
Resource Consent Appeals: Status Report 4 October 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 3 September 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 4 October 2018.

Comments

4. As at 26 September 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 has been one new appeal and three appeals resolved.
6. The appeal by Panuku Development Auckland opposes the decision to refuse consent to an application for a mixed use development at 198-202 and 214-222 Dominion Road and 113-117 Valley Road, Mt Eden. The development comprises four new buildings with 102 residential units, nine retail units and 115 carparks. The resource consent application was publicly notified and drew a large number of submissions. The reasons for the decline of consent by independent commissioners primarily related to adverse amenity effects from the bulk and scale of the proposal and the associated visual, shading and dominance effects.

Local board views and implications

7. Not applicable.

Māori impact statement

8. The decision requested of the Regulatory Committee is to receive this progress report rather than to decide each appeal.
9. 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

10. 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 26 September 2018	

Signatories

Authors	Robert Andrews – Principal Specialist Planner
Authorisers	Ian Smallburn - General Manager Resource Consents Penny Pirrit - Director Regulatory Services

RODNEY – Local Board Area (3 APPEALS)

Appellant	Sharley Haddon	Received	18 June 2018
References	ENV-2018-AKL-000118 Haddon v Auckland Council - BUN20440131		
Site address	488 Rahuikiri Rd & 1294 Pakiri Rd, Pakiri.		
Other parties	n/a		
Description	An appeal to the refusal of subdivision that seeks to protect 3.01ha of wetland (including buffer) at 488 Rahuikiri in return for a subsequent subdivision entitlement. The applicant is proposing a combination of one in-situ lot at 488 Rahuikiri as well as the transfer of one lot to the site at 1294 Pakiri Road.		
Iwi comments	none		
Status	Court assisted mediation took place on 12 th of July. Mediation agreement reached. Appeal can be resolved when the conditions of the agreement are met, which may take approximately 6 months. Still progressing as of 25 September 2018.		

Appellant	Kumeu Baptist Church	Received	11 June 2018
References	ENV-2018-AKL-000101 Kumeu Baptist Church v Auckland Council - BUN60069525		
Site address	68 Old Railway Road, Kumeu		
Other parties	n/a		
Description	Applicant appeal to the conditions of a consent that permits construction of a new church complex, including an auditorium, hall area, gymnasium, caretakers dwelling and school. The maximum occupancy of the church is to be 360 people, with a maximum occupancy of the school to be 200 pupils and 10 teachers. Wedding receptions, seminars and functions associated with the church and school will occur. Earthworks of approximately 9,500m ² , and 3,344m ³ .		
Iwi comments	Cultural values assessment prepared		
Status	Appeal relates to conditions only. Court assisted mediation took place on 2 August 2018. Agreement reached at mediation subject to conditions. Consent Order issued by the Court on the 18th of September and appeal is complete.		

Appellant	Rahopara Farms Ltd and Cabra Rural Developments Ltd	Received	12 December 2017
References	ENV-2017-AKL-000182 Rahopara Farms Ltd and Cabra Rural Developments Ltd v Auckland Council - BUN60069542		
Site address	1502 Weranui Road & 909 Haruru Road, Wainui.		
Other parties	n/a		
Description	The appeal relates to refusal of the consents applied for to undertake a four		

	stage 31 lot rural residential subdivision and lot relocation at 1502 Weranui Road and 909 Haruru Road, Wainui.
Iwi comments	-
Status	Proceeding to Environment Court hearing, possibly in late 2018, prior to the resolution of the High Court appeal with respect to the Environment Court decision relating to the Rural Subdivision provisions of the AUP OP. <i>Court assisted mediation to occur before the end of October 2018.</i>

Hibiscus and Bays - Local Board Area (1 APPEAL)

Appellant	Auckland Council (Community Facilities)	Received	22 December 2017
References	ENV-2017-AKL-00075 Council – SUB60069647		
Site address	Orewa Beach Esplanade Reserve, between Kohu Street and Marine View		
Other parties	Four 274 parties		
Description	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.		
Iwi comments	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.		
Status	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 amicus curiae should be appointed. Affidavits have been prepared for the pre-hearing set for 9 April 2018 that proceeded as scheduled. The Court released on 2 May 2018 its decision confirming jurisdiction over the Council's right to appeal. A pre-hearing has been set for 31 July to discuss timetabling and possible mediation dates. <i>The Court has asked the appellant to clarify the nature of the appeal and issues and the council to then respond and with mediation likely after 10 October.</i>		

UPPER HARBOUR - Local Board Area (2 APPEALS)

Appellant	Trevor Hobson and Oliver Hobson	Received	3 May 2018
References	ENV-2018-AKL-000072		
Site address	355 Dairy Flat Highway, Lucas Heights, Auckland		
Other parties	Forest and Bird Protection Society		
Description	An appeal by the applicant against Hearing Commissioners' decision to decline consent to a 4-lot subdivision in the Countryside Living Zone.		
Iwi comments	The application did not trigger any requirement for a Cultural Impact Assessment, or raise any iwi or Treaty issues.		
Status	Mediation held on 29 August 2018. Agreement for possible settlement between all parties reached at mediation. <i>Discussions continuing.</i>		

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. Settlement agreement was reached with all parties on 15 August 2018. Consent Order issued by the Environment Court on 17 September 2018.		

DEVONPORT TAKAPUNA – Local Board Area (1 Appeal)

Appellant	Loxley Hall Development Limited	Received	19 July 2018
References	ENV-2018-AKL-000119		
Site address	32-34 Tennyson St, Takapuna		
Other parties	None		
Description	Appeal against condition 22 (relating to construction hours of operation) of a resource consent for 47 apartments (BUN60069941).		
Iwi comments	The application was publicly notified and no submissions from Iwi were submitted		
Status	Memo updating status due to the Environment Court on 30 July 2018. Matter left to resolve between the parties. Discussions continuing between parties.		

WAITAKERE – Local Board Area (1 Appeal)

Appellant	Trustees of Forest Trust and Successors	Received	19 July 2018
References	ENV-2018-AKL-000145 Council: SUB-2011-63		
Site address	199 Anzac Valley Road, Waitakere		
Other parties	None		
Description	Appeal against hearing decision to uphold in part and dismiss in part a section 357 objection to conditions and costs of a subdivision resource consent (SUB-2011-63)		
Iwi comments	The application did not trigger any requirement for a Cultural Impact Assessment, or raise any Iwi or Treaty issues.		
Status	Appeal lodged on 26 July 2018. Awaiting directions from the Court.		

ALBERT-EDEN –Local Board Area (2 APPEALS)

Appellant	<i>Panuku Development Auckland v Auckland Council</i>	Received	04 September 2018
References	<i>ENV-2017-AKL-000176 Council – LUC60303721 & DIS60303722</i>		
Site address	<i>198-202 and 214-222 Dominion Road and 113-117 Valley Road, Mt Eden</i>		
Other Parties	<i>Pacific Fringe Ltd, Astrid Modrow, Chris King, John Cram, Julie Singh, June Beaumont, Krish Jayaratne, LE & JE Whiley, Michael Wang, Nancy Smith, Peter Lange, Roger Bannan, Robert Dexter, Richard Peters, Ruth Batten, Stuart Wong, Walter Kelland, Valerie Turner</i>		
Description	<i>Appeal against a hearing commissioner’s decision to refuse resource consent for a mixed use development comprising four new buildings with 102 residential units, nine retail units and 115 carparks. The commissioner’s grounds for refusal related to the bulk and scale of the proposal and the associated visual, shading and dominance effects, and the adverse effects on Special Character values from the loss of the Universal Building (a character-supporting building).</i>		
Iwi comments	<i>The application did not trigger any requirement for a Cultural Impact Assessment, attract submissions from Iwi or raise Treaty issues.</i>		
Status	<i>New appeal regarding a development that has generated media, political and local interest. Council has met on a without prejudice basis with the appellant (18 and 24 September). Awaiting directions from the Court regarding mediation dates.</i>		

Appellant	<i>View West Limited v Auckland Council</i>	Received	29 September 2017
References	<i>ENV-2017-AKL-000151 Council – R/LUC/2016/2243, LUC60114213</i>		
Site address	<i>31 Esplanade Road, Mount Eden</i>		
Other Parties	<i>Civic Trust</i>		
Description	<i>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.</i>		
Iwi comments	<i>The application did not trigger any requirement for a Cultural Impact Assessment, attract submissions from Iwi or raise Treaty issues.</i>		
Status	<i>Court directions received on 24 October 2017. The Court requires a response by 7 November as to whether parties agree to mediation. Mediation attended Wednesday, 14th February 2018. Parties agreed a timeline for an alternative proposal to be developed that would see the building retained and re-used. An evidence exchange timetable has been set. The Council has prepared all its evidence and expert caucusing progressed during the weeks 9th and 30th July. A second 8 August mediation was abandoned. <i>The applicant and 274 parties are to circulate evidence on 26 September and with a hearing set in the week 26 November 2018.</i></i>		

PUKETAPAPA –Local Board Area (1 APPEAL)

Appellant	Cadwallader v Auckland Council	Received	17 July 2018
References	ENV-2018-AKL-000139 Council -		
Site address	14 Parfitt Street, Mount Roskill		
Other Parties	Transpower		
Description	Appeal against a decision to refuse consent to relocate and modify and existing dwelling, construct two new dwellings and carry out a three lot subdivision within the National Grid Corridor Overlay.		
Iwi comments	The application was publicly notified, no submissions from iwi. No CIA requirements.		
Status	Appellant discussing modifications to the proposal with Transpower. Appeal to be allocated to the “Parties On-Hold” category. The Court issued directions with a reporting date for 31 August 2018. This has been extended as the appellant remains in discussion with Transpower. <i>Discussions between the appellant and Transpower (separate to council) remain ongoing.</i>		

WAIHEKE –Local Board Area (1 APPEAL)

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. Three s274 parties have joined. Awaiting confirmation of Environment Court mediation date. Mediation will involve both the consent appeal and the enforcement order application. The mediation scheduled for 27 April abandoned and now scheduled for 2 July 2018. Mediation held on 2 July 2018. No agreements reached between the parties.		

	<p>Caucusing between noise experts to on 5 July 2018 and a further mediation to be scheduled. No agreement reached at second mediation and matter to be set down for a hearing. The Court has confirmed a joint resource consent appeal and enforcement order hearing commencing on 7 November 2018. The appellant's evidence is due by 7 September and the Council's evidence is due by 21 September. Council to call Planning and Noise expert witnesses.</p> <p><i>Council's evidence was filed with the Court on 21 September 2018.</i></p>
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ORAKEI (1 appeal)

Appellants	Summerset Villages (St John) Limited v Auckland Council	Received	10 August 2018
References	ENV-2018-AKL-000160		
Site address	55-57 Ripon Crescent, Meadowbank		
Applicant	Summerset Villages (St John) Limited		
Other parties	Andrew and Jeanette Hayes and others		
Description	An appeal against a decision to refuse an application to construct and operate a retirement village consisting of 7 buildings with 344 residential units at 55-57 Ripon Cres, Meadowbank		
Iwi comments	The resource consent application was publicly notified and determined by commissioners in accordance with the RMA. Involved stormwater discharge and removal of SEA. CIA provided by Ngai Tai ki Tamaki.		
Status	Council directed to report back to the Court by 24 September 2018 on progress regarding any negotiation/mediation. <i>Awaiting further directions from the Court and confirmation of a mediation date.</i>		

MAUNGAKIEKIE TAMAKI (1 appeal)

Appellants	Windward Properties Ltd v Auckland Council	Received	28 June 2018
References	ENV-2017-AKL-000130		
Site address	57 Walls Road, Panmure		
Applicant	Windward Properties Limited		
Other parties	n/a		
Description	Appeal against council's decision to refuse resource consent (non-notified) to establish non-accessory office space within an existing building in the Business – Light Industry zone.		
Iwi comments	No iwi issues. The application was considered in accordance with the RMA.		
Status	Awaiting directions from the Court and confirmation of a mediation date. Council to provide a memorandum to the Court by 7 August 2018 stating the outcome of any negotiation / mediation between the parties, and a timetable for the filling and exchange of evidence and expert caucusing. The parties have met twice - 6 and 24 August 2018 to narrow the scope of the issues and discuss possible		

	resolution. A joint memorandum has been submitted to the Court requesting court-assisted mediation. Mediation scheduled for 3 October 2018 to further discuss possible consent conditions that address planning policy issues.
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MANGERE-OTAHUHU (1 appeal)

Appellants	Travama Trust Company Limited v Auckland Council	Received	13 June 2018
References	ENV-2018-AKL-000110 LUC60129019		
Site address	91 Huia Road Otahuhu		
Applicant	Travama Trust Company Limited		
Other parties	None presently		
Description	Appeal against council's decision to refuse retrospective resource consent for a boarding house activity within an existing building in the Business – Light Industry zone.		
Iwi comments	No iwi submissions or known issues.		
Status	Awaiting directions from the Court and confirmation of a mediation date. The Court has confirmed mediation however a date is yet to be set. The appeal proceeded to mediation on 30 August without settlement. The parties are to inform the Court of a propose evidence timetable in the coming week. Following mediation the council has since been informed that the appeal has been withdrawn. The appeal is complete.		

HOWICK (1 appeal)

Appellant	Drinkrow Industrial Estates Ltd	Received	12 June 2018
References	ENV-2018-AKL 0000107 Council – LUC60292029		
Site address	11 Cryers Road		
Applicant	Drinkrow Industrial Estates Ltd		
Other Parties	Waste Management NZ Ltd, Lewis Holdings Ltd, David Levene Foundation – s274 parties		
Description	Appeal by appellants against the decline of their consent application to establish a mixed use development comprising a retail, commercial and office building and a separate childcare centre and gym building, with associated outdoor areas and parking in the Heavy Industry zone. Main issues in contention include appropriateness of the proposed activities in the HIZ, adverse air quality effects for children, potential health and safety risks, reverse sensitivity effects on existing activities.		
Iwi comments	No iwi issues. The application was considered in accordance with the RMA.		
Status	New appeal that has a number of interested parties. The Court has asked parties to confirm whether they agree to Court assisted mediation. Council has requested that the matter of activity status be determined at a preliminary hearing. A judicial teleconference was held on 31 July and the legal counsel for all parties will caucus regarding the interpretation of the relevant provisions and report to the Court before the Court decides a course of action. A pre-hearing conference held on 27 August has set a mediation date of 27 September.		

FRANKLIN – Local Board Area (4 APPEALS)

Appellant	Waharau Trust	Received	20 July 2018
References	ENV-2018-AKL 000143 Council – CST60082314		
Site address	Western Firth of Thames		
Applicant	Western Firth Marine Farming Consortium		
Other parties	The Pukorokoro Miranda Shorebirds Centre; Te Whānau-A-Haunui (Royal Family); The Kaiāua Citizens and Ratepayers Association; The Kaiāua Boating Club ; Ngati Whanaunga ki Wharewaka and Surfbreak Protection Society Inc.		
Description	Appeal by a submitter opposing the grant of consent to establish, operate and maintain a marine farm in the western Firth of Thames. The farm will be used to grow and harvest New Zealand Green- lipped mussels. The application is for a 447ha farm within a total application area of 664ha located some 5km to 8km offshore. The appellant seek conditions that will better address concerns around water quality and marine ecology effects, visual amenity and effects on recreational opportunities. Other matters raised at the hearing concerned possible effects on wave breaks and landscape effects.		
Iwi comments	A number of cultural matters were canvassed at the hearing. The Hauraki Maori Trust Board (that represents 12 iwi of Hauraki) has a longstanding participation in aquaculture in Tikapa Moana(Hauraki Gulf) and is a member of the applicant consortium. Te Whanau–A-Haunui as a submitter raised issues to ensure kaitiaki, the mauri and customary practices are not adversely effected.		
Status	A direction from the Court seeks the parties to summarise issues, a possible mediation and evidence timetable and the likely witnesses to be called. Reporting date extended to 28 September 2018 following lodgement of multiple 274 notices. Report to Court due 28 September.		

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		
Other parties	Auckland Transport, Clevedon Protection Society, Clevedon Cares Incorporated, Clevedon School Board of Trustees and Clevedon Conversations - 274 parties		
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	Parties are in discussion in regards to seeking a mediation date with the Court in		

	<p>early May. Mediation proceeded on 21 and 22 May 2018. Further discussion continues between the parties with the intention of either settlement or minimising the outstanding matters. A draft consent order was lodged with the Court on 10 June that deals with all party matters (except those of Auckland Transport) and incorporates changes to conditions as generally agreed at the mediation. The Court granted a court order that modifies the agreed conditions apart from those (conditions 65 -66) relating to the Auckland Transport road pavement rehabilitation issues that remain outstanding. <i>This also resolved the related Clevedon Protection Society appeal.</i> An application to commence consent with the exception of the AT matters was granted unopposed. <i>AT and FHL reported to the Court on 24 September 2018 noting acceptance of conditions as currently written however with a hearing option remaining as to their implementation.</i></p>
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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. Awaiting signed and sealed consent order docs from the Court. The Court has declined to sign the consent order as it requires further information regarding potential landscape and character effects. <i>The appellant is continuing to consider their options.</i>		

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		

	<p>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. Council filed its submissions on 31 August and a hearing has been set for 9 October 2018.</p>
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