

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2023] NZEnvC 251

IN THE MATTER OF an appeal under clause 14 of the First
Schedule of the Resource Management
Act 1991

BETWEEN SHORTBREAD LIMITED
(ENV-2023-AKL-000044)

Appellant

AND HAMILTON CITY COUNCIL
Respondent

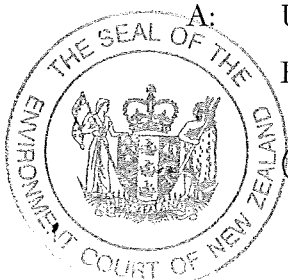
Court: Environment Judge S M Tepania sitting alone under s 279 of the
Act

Last case event: Joint memorandum in support of draft consent orders dated
31 August 2023

Date of Order: 20 November 2023

Date of Issue: 20 November 2023

CONSENT ORDER



A: Under section 279(1)(b) of the Resource Management Act 1991 (**the Act**), the
Environment Court, by consent, orders that:

- (1) Appendix 2: Structure Plans in Proposed Plan Change 5: Peacocke
Structure Plan to the Operative Hamilton City District Plan be

amended in accordance with **Attachment A** to this Order to amend the indicative location of the Stormwater Management Device; and

(2) the appeal is otherwise dismissed.

B: Under section 285 of the Act, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to an appeal by Shortbread Limited against the decisions of Hamilton City Council (**the Council**) on Proposed Plan Change 5 (**PC5**) to the Operative Hamilton City District Plan (**ODP**) in relation to Shortbread Limited's submissions seeking amendments to the relevant structure plan maps to change the indicative location of a Stormwater Management Device (**SMD**) on their property at 66-67 Peacockes Lane (**the Property**).

[2] The parties jointly filed a memorandum and a draft consent order on 31 August 2023 seeking to resolve Shortbread Limited's appeal in its entirety.

Background

Original submission and PDP Decision

[3] PC5 is a Council-led plan change pursuant to clause 2 of the First Schedule to the Act which proposes to replace the existing Peacocke Structure Plan with a new Peacocke Structure Plan to enable the urbanisation of the Peacocke Growth Cell.

[4] Shortbread Limited made a submission and a further submission seeking amendments to PC5, including to the maps in Appendix 2: Structure Plan in particular, a change to the indicative location of a proposed SMD on the Property on the relevant maps.

[5] On behalf of the Respondent, an Independent Hearing Panel made decisions on PC5 which retained the indicative location of the SMD on the relevant structure

plan maps on the grounds that the indicative nature of the notations appropriately signals the need for the infrastructure and provides an opportunity for review on a site-by-site basis.

Appeal

[6] On 14 April 2023, Shortbread Limited filed an appeal against the decisions of the Council, declining the relief sought by their submissions, including to retain the indicative location of the SMD within the Property and not to reposition the indicative SMD within the Peacocke Structure Plan – Land Use Map in Appendix 2.

[7] Shortbread Limited contends that the location of the proposed SMD on the planning maps is impractical from an engineering perspective, risks unreasonably constraining the efficient future development of the Property and gives rise to unnecessary costs.

Agreement reached between the parties

[8] Since the appeal was filed, the parties have engaged in direct discussions and have reached agreement to resolve Shortbread Limited's appeal in its entirety. The appeal had been allocated a Court-assisted mediation date of 26 July 2023 which was vacated following the agreement.

[9] No other persons gave notice of their intention to become parties to the appeal under section 274.

[10] The agreed amendments are set out in the updated maps in **Attachment A**. They include amendments to Figure 2-1 and Figure 2-3 in Appendix 2: Structure Plans to change the indicative location of the SMD on the Property and consequently include the following notation to emphasise that the locations of SMDs on the structure plan maps are merely indicative and will be finalised during the subdivision process:

Indicative stormwater management device locations are shown on this map to display the likely location of such devices. These locations are broadly identified as per the Mangakootukutuku Integrated Catchment Management

Plan, but the location, design and size will be finalised during subsequent subdivision and development processes.

Section 32AA evaluation

[11] Section 32AA of the Act requires a further evaluation of any changes to a proposal since the initial section 32 evaluation report and the decision. The parties provided a section 32AA evaluation of the appropriateness of the agreed amendments as set out in **Attachment B** to this order.

[12] The parties agree that these amendments are considered to be within the scope of the Appellant's submission and appeal and are no more or less appropriate for achieving the relevant objectives of PC5 than the Decisions Version. Those objectives¹ emphasise a well-functioning, well-designed, well-integrated and connected urban environment, with development occurring in a manner that ensures the efficient and effective delivery of infrastructure that is consistent with the Peacocke Structure Plan. That is because the location of features on the structure plan maps is merely indicative, with the final design and location to be determined at the subdivision consent stage.

[13] The evaluation compares the costs and benefits of retaining Figures 2-1 and 2-3 as approved by the Council in its decision and amending PC5 as agreed by the parties. The parties concluded that the option to make agreed amendments is the most efficient and beneficial under s 32(2)(a) for the following reasons:

- (a) the amendments are no more or less appropriate for achieving the relevant objectives of PC5 than the Decisions Version;
- (b) the amendments are equally as efficient and effective as the Decisions Version as they do not give rise to additional costs; but
- (c) the option gives rise to prompt settlement of the Appeal.

Consideration

[14] In making this order the Court has read and considered:

¹ DEV01-PSP:01, DEV-01-PSP:019, DEV01-PSP:020, MRZ-PREC1-PSP:01, MRZ-PREC1-PSP:05, SUB-PREC1-PSP:06

- (a) the notice of appeal dated 14 April 2023; and
- (b) the joint memorandum of the parties in support of draft consent orders dated 31 August 2023.

[15] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[16] The Court is satisfied that the changes sought are within the scope of the Appellant's submission and appeal.

Order

[17] The Court orders, by consent, that:

- (a) Appendix 2: Structure Plans in Proposed Plan Change 5: Peacocke Structure Plan to the Operative Hamilton City District Plan be amended in accordance with **Attachment A** to this Order to amend the indicative location of the Stormwater Management Device; and
- (b) the appeal is otherwise dismissed; and
- (c) there is no order as to costs.



PEACOCKE STRUCTURE PLAN

Hamilton Garden's
Hamilton East Cemetery
Sandford Park
Fitzroy Park
Te Anau Park
Hammond Park
Peacocke Lane
Peacocke Road
Whakoruru Reserve
Waikato District
Waipa District
SOUTHERN LINKS

Indicative stormwater management device locations are shown on this map to display the likely location of such devices. These locations are broadly identified as per the Mangakootukutuku Integrated Catchment Management Plan, but the location, design and size will be finalised during subsequent subdivision and development processes.

Land Use

- Peacocke Stage 1A
- Proposed Peacocke Medium Density
- Proposed Peacocke Increase Height Overlay
- Proposed Natural Open Space
- Proposed Community Park
- Proposed Sports Park
- Existing Natural Open Space
- Transpower - Hamilton Communication Centre
- Indicative Road Network
- Indicative Key Local Road
- Indicative Cycleway/Walkway
- Indicative Future Pedestrian Bridge
- Proposed Road Stopping
- Primary Bus Interchange
- Indicative Future Mass Transit Stop
- Proposed Local Centre
- Proposed Neighbourhood Centre
- Indicative Education Facilities
- Proposed Neighbourhood Park
- Indicative Stormwater Management Device
- Structure Plan Boundary

0 125 250 Meters 500 750 1,000

Hamilton City Council
Te Kaitiaki o Kaitiaki

Maple Technology, Land Information New Zealand

Figure 2-3: Peacocke Structure Plan – Environment and Heritage

Attachment B

Section 32AA Evaluation

Section 32 requirements

1. An evaluation report prepared in accordance with s 32 of the Resource Management Act 1991 (**RMA**) must:
 - (a) Examine whether the objectives of the plan change are the most appropriate way to achieve the purpose of the RMA;
 - (b) Examine whether the provisions in the proposal are the most appropriate way of achieving the objectives by:
 - (i) Identifying other reasonably practicable options for achieving the objectives;
 - (ii) Assessing the efficiency and effectiveness of the provisions in achieving the objectives;
 - (iii) Summarise the reasons for deciding on the provisions; and
 - (c) Contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- (2) An assessment under (1)(b)(ii) must:
 - (a) Identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
 - (b) If practicable, quantify the benefits and costs referred to in paragraph (a); and
 - (c) Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

Section 32AA requirements

2. Section 32AA of the RMA sets out the requirements for undertaking and publishing further evaluations. The section provides:

32AA Requirements for undertaking and publishing further evaluations

- (1) A further evaluation required under this Act—
 - (a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and
 - (b) must be undertaken in accordance with section 32(1) to (4); and
 - (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and
 - (d) must—
 - (i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or

- (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.
- (2) To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).
- (3) In this section, proposal means a proposed statement, national planning standard, plan, or change for which a further evaluation must be undertaken under this Act.

Agreed amendments

3. The following amendments are proposed to resolve the appeal filed by Shortbread Limited against the decisions of Hamilton City Council on Proposed Plan Change 5 – Peacocke Structure Plan (**PC5**):

- a) Amend Figure 2-1 and Figure 2-3 in Appendix 2: Structure Plans by changing the indicative location of the stormwater device on the property as shown in the updated maps in **Attachment A**; and
- b) A consequential change to Figure 2-1 and Figure 2-3 in Appendix 2: Structure Plans to include the following notation as shown in **Attachment A** to emphasise that the locations are merely indicative and will be finalised during the subdivision process:

Indicative stormwater management device locations are shown on this map to display the likely location of such devices. These locations are broadly identified as per the Mangakootukutuku Integrated Catchment Management Plan, but the location, design and size will be finalised during subsequent subdivision and development processes.

Analysis under s 32AA

4. In relation to the stormwater network within the Peacocke Precinct, the following objectives have been identified as being relevant:

DEV01-PSP:01: The Peacocke Precinct delivers a connected, well integrated, high amenity, medium density residential environment, where higher density development is focused around commercial centres, schools, public transport corridors and areas of open space and natural amenity;

DEV-01-PSP:019: Development of the Peacocke Structure Plan area occurs in a staged manner that ensures the efficient and effective delivery of infrastructure.

DEV01-PSP:020: The timing, type and intensity of new urban development is integrated and aligns with the planning and provision of network infrastructure.

MRZ-PREC1-PSP:01: A well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future;

MRZ-PREC1-PSP:05: The Peacocke Precinct is a well-connected, integrated, high amenity, medium density residential environment with areas of higher density around identified activity nodes, corridors and areas of natural amenity;

SUB-PREC1-PSP:06: Subdivision contributes to a well-designed urban environment that is generally consistent with the Peacocke Structure Plan.

5. The efficiency and effectiveness of the provisions, including the costs, benefits and risks, are assessed in the following table:

Options	Costs	Benefits	Risk of acting or not acting/Sufficiency of information
<p>Option 1: Status Quo Retain Figures 2-1 and 2-3 as approved by the Respondent in its decision on PC5.</p>	<ul style="list-style-type: none"> • The Appellant considers that Option 1 will impose an undue burden on it to alter the location of the stormwater device on its property in a future consent process. The respondent considers that the risk of undue costs arising in relation to the stormwater device is low as its final location and design will still need to be considered and determined at the consent stage. • Option 1 does not satisfy the concerns raised in the appeal. 	<ul style="list-style-type: none"> • None are identified. 	<ul style="list-style-type: none"> • There is certain and sufficient information available about the broad planning outcomes sought in the indicative structure plan maps. Accordingly, there is no need to assess the risk of acting or not acting.
<p>Option 2: Amend PC5 as agreed by the parties Amend Figures 2-1 and 2-3 as described in</p>	<ul style="list-style-type: none"> • None are identified. 	<ul style="list-style-type: none"> • The Appellant considers that Option 2 will simplify the future consent process in relation to establishing 	<ul style="list-style-type: none"> • There is certain and sufficient information available about the broad planning outcomes sought in the

paragraph 3 above.		<p>the appropriate location of the stormwater device on its property. The Respondent considers that it is unclear that Option 2 will be more efficient as the final location and design of the device must still be considered and determined at the subdivision stage.</p> <ul style="list-style-type: none"> • Satisfies the concerns raised in the appeal. 	<p>indicative structure plan maps. Accordingly, there is no need to assess the risk of acting or not acting.</p>
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6. Overall, it is considered that both options achieve the objectives identified in paragraph 4 above, which emphasise a well-functioning, well-designed, well-integrated and connected urban environment, with development occurring in a manner that ensures the efficient and effective delivery of infrastructure that is consistent with the Peacocke Structure Plan. That is because the location of features on the structure plan maps are merely indicative, with the final design and location to be determined at the subdivision consent stage. Ultimately, the amendments under Option 2:

- (a) Are no more or less appropriate for achieving the relevant objectives of PC5 than the Decisions Version;
- (b) Are equally as efficient and effective as the Decisions Version as they do not give rise to additional costs; but
- (c) Gives rise to prompt settlement of the Appeal; and

Therefore, are the most efficient and beneficial in terms of s 32(2)(a).