

Landco Mt Wellington Ltd v Auckland City Council

Environment Court Auckland

A 035/2007

16, 17, 18 April; 4 May 2007

Judge C J Thompson, Environment Commissioners J R Mills and
T Fookes

Plan change proposal — Medium/high-density residential development — Sustainable management — Submissions against proposal — Roding concerns — Effects on existing retail centres — Management of stormwater — Effects on neighbouring volcanic cone — Resource Management Act 1991, ss 5, 32, 271A, 274 and 293; Local Government Amendment (Auckland) Act 2004; Reserves and Other Lands Disposal and Public Bodies Empowering Act 1915.

The site of the former Mt Wellington Quarry was formerly owned by Patras Investments Ltd and Winstone Ltd, who lodged an application for a private plan change which the respondent, the Auckland City Council, declined. The appellant bought the land in 2001 and became the successor in the appeal to the Environment Court against the declining of the original proposal. The appellant's intentions for the site, however, coincided with the respondent's wish to see it developed, primarily, as medium/high-density residential. By the time of the hearing the parties were in complete accord in their views of how the land should be developed. As now refined, the design of the development would provide some 2400 housing units, together with a retail and commercial centre, a school and reserves. The revised proposal would require the rezoning of the site. Development proposals for approximately half the site had already been resolved by way of a partial consent order and a plan change. Development of the balance had been agreed between the appellant and respondent but remained in contention from what were now s 274 or s 271A Resource Management Act 1991 parties. The issues raised by the opposing parties were: adverse effects on the roading network created by the additional traffic generated by the development; adverse effects on the existing retail centres near the site; the management of stormwater; and adverse effects on the volcanic cone of Maungarei/Mt Wellington.

Held (approving the plan change, with the exception of the Maungarei issue)

1 The best that could be said about the traffic issue was that the traffic effects within and immediately surrounding the area could be managed effectively. It was for the Council and the other roading and transport organisations to manage the wider network, and public transport, to cope with the present loads and future growth (see para [18]).

2 There might be some of the present spend in the existing retail centres lost to the new site, but a community of 6000 people in a relatively confined and discrete area had to have at least a reasonable range of convenience shopping available to it. To do otherwise would not provide for the wellbeing of the community. What was proposed seemed to be appropriate to that end (see paras [23], [26]).

3 The discharge from the whole Ellerslie–Waiatarua catchment to the Orakei Basin operated under a comprehensive Council consent and the proposed discharges could be included in that. The stormwater management had been well thought through and met the requirements of the Resource Management Act (see para [32]).

4 Rows of two-storey townhouses, particularly the block of nine, would be visually intrusive and a physical barrier for persons wishing to climb the cone's northern flank. Coupled with that was the value to residents and visitors seeing the cone emerge from the ground level rather than from behind rows of houses. It was appropriate to pass the issue back to the appellant and the respondent with the request that they reconsider it and, if they wished, to present a revised proposal to the Court. On that issue, this decision should be regarded as an interim one (see paras [42], [45]).

Cases mentioned in judgment

Capital Coast Health Ltd v Wellington City Council (Environment Court, Wellington, W 4/00, 19 January 2000).

Discount Brands Ltd v Westfield (New Zealand) Ltd [2005] 2 NZLR 597 (SCNZ).

Appeal

This was an appeal from a decision of the Auckland City Council declining an original plan change proposal for a former inner city quarry.

D A Kirkpatrick, V J C Rive and C J Law for the appellant.

W S Loutit and M L Quin for the respondent.

A McNair for Progressive Enterprises Ltd, Westfield New Zealand Ltd and Works Infrastructure Ltd.

D A Allan for Kiwi Income Property Trust, Kiwi Property Management Ltd and Sylvia Park Business Centre Ltd.

M Dryden for the Alistair Dryden Family Trust.

C Foley for the Ellerslie Business Association.

P R Gardner for PR and TH Gardner.

R Green for R, M and N Menzies.

R C Mullins appeared in person.

K A Remetis and A Bader for the Glen Innes Business Association.

G Smith for the Auckland Volcanic Cones Society Inc.

P Smits for the Remuera Community Committee Inc.

D H Stewart appeared in person.

K M Stone for the St Heliers/Glendowie Residents Association Inc.

M K Twomey appeared in person.

JUDGMENT OF THE COURT. [1] The population of Auckland region is predicted to increase from 1.2m to more than 2m over the next 50 years, with Auckland City's population increasing by about 142,000 people over the same period. This expansion must obviously be planned and provided for. The Auckland City Growth Management Strategy of 2003 identifies the land involved in this proceeding, the site of the former Mt Wellington Quarry, as one of only seven priority 1 sites in the City for residential development. This has been reinforced by the Council initiated plan change 175 (PC 175), developed in response to the Local Government Amendment (Auckland) Act 2004, also identifying the site as priority I for urban living growth. We are informed that no submissions opposing the residential development of the site under PC 175 were received, and the Council is expected to deliberate on the plan change in May 2007.

[2] The quarry site was formerly owned by Patras Investments Ltd and Winstone Ltd who lodged an application for a private plan change (PC 7). The Council declined it in November 2000, being dissatisfied with its primarily commercial/industrial focus for the land. Landco Mt Wellington Ltd bought the land in 2001 and became the successor, as appellant, in the appeal to this Court against the declining of the original proposal. However, Landco's intentions for the site coincided with the Council's wish to see it developed, primarily, as medium/high density residential. The thinking of Landco and the Council has continued to evolve and by the time of the hearing those parties were in complete accord in their views of how the land should be developed. As now refined, the design of the development will provide some 2400 housing units of various types and densities for about 6000 people, together with a retail and commercial centre, a school, and reserves. All services, including at diaconate stormwater system required to drain the lowered floor of the quarry pit, will be provided. Specifically the revised proposal will require the rezoning from business 7 (the existing quarrying zone) of 33 ha to modified residential 8b; 7 ha to modified residential 8c; 2.75 ha to business 2; 3.3 ha to special purpose 2 (for a school); 5.5 ha to open space 1 for a pond system (stormwater management); 0.5 ha to open space 2 (for part of the reserve network), and provisions for roads. In general terms, the proposal is that development within the site will be controlled by the existing district plan rules for the various zones, and a structure plan to be incorporated into the district plan. Development that does not accord with the structure plan will be a discretionary activity.

[3] Development proposals for approximately half of the 110 ha site have already been resolved by way of a partial Consent Order finalised in 2004 and a plan change (PC 128) effective from July 2005. Principally, they comprise of an area of Business 4 land along the Lunn Avenue frontage to the south, above the steep and up to 40-m high face created by past quarrying; 5.4 ha of residential land along the College Avenue frontage to the northwest, and about 28 ha of residential in the north-eastern portion of the old quarry floor. Development of the balance of about 50 ha of the old quarry floor, running south and east towards the cone of Maungarei, or Mt Wellington, has been agreed between Landco and the Council but remains in contention from what are now s 274 or

s 271A parties. The development has been christened *Stonefields* by Landco and for convenience we will use that name.

Section 293 procedure

[4] By an Order made in 2006 the Court approved an application by Landco (supported by the Council) to re-notify what they had agreed as a revision of the original proposal, still the subject of the appeal, under the pre-2005 amendment version of s 293 of the RMA. This creates a somewhat hybrid procedure where persons who wish to submit on what is proposed under the revised proposal can make submissions directly to the Court, rather than to the Council as a first step. This procedure was criticised by some of the parties who did appear at the hearing, they having the view that people would be deterred by the greater formality, and perhaps the cost, of becoming involved in the appeal to the Court. There may be some validity in that criticism, but the procedure is provided by the RMA, and we do note that 144 individuals and bodies made submissions of whom, on our count, 84 opposed the proposal for one reason or another. We have noted above the parties who appeared at the hearing. They include some of those who were parties to the original appeal, and those who joined in the s 293 process. The parties represented by Ms McNair and Mr Allan were either neutral or supported the revised proposal. The balance, who opposed it, supported their opposition by way of evidence and/or submissions.

[5] We record that at the outset of the hearing, as a matter of procedural precaution, all parties present were asked whether any still wished to argue in favour of the relief sought in the original (that is, pre-s 293 application) appeal. None did, and the only focus of evidence and submissions was the revised proposal.

The issues

[6] The issues raised by the opposing parties were in four groups; – adverse effects on the roading network created by the additional traffic generated by the development; adverse effects on the existing retail centres near the site; the management of stormwater, and adverse effects on the volcanic cone of Maungarei/Mt Wellington.

[7] It may be convenient to note here that the Auckland Regional Council supports the Landco/City Council position, it being satisfied that what is now proposed accords with the Auckland Regional Growth Strategy and the Auckland Regional Policy Statement.

Site location

[8] To put the site in a geographical context, the long established residential areas of Remuera and St Johns lie little more than a kilometre or so to its north. The Ellerslie retail centre is about 2.5 km to its west. The Panmure shopping centre is immediately to the southeast of Maungarei, and the Glen Innes shopping centre is a kilometre or so to the northeast. The University of Auckland has an expanding Tamaki Campus between the site and Glen Innes, and the Auckland Netball Association has established a major complex which, at capacity, will have 46 outdoor and eight indoor courts immediately opposite the proposed retail centre. Just

to the north of the netball complex is the Vodafone Tennis Centre. About 3 km to the south, abutting the Southern Motorway, is the very large and still developing Sylvia Park office, entertainment and retail complex.

Traffic

[9] That Auckland City has major and seemingly ever-increasing traffic problems comes as news to no one. Proposed solutions seem to come and go, being discarded as inadequate, unworkable or unaffordable, while the volume of cars and trucks on the roading network continues to grow.

[10] We need to begin this part of our decision by stating three clear premises. First, this appeal is not the opportunity to solve the traffic problems of Auckland City or even just the Tamaki Edge. The proposal stands or falls on its own merits, and its proponents are not required to resolve infrastructure problems outside its boundaries although they may be required to contribute, by way of financial contributions, to the cost of doing so.

[11] Secondly, Auckland's population growth seems inexorable, and will occur over the projected timeframe, whether or not this proposal goes ahead. We understand those who say that we should not approve this proposal until the wider traffic infrastructure, already under pressure, has been upgraded sufficiently to absorb its projected output. In an ideal world that might be a viable course of action, but the world is not ideal. If 6000 people cannot be housed in Stonefields, the simple consequence will be that they will go elsewhere, almost certainly further away from the hubs of employment, education and recreation the city provides. They will have to travel further and for longer, placing even greater demands on the roading network and other transport infrastructure. That factor is no doubt one of those which led to the Stonefields site being identified as priority 1 for residential growth (see para [1]).

[12] Thirdly, the evidence from the traffic engineers is that, as embodied in the Auckland Regional Land Transport Strategy 2005, it is accepted as no longer possible to continue to provide road space to vehicles, sufficient for congestion free movement. The corollary is that the region needs to introduce measures that reduce demand for travel, particularly by private vehicles. To that end, they regard congestion as, partly, an educative and motivating process to encourage non-car travel.

[13] Mr Brett Harries, Landco's consultant traffic and transportation engineer, applied various models to estimate peak hour vehicle trips, external to the site, likely to be generated in the years 2011 and 2021. The EWE/2 model produces this result, in table form:

2-hour vehicle trips in EMME/2 model

Year	AM Peak Period		PM Peak Period	
	Inbound	Outbound	Inbound	Outbound
2011	890	2869	2856	1159
2021	675	2486	2776	891

The impact of those volumes, whether inbound or outbound, will of course be greatest at points close to the site itself. As the vehicles move away to their various destinations, or begin to return to the site from them, their effects will be more diffuse. So the greatest need for provision to manage the effects of increased traffic is in the roads immediately surrounding the site.

[14] As part of the overall development Landco is itself undertaking, or is fully or partially funding, very substantial work on the roading network immediately surrounding the site. Some of that is being done now as part of the developments authorised by the 2004 consent order and plan change 128. The following intersections are to be upgraded: Lunn Avenue/Ellerslie-Panmure Highway; Abbotts Way/Ladies Mile; Lunn Avenue/College Road/Abbotts Way; College Road/Road 1 (the main internal access road); College Road/Merton Road; College Road/St Johns Road; College Road/Norman Lesser Drive; Lunn Avenue/Harding Avenue/Marua Road, and Abbotts Way/Grand Drive. In addition, Lunn Avenue is to have a flush median and College Road is to be widened from two to four lanes. According to Mr Garson Bell, the Council's consultant traffic engineer, a further four intersections in the surrounding area are noted as requiring upgrading when the Stonefields development reaches defined trigger points.

[15] With this work done, it is the view of Mr Harries, Mr Bell and Mr Phillip Brown, a traffic engineer briefed by Landco to examine the design and operational details of the intersections and access arrangements for the proposal, and of Mr Karl Hancock, a further traffic engineer who reviewed all of the material for the Council, that the effects of the traffic to be generated are manageable. Mr Brown puts it this way:

... the new intersections to be constructed will also function at an acceptable level, with others potentially operating at or close to capacity. Despite the latter point, it is my opinion that the resulting situation will still be acceptable given the limitations of the modelling for such a distant time period (and the conservative assumptions used), and reflects the effects of other growth that is expected to occur in the region.

While we certainly recognise the concerns of people who already suffer the frustration and cost of clogged roads, there was no qualified evidence to dispute the consensus view of the experts that, while not perfect, the proposal could be made to work.

[16] There is one further issue about the wider traffic network that requires mention. The management of traffic flows between the city and Manukau, including the Tamaki Edge, may (and it presently is no firmer than *may*) be by way of the Auckland to Manukau Eastern Transport Initiative (the AMETI). The present expectation is that, if built at all, the AMETI will have a connection to the Ellerslie-Panmure Highway/Mt Wellington Highway intersection, to the south east of Stonefields, and on the other side of Maungarei from it. Mr Bell confirms that because of the uncertainty about the AMETI analysis has been carried out using two alternative scenarios; with the AMETI, and without it.

The viability of the proposal from a traffic point of view is not reliant on the existence of the AMETI.

[17] The Council is satisfied that, within the site, adequate provision has been made for bus routes and bus stops. The siting of the school in the middle of the development will encourage, so far as it can, walking to and from it.

[18] We are certainly not sanguine about the traffic situation, but then nobody is. The best that can be said about it is that the expert evidence is that the traffic effects within and immediately surrounding Stonefields can be managed effectively. It is for the Council and the other roading and transport organisations to manage the wider network, and public transport, to cope with the present loads and future growth, wherever in the region that might occur.

Effects on retail centres

[19] The plan is to provide that the Stonefields town centre will have no more than 4500 m² of retail space, including a superette of no more than 500 m²; and a further 7500 m² of *non-residential* space. The latter could accommodate, for instance, medical and professional practices, hairdressing and beauty salons, gyms, and other commercial and service operations. The size of the superette can be put in context by the evidence of Mr Timothy Heath, Landco's property consultant and retail analyst, that newer supermarkets in the Auckland region are generally in the 4000 – 5000 m² range. Presently of course, no one can know what mix of sizes and types of shop could be established, but there is no evidence indicating a likelihood of anything other than a typical suburban mix appropriate to the socioeconomic demographic of its catchment.

[20] We heard from representatives of the Business Associations of Glen Innes and Ellerslie; both of them, Glen Innes in particular, having quite substantial shopping centres. Mr Murdoch Dryden manages the assets of the Alistair Dryden Family Trust, among them a commercial and retail property in Glen Innes which, coincidentally, is broadly of the size proposed for the Stonefields retail. We were able to see these centres, including the Trust's property, on our site visit. Mr Dryden told us of difficulties he had had, some little time ago, in arranging good tenancies of the Trust properties (although these are now satisfactory) and of his concerns that more retail space in the general area will bring back those difficulties. According to an ASB study Ms Remetis referred to, Auckland has something like 30 per cent more retail space per capita than Sydney, and she expressed the view that the Auckland region already has excess retail capacity. We do not have enough knowledge to interpret the Sydney versus Auckland figures but we do note that, although expressly invited to do so, none of the witnesses could nominate a shopping centre in the relevant area that has more than a normal percentage of untenanted retail space. That indicates to us that, presently at least, supply and demand are reasonably in balance.

[21] The introduction of (eventually) 6000 residents into Stonefields, where none presently reside, is obviously going to have effects on local, and even regional, retail spending. Mr Heath's figures

seemed to assume an annual retail spend, per capita, of about \$16,000. Dr John Small, the Council's consultant economist, was a little more conservative, suggesting a figure in the "low to mid tens". For the purpose of an illustrative exercise we can adopt a figure in that lower range; say \$12,000. That would generate annual retail spending power of about \$72M from the residents of Stonefields, where none exists at present.

[22] It is a given that not all of that will be spent within Stonefields – there will not be a sufficient variety of stores or range of products to satisfy the breadth of demand. Mr Heath and Dr Small agreed that a *convenience* shopping centre, without a true supermarket, would be likely to attract between 10 per cent and 15 per cent of the retail spend. That is reinforced by the figures from Ms Remetis which indicated that the average percentage of total spend generated in their immediate catchments for the centres of Glen Innes, Panmure, St Heliers and Ellerslie is about 16.5 per cent; although we do note that at least Glen Innes and Panmure have full size supermarkets. Ellerslie, which does not have a full supermarket, was significantly lower than the others, at 4.1 per cent. The 10 – 15 per cent figure would mean that Stonefields could be expected to attract between \$7.2m and \$10.8m – leaving between \$64.8m and \$61.2m to be spent elsewhere. To allow a good margin for error, we could say that the Stonefields portion might be 25 per cent. Even that means that the Stonefields portion would be \$18m, leaving \$54m to be spent elsewhere. No one can presently know exactly how much those figures might prove to be, or where the money will actually be spent, but it is obvious that some of it, and quite likely most of it, will go to the surrounding retail centres such as Panmure, Glen Innes and Ellerslie, to their obvious benefit.

[23] That there might be some of the *present* spend in those centres lost to Stonefields: ie that it will attract shoppers from outside its immediate catchment, is certainly possible. But logic says that what comes in to Stonefields will be far less than what goes out, for the very same reason that Stonefields residents will do most of their shopping elsewhere: – a lack of range and choice of product in a small centre. For convenience shopping, why would a Glen Innes resident travel past a Glen Innes shop and go to one in Stonefields to buy an identical product? If it should be that the product is not identical; for instance a Stonefields bakery might become known for its superior croissants at a competitive price, then that will be a simple issue of consumer choice and not within the purview of the RMA.

[24] That local people should be concerned that they do not lose what they value by way of town, or neighbourhood, shopping centres is quite understandable. But the line between effects that the RMA is concerned with, and what is in the realm of the market and consumer choice, is very clear and must be observed. Blanchard J put it this way in the Supreme Court's judgment in *Discount Brands Ltd v Westfield (New Zealand) Ltd* [2005] 2 NZLR 597:

[120] The Court of Appeal considered that only "major" effects needed to be considered, since only then would the effect on the environment be more than

minor, in terms of s 94(2)(a). But in equating major effects with those which were "ruinous" the Court went too far. A better balance would seem to be achieved in the statement of the Environment Court, which Randerson J adopted, that social or economic effects must be "significant" before they can properly be regarded as beyond the effects ordinarily associated with trade competition on trade competitors. It is of course necessary for a consent authority first to consider how trading patterns may be affected by a proposed activity in order that it can make an informed prediction about whether amenity values may consequentially be affected.

[25] There is simply no evidence from which we could draw a conclusion that the social and Economic wellbeing of any of these communities, and the people who reside and work within them, would be *significantly* adversely affected by the Stonefields retail and other non-residential space to be provided for in the plan.

[26] Conversely it is the case, as even the critics of the proposal acknowledge, that a community of 6000 people in a relatively confined and discrete area must have at least a reasonable range of convenience shopping available to it. To do otherwise would certainly not provide for the wellbeing of that community. What is proposed seems to us to be appropriate to that end, and there is no basis for us to hold that it would be *unsustainable* in resource management terms.

Stormwater

[27] This was an issue pursued by the Remuera Community Committee Inc. In brief, the Committee opposed the ultimate disposal of the site's stormwater into the Orakei Basin, being concerned about pollution of the Basin and Hobson Bay. It suggested that the site's stormwater should be managed by a gravity discharge into the Tamaki Estuary, rather than being reliant on a prone-to-failure pump system raising it to the Waiatarua wetland and thence to the Orakei Basin. It argued, with some apparent logic, that if the pump system failed during, say, a 100-year flood event the result could be disastrous.

[28] As mentioned, the stormwater system is necessarily quite elaborate. The floor of the quarry falls generally towards the Lunn Avenue side where there presently is a collection pond from which the stormwater has, for a long time, been removed by pump out of the quarry pit, across College Road, beneath the Remuera Golf Club and discharged into the Waiatarua wetland, and thence to the Orakei Basin. The system for the development will follow the same general route. The existing pond, to be kept as a detention pond, will be supplemented by two forebays, primarily for sediment collection. The water will then, as now, be pumped up and out of the development along the same route. The system has been designed around providing 36 hours storage capacity for a 100-year event (that is, 1 per cent AEP), on the assumption that such an event will also disrupt electricity supply, requiring back up generation capacity to be brought in to power the pumps. As a "last ditch" measure, a plan for the evacuation of Stonefields will be put in place.

[29] From the evidence of Mr Murray Menzies, a specialist water resources engineer who has been advising the Council on the project, we note that performance criteria for the system will be:

- the ability to receive the runoff from a 1 per cent AEP storm event without flooding any habitable floors within the development (this exceeds the requirements of the Building Act, which requires protection from a 2 per cent AEP event);
- the removal of 75 per cent of suspended solids from stormwater runoff, including the removal of gross pollutants prior to the water leaving the site;
- treatment to a standard which ensures that there are no adverse effects on the Waiatarua wetland, in terms of both quality and quantity;
- avoiding water quality problems in dry or hot weather conditions;
- the ability to pump the pond completely empty; and
- safeguards for public access to the ponds.

We note that as part of the steps to protect the quality of the Waiatarua wetland, all buildings on the site will be subject to a covenant forbidding the use of roofing materials containing copper or zinc.

[30] Some stormwater will be extracted from the collection pond and pumped to a cistern at the highest point of the site. From there it will be reticulated around Stonefields by a separate system as a non-potable water supply for garden watering, car washing and so on.

[31] The alternative of discharging stormwater to the Tamaki Estuary was not pursued because the Council wished to maintain a minimum flow to the Waiatarua wetland which could not be met without the Stonefields discharge.

[32] The discharge from the whole Ellerslie–Waiatarua catchment to the Orakei Basin operates under a comprehensive ARC consent and the proposed discharges can be included in that. Overall we are satisfied, as are the two Councils, that stormwater management has been well thought through and meets the requirements of the Act.

Maungarei – Mt Wellington

[33] The south-east of the quarry site abuts the Mt Wellington Domain, which is the volcanic cone known as Maungarei or Mt Wellington. With the exception of the site, the cone is mostly ringed by residential or industrial/commercial development. The Auckland Volcanic Cones Society Inc expressed concern that advantage had not been taken of the opportunity to better integrate Maungarei into the development: – specifically, the Society opposed the taking of residential development up to the Domain boundary.

[34] Landco and the Council have agreed that the part of the site adjoining the Domain will be zoned Residential 8b. Along this boundary, except for reserve land immediately east of Gollan Road, it is intended to build two storey town houses. There will be two groups of them, one of thirteen units side-by-side, and one of nine units. They are to be separated by a relatively small open space to provide a viewshaft from what is presently the quarry floor to Maungarei. Public access to the Domain will not be provided there.

[35] The portion of the site to the west of the townhouses, immediately below Gollan Rd and in front of the cliff formed by quarrying operations has already been rezoned under the Partial Consent Order and five to six storey apartment blocks are to be built there. Even at 15 – 20 m height, they will be considerably lower than the cliff and will not impede the view of Maungarei from the balance of the site.

[36] The Society based its submission on the intentions of the Council's planning documents, the actions being taken to achieve world heritage status for the Auckland volcanic field, of which Maungarei forms a significant part, and the Council's scheduled management review of Maungarei as a heritage landscape feature. The planning documents included:

- Auckland City's Landscape and Features Management Strategy (1999) covering the whole volcanic field within the city, including Maungarei, with four strategy objectives to identify the field's important qualities, including those that need to be enhanced, identify potential threats, and establish principles to guide decision making on future land use and enhancement;
- the City's district plan, section 5C.2.1, where "Natural Resources – Landform" refers to "Volcanic Cones" across several matters:
 - "They are of considerable importance to Maori and are of national and international significance because of this special relationship, their archaeological, their geological, and their landscape importance";
 - the importance of views of these dominant natural features, and the need for the plan to protect these views;
 - the preservation of the visual integrity of the cones, including ensuring "that development of private land is sympathetic to the volcanic feature";
- the Proposed Auckland Regional Policy Statement, ch 6 – Heritage Issue 6.2.6: Auckland's Volcanic Field, which states inter alia:
 - "The volcanic cones, explosion craters and associated tuff rings are outstanding natural and heritage features of the Auckland Region. Their physical and visual integrity, and social, cultural, historical and landscape values can be adversely affected by subdivision, use and development that directly impacts on their structure, or by inappropriate development in surrounding areas";
 - "Important views to the cones from urban Auckland and their value as outstanding natural features can also be compromised by inappropriately located, or inappropriately sized development".

[37] We accept that the Council has provided urban design principles and it regards these as being met by the proposal. While the principles make no reference to the landscape interface between Maungarei and the development, it is a principle to "Promote well-defined active edges to all public space".

[38] Landco and the Council acknowledge the landscape significance of Maungarei, but the Council is not interested in taking the part of the site abutting it as part of its reserves contribution because of its steepness, and that to remedy the effects of quarrying work, it requires earthworks which will further reduce its usefulness. We accept also that "it is generally inappropriate to zone private land for open space purposes against the consent of the land owner" (see *Capital Coast Health Ltd v Wellington City Council* (Environment Court, Wellington, W 4/00, 19 January 2000)).

[39] We were also referred to the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1915 as legislation relevant to the cone, which would be complied with. This was not part of the Society's case, and it does not influence our consideration of the issue, even though a positive response to the Society's case would be sympathetic to the intentions of the Act.

[40] We appreciate that further assessments of effects will be made as the subdivision and land use consent process develops, and that the site's reserve land is presently largely indicative only. But we note from the evidence of Ms Karen Bell, the council's planner, that subdivision will be a restricted discretionary activity where it is in accordance with the structure plan. We are not confident therefore that the Council will have the ability to require land being left clear of development at the subdivision stage, especially when the structure plan says: "All subdivision and development must be in accordance with that Structure Plan". It would seem that the matter needs to be resolved at this structure plan acceptance stage, rather than later.

[41] It is evident that the parties are approaching the issue of Maungarei from different perspectives. Landco and the Council have judged that the part of the site adjoining the Domain is unsuitable for active recreation, preferring instead to assign flat land on the quarry floor for that purpose. Secondly, they have considered Maungarei as a landscape feature to be viewed from, across and beyond the site. View shafts have been provided, and they are satisfied that Maungarei's prominence ensures it will retain its dominance when viewed from the site. Thirdly they have seen it as an opportunity to have further residential units in the total development of 2400 units. Fourthly they have eliminated the option of zoning the land in question as some form of open space because Council would be required to purchase it. The Society has approached the issue as one of either better integrating, or largely excluding, Maungarei from the development. It believes that by bringing the lower slopes of the cone into the development its significance for the local and regional community will be maintained and enhanced. The same can be said for people outside the Auckland Region, and overseas.

[42] We believe that the rows of two storey townhouses, particularly the block of nine, between the domain boundary and Road 53 will be visually intrusive and a physical barrier for persons wishing to climb the cone's northern flank. The visual intrusive point is demonstrated by the existing residential and commercial/industrial developments to the east and west of the proposed townhouse area. Coupled with this is the value

to residents and visitors of seeing the cone emerge from the ground level rather than from behind rows of houses.

[43] Clause 3.5 of PC 7 refers to "Parks and Reserves". While it provides for parks and reserves as public open space, consideration is only given to land within the site. This includes interfaces between reserves and residential development. There is no explicit acknowledgment in cl 3.5 of adjoining significant public land such as Maungarei. This means that when one reaches the explanation at cl 3.7.4 (Financial Contributions, Works and Services Conditions and Development Contribution in Relation to Transport) providing that "Specific consideration is to be given to the coordination of the public open space and the street network *as well as recognising those important features located outside the site*" (emphasis added), we doubt whether it will have much impact on decisions.

[44] Our attention was drawn to the acknowledged significance of Maungarei to tangata whenua, and note the intention to retain the Iwi Trail. This begins near the reserve adjacent to Gollan Road and continues west, below the Lunn Avenue boundary of the site, to College Road. By removing the block of nine townhouses, it would seem possible to extend the trail further to the east, across the foot of Maungarei, better enabling access.

[45] We would like to see the development, where it adjoins the Domain, redesigned to recognise the issues raised by the Society. There may be several ways to do this, perhaps by removing the block of nine townhouses and using that part of Road 53 as the edge between the development and the northern slope of Maungarei. We have a clear view too that the two residential sites proposed for the eastern end of Gollan Road should be removed, and that part of the site left open. It is appropriate at this stage to pass the issue back to Landco and the Council with the request that they reconsider it and, if they wish, present a revised proposal to the Court. On that issue, this decision should be regarded as an interim one. We ask that a revised proposal be presented within 15 working days of the issuing of this decision.

Section 32

[46] For completeness, we should perhaps add that there was no separate argument that the requirements of s 32 had not been met. We are satisfied that the analysis has been robust, resulting in a plan change proposal that, with the exception of the issue of the Maungarei cone, will meet the requirements of s 5 of the RMA.

Costs

[47] For the moment, costs are reserved.

Reported by: Rachel Marr, Barrister and Solicitor