2017-AKL-00079 an application for a declaration regarding the use of a dwelling at 37A Hayr Road, Three Kings). A reporting date on progress has been set for 28 February 2018. <i>No court directions have been received yet.</i>

WAIHEKE –Local Board Area (3 APPEALS)

Appellants	Cable Bay Wines Ltd v Auckland Council	Received	2 February 2018
References	ENV-2017-AKL-000010 Council – LUC60127798		
Site address	12 Nick Johnston Drive, Waiheke Island		
Applicant	Cable Bay Wines Limited		
Other parties	Stephen & Suzanne Edwards, Julie Loranger & Lindsay Niemann, Michael & Christine Poland.		
Description	Cable Bay appeal Council's decision to refuse retrospective consent relating to the unlawful establishment and use of an additional dining area known as 'The Verandah'. The principal issues in contention relate to the scale and intensity of the activity and the general amenity / noise effects associated with the use of the structure.		
Iwi comments	The application was limited-notified to neighbours. No iwi group indicated a need for a cultural impact assessment. The Hearing Commissioners considered the application in accordance with the requirements of the RMA 1991 and in particular Part 2 of the RMA.		
Status	The Environment Court has directed court-assisted mediation after the expiry of the section 274 period which is 15 March 2018. Council is to file and serve a reporting memorandum by 4 May 2018. <i>Three s274 parties have joined. Awaiting confirmation of Environment Court mediation date – will likely be in the week beginning 9 April 2018. Mediation will involve both the consent appeal and the enforcement order application.</i>		

Appellants	1.Walden v Auckland Council	Received	9 June 2017
	2.SKIP Incorporated v Auckland Council	Received	9 June 2017

References	ENV-2017-AKL-000076 ENV-2017-AKL-000077 Council – R/LUC/2017/489, R/REG/2017/65
Site address	Donald Bruce Road, Kennedy Point, Waiheke Island
Applicant	Kennedy Point Boatharbour Limited
Other parties	Over 30 parties have joined the appeal under section 274 of the RMA.
Description	Two separate appeals opposing the construction, maintenance and use of a 186 berth marina within the coastal marine area adjacent to Kennedy Point. The marina includes floating attenuators for wave protection and floating pontoons for car parking, office and a public/café building. The council hearing canvassed a large range of issues and potential effects including landscape, traffic and transport, ecology.
Iwi comments	The applicant consulted with iwi, including Ngati Paoa Trust and Ngai Tai ki Tamaki Tribal Trust. A cultural values assessment was provided by Ngati Paoa and a cultural impact assessment from Ngai Tai ki Tamaki. Iwi sought to have input into conditions but no submissions were lodged by iwi. The independent hearing commissioners had regard to all the information before them and considered the application in accordance with the relevant statutory requirements and in particular Part 2 of the RMA 1991.
Status	The Environment Court has set down the appeals for a court-assisted mediation on 4 and 7 August 2017. Mediation on 4 and 7 August 2017 has now been completed. Mediation narrowed down some issues but did not resolve all the issues for the appellants and all the section 274 parties. A timetable for exchange of evidence, caucusing of expert witnesses and Environment Court hearing date has been confirmed. All evidence and witness caucusing is complete with the hearing set for the week of 26 February 2018. Hearing commenced on Monday 26 February 2018. Hearing completed. Waiting for Environment Court's decision.

OTARA-PAPATOETOE – Local Board Area (1 APPEAL)

Appellant	Lion – Beer, Spirits & Wine (NZ) Limited	Received	24 July 2017
References	ENV-2017-AKL 000106 Council – 50566		
Site address	79 Ormiston Road		
Applicant	Ormiston Centre Limited		
Description	Appeal by a submitter to the grant of land use and subdivision consent to establish a mix of commercial activities including a supermarket, department store and offices. The site is zoned Business – Light industrial under the AUP-OP in which the activities are a non-complying.		
Iwi comments	The application was publicly notified and there were no submissions by iwi. No iwi group indicated a need for a cultural impact assessment. The Hearing Commissioners considered the application in accordance with the requirements of the RMA 1991 and in particular Part 2 of the RMA.		
Status	New appeal with the parties yet to receive any directions from the Court. Negotiations continuing between appellant and consent holder. Next reporting date 13 April 2018.		

FRANKLIN – Local Board Area (4 APPEALS)

Appellant	Fulton Hogan Limited	Received	15 March 2018
References	ENV-2018-AKL 0000046 Council – 53124, 53125, 53126		
Site address	546 McNicol Road Clevedon		
Applicant	Fulton Hogan Limited		
Description	Appeal by the applicant relates to two conditions of consent imposed on the grant of consent to expand its quarry at 546 McNicol Road Clevedon. Condition 23 relates to a restriction that prevents quarry truck movements to and from Clevedon Quarry after 12 pm (noon) on Saturday. Condition 19 (b) and (c) are references in the review condition regarding adverse truck noise along McNicol Road (south of Tourist Road) and Tourist Road.		
Iwi comments	There were no cultural value assessments submitted or later submissions from Iwi following public notification.		
Status	New appeal. Parties are in discussion in regards to seeking a mediation date with the Court in early May.		

Appellant	Clevedon Protection Society 2017 Incorporated	Received	15 March 2018
References	ENV-2018-AKL 0000044 Council – Council – 53124, 53125, 53126		
Site address	546 McNicol Road Clevedon		
Applicant	Fulton Hogan Limited		
Description	Appeal by a submitter to particular conditions imposed on the consent for the application by Fulton Hogan to expand the size of its Clevedon Quarry and increased activity to an annual production of approximately 3 million tonnes per year. The conditions relate to the Community liaison Group, monitoring and review, truck management, numbers, speed and road parking and safety, operation hours and noise, stream ecology and discharge to air.		
Iwi comments	There were no cultural value assessments submitted or later submissions from Iwi following public notification.		
Status	New appeal. Parties are in discussion in regards to seeking a mediation date with the Court in early May.		

Appellant	Manukau Harbour Restoration Society Inc	Received	17 January 2018
References	ENV-2018-AKL 000002 Council – R/REG/2016/2749 and R/REG/2016/2751		
Site address	Waiuku		
Applicant	Watercare Services Limited		
Description	Appeal by a submitter to the grant of regional permits to discharge wastewater		

	into the Waiuku Estuary and Manukau Harbour. One s274 party has joined (Gary Whyborn).
Iwi comments	The application was publicly notified and submissions were received from Ngati Te Ata and Ngati Tamaoho Trust. Ngati Te Ata provided its full support to the Project and the applications. Ngati Tamaoho Trust asked that the application be declined but also proposed conditions should consent be granted
Status	Parties have met to discuss concerns/questions with the conditions. Court assisted mediation is also likely to occur in March/April.

Appellant	Giles and Third	Received	16 August 2017
References	ENV-2017-AKL-000118 Council – SUB60300057 (MC53131)		
Site address	340 Clevedon Kawakawa Bay Road		
Applicant	Dianne Giles and Lynette Colleen Third		
Description	Appeal against a decision refusing consent to subdivide a rural site to create two lots. Consent refused on a non-notified basis		
Iwi comments	The application was non-notified. No iwi group indicated a need for a cultural impact assessment. The delegated decision maker considered the application in accordance with the requirements of the RMA 1991 and in particular Part 2 of the RMA.		
Status	Appeal on hold to allow applicant to see if reasons for refusal can be addressed. Currently exploring design options to see if policy matters can be addressed. Next court report date on 23 February 2018. An amended proposal has been submitted by the applicant for consideration by Council as to whether it addresses the reasons for refusal. The next reporting date is 31 March. Consent order docs are being prepared as the revised proposal now addresses the reasons for refusal.		

Appellant	Pine Harbour Holdings Limited	Received	2 February 2017
References	ENV-2017-AKL-010 Council – 48758		
Site address	96 Karaka Road, Beachlands		
Applicant	Pine Harbour Holdings Limited		
Description	Appeal against several conditions of the council decision to grant subdivision and landuse consent to create 27 lots and 27 dwellings.		
Iwi comments	The application was publicly notified and there were no submissions by iwi. Ngai Tai Ki Tamaki advised during the processing of the proposal that they were happy for the development to proceed based on their longstanding relationship with the applicant. No iwi group indicated a need for a cultural impact assessment. The Hearing Commissioners considered the application in accordance with the requirements of the RMA 1991 and in particular Part 2 of the RMA.		
Status	Appeal reported to the Regulatory Committee under urgency on 1 March 2017 as the Court had directed a reporting date of 1 March 2017 to identify whether mediation is appropriate and/or agree a hearing timetable. Mediation set down and held on 19 April. Parties will be reporting back to the Court on a monthly		

	basis. Evidence exchange has commenced with a hearing likely in the new year. Hearing has been postponed as there is a possibility of settlement due to the imminent commencement of works on the adjacent property which would address the conditions in contention.
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Appellant	Ahuareka Trustees (No. 2) Ltd	Received	19 November 2015
References	ENV-2015-AKL-000147 Council – 42081		
Site address	650-680 Whitford Maraetai Road, Whitford		
Other parties	Whitford Residents and Ratepayers Association		
Description	Appeal against Council's decision to refuse consent to establish a hamlet of 186 households and ancillary buildings, a country pub and restaurant, retail and commercial units and carpark in the Whitford Rural B zone.		
Iwi comments	No iwi submissions		
Status	Appeal reported to the Committee in December 2015. Mediation held 11 February 2016. Appeal reported to the Regulatory Committee on 1 December 2016. Evidence exchange occurred in February/March 2017 although no hearing date set. Judicial teleconference held 30 March. Rebuttal evidence due 28 April with hearing possible in July. Court hearing proceeded within the week 3 July 2017, with the applicants reply to be filed in writing and subsequently the Court's decision. Awaiting Court decision. Decision of the Court received 15 December 2017 – appeal declined. Significant policy-based decision supporting provisions of AUP (OP). Court costs being sought, otherwise appeal matters complete. The Environment Court decision since appealed by the appellant to the High Court on 26 January 2018. A case management conference is scheduled for 6 March. High Court hearing set down for 3 July.		