

**IN THE ENVIRONMENT COURT
AUCKLAND**

ENV-2022-AKL-

**I MUA I TE KOOTI TAIAO O AOTEAROA
I TAMAKI MAKAUROA ROHE**

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

AND

IN THE MATTER of Clause 14(1) of Schedule 1 of the RMA

BETWEEN

PORTS OF AUCKLAND LIMITED

Applicant

AND

WAIKATO DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISIONS ON
THE PROPOSED WAIKATO DISTRICT PLAN**

& : 96 F1 5 FM 2022

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To: The Registrar
The Environment Court
AUCKLAND

PORTS OF AUCKLAND LIMITED ("POAL") appeals against parts of the decisions of the Waikato District Council ("**Council**") in respect of the Proposed Waikato District Plan ("**Proposed Plan**").

BACKGROUND AND DECISIONS APPEALED

1. POAL made a submission on the Proposed Plan on 9 October 2018,¹ and a further submission on 27 June 2019.² POAL presented evidence in support of its submission.
2. POAL received notice of the Council's decision on the Proposed Plan on 17 January 2022 ("**Decision**").
3. POAL is not a trade competitor for the purposes of section 308D of the RMA.
4. POAL is a port company established under the Port Companies Act 1988. POAL has over 500 employees and currently operates a seaport and three 'inland freight hubs' at Wiri in South Auckland, Horotiu in the Waikato and has shares in Longburn near Palmerston North.
5. POAL has commenced the construction of a new inland freight hub at the Horotiu Industrial Park the first stage of which became operation in 2019. Built on a 33 ha site, it has excellent road and rail connections, and will improve access to overseas markets for Waikato-based exporters. As such, the freight hub will increase the freight hub will increase freight efficiency and enable POAL to deliver on its commitment of increasing the use of New Zealand's existing rail infrastructure in expansion of its port operations.
6. POAL has an interest in ensuring that the Proposed Plan appropriately recognises and provides for the operation of its inland freight hub from the Horotiu Industrial Park, which is identified is identified within the Waikato Regional Policy Statement as a 'strategic industrial node'.

SCOPE OF APPEAL

7. POAL appeals the parts of the Decision that relate to:
 - (a) the permitted height rule for the Horotiu Industrial Park Precinct;³ and
 - (b) the omission of permitted activity status for "Caretaker's or security person's residential unit" in the Horotiu Industrial Park Precinct.⁴

¹ Submission number 578.
² Further submission number 1087.
³ Submission points 578.21.
⁴ Submission point 578.9.

SPECIFIC REASONS FOR APPEAL AND RELIEF SOUGHT

Permitted height rule PREC-S5

8. POAL opposed the permitted height for the Industrial Zone set out in the notified version of the Proposed Plan and sought that the building height control of the Operative Plan for the Horotiu Industrial Park was reinstated.⁵
9. The provisions which POAL sought to be reinstated for the Horotiu Industrial Park provided for a permitted height level not exceeding 25 metres for the site and 15 metres for 90% of the site.
10. The Commissioners accepted POAL's submission on this point, as confirmed in Decision Report 21 for the Industrial Zone. In their findings, the Commissioners set out that the rule should read as follows:⁶
- (a) A building or structure that is more than 400 metres from Horotiu Road and does not exceed a height of:
- (i) 25 metres; and
- (ii) 15 metres over 90% of the site measured from the natural ground level immediately below that part of the structure.

However, in the Decision version of the Proposed Plan, the equivalent text at PREC-S5(1)(a)(ii) reads as "*5 metres over 90% of the site*".

11. POAL considers that the reference to 5 metres in the decision, rather than the 15 metres agreed in evidence and determined to be acceptable in Decision Report 21, is an error which ought to be corrected to reflect the Decision.

Relief sought

12. POAL seeks:
- (a) That PREC-S5 is corrected to reflect the height limits in the notified version of the Proposed Plan, as follows:

PREC-S5 – Building height

<p>(1) Activity status: PER Where: (a) A building or structure that is more than 400 metres from Horotiu Road and does not exceed a height measured from the natural ground level immediately below that part of the structure of: (i) 25 metres; and (ii) 5<u>15</u> metres over 90% of the site. (b) Rule GIZ-S3 does not apply.</p>	<p>(2) Activity status where compliance not achieved: RDIS Council's discretion is restricted to the following matters: (a) The extent to which visual amenity in the GRZ – General residential zone is maintained.</p>
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⁵ Submission point 578.9.

⁶ Decision Report 21 at Attachment 1, 20.5.4.1 – Building height.

- (b) any such alternative or consequential relief that addresses POAL's concerns.

Permitted activity status for "Caretaker's or security person's residential unit in the Horotiu Industrial Park Precinct

13. In its submission, POAL sought the provision of worker's accommodation for people whose duties require them to live on site to facilitate the 24-hour operation of industrial activities. As a result, POAL proposed the inclusion of a permitted activity for worker's accommodation in the Industrial Zone.⁷
14. As confirmed in Decision Report 21 for the industrial zones, the Commissioners accepted POAL's submission on this point. In accepting POAL's submission, the Commissioners agreed that the activity of providing accommodation for workers whose duties require them to live on-site is compatible with the functioning of Industrial Zones. This is confirmed by the finding that the permitted activity status "*does not only apply in Horotiu Industrial Park, but throughout the Industrial Zones*".⁸ As a result it was found to be appropriate for worker's accommodation in Industrial Zones to be allocated a permitted activity status when located within an industrial building and also of small scale
15. As a result, the General Industrial Zone⁹ and the Heavy Industrial Zone¹⁰ were amended to include a permitted activity status for caretaker's or security person's residential units. However, further amendments to the Horotiu Industrial Park Precinct have resulted in land use activities in the General Industrial Zone no longer applying to the Precinct. Therefore, while POAL's submission was accepted by the Commissioners, the Horotiu Industrial Park Precinct does not get the benefit of the permitted activity status.
16. POAL considers the omission of the permitted activity from Horotiu Industrial Park Precinct is an unintended error which ought to be amended to reflect the reasoning in the Decision.

Relief sought

17. POAL seeks:
- (a) the insertion of an equivalent permitted activity status to Rule GIZ-R17 into the Horotiu Industrial Park Precinct, as included in the General Industrial Zone, as follows:

⁷ Submission point 578.74.

⁸ Decision Report 21.

⁹ Proposed Plan at Rule GIZ-R17.

¹⁰ Proposed Plan at Rule HIZ-R11.

XX – Caretaker's or security person's residential unit

<p>(1) Activity status: PER Activity-specific standards: <u>(a) Is located within an industrial building;</u> <u>(b) Does not exceed 70m² gross floor area; and</u> <u>(c) Accommodate no more than two people.</u></p>	<p>(2) Activity status where compliance not achieved: DIS</p>
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- (b) any such alternative or consequential relief that addresses POAL's concerns.

ATTACHMENTS

18. The following documents are attached to this notice:
- (a) A copy of the relevant parts of the Decision.
- (b) A copy of POAL's submission.
- (c) A list of the relevant names and addresses of persons who lodged submissions who are to be served with a copy of this notice.

PORTS OF AUCKLAND LIMITED by its solicitors and authorised agents Russell McVeagh:



Signature: D J Minhinnick / N T Harris

Date: 1 March 2022

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TO: The Registrar of the Environment Court at Auckland.

AND TO: The Waikato District Council.

AND TO: The relevant submitters on the provisions appealed.

Advice to recipients of copy of notice of appeal*How to become a party to proceedings*

1. You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.
2. To become a party to the appeal, you must:
 - (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
 - (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.
3. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.
4. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.