

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for resource consent by Duopharma Pacific Limited to construct an eight storey apartment building with ground floor level commercial space at 543 Te Atatu Road, Te Atatu Peninsula.

DECISION OF WAITAKERE CITY COUNCIL

A. DECISION ON LATE SUBMISSIONS:

That pursuant to Section 37 of the Resource Management Act 1991, it is **resolved** to take into account the late submissions of:

- o C Pouesi
- o GW & J Cremer
- o HM & JE Brewer,

for the reasons outlined in section 6.0 of the reporting planner's report.

B. DECISION ON THE APPLICATION:

That pursuant to Sections 104, 104D and 113 of the Resource Management Act 1991, **consent be refused** to the non-complying activity land use consent application by Duopharma Pacific Limited to construct an eight storey apartment building with ground floor level commercial space at 543 Te Atatu Road, Te Atatu Peninsula, Lot 2 DP176364, for the reasons contained in section C of this decision.

C. REASONS FOR THE DECISION:

1. The Commissioners have reached a view that the proposed apartment building would give rise to significant adverse effects. In particular, the Commissioners consider that amenity values and residential character would be compromised by the height, bulk and scale of the building. This includes building dominance and shading. It is considered that these effects cannot be adequately mitigated.
2. The Commissioners consider that the locality in which it is proposed to establish the apartment building may be suitable for more intensive

residential development, possibly including further apartment development but at a lower height. The locality is on the interface between the commercial centre and the surrounding neighbourhood, which is predominantly low rise residential in character. The Commissioners consider that development in such a location needs to be sensitively designed in order to minimise adverse impacts, particularly in relation to the residential development that is located in close proximity to this site. After careful consideration, the Commissioners have concluded that the scale of the proposal is such that it would give rise to significant adverse effects for residents in the vicinity.

3. While the Commissioners acknowledge that the proposed apartment building would have some positive effects in relation to residential intensification and supporting the economic vitality of the town centre, it is considered that these positive effects are outweighed by the adverse effects that will arise.
4. The Commissioners considered that the intensity, bulk and scale of the proposed apartment development would not be appropriate in the context of surrounding land uses (including the town centre). That conclusion is based on the particular circumstances and nature of the application. A less intense residential development of a lower height may be acceptable on the site, although the Commissioners did not have an alternative proposal to consider. The Commissioners note however that the Te Atatu Peninsula Town Centre Concept and Implementation Plan (TCCIP) indicates that the site may be able to accommodate 3-4 storey development.
5. Given the degree of adverse environmental effects that are envisaged, the Commissioners consider that the proposed apartment development would be inconsistent with the thrust of policies in the District Plan that seek to maintain and enhance amenity values and neighbourhood character in residential areas of the City. The application would, for similar reasons, fail to satisfy the purpose and principles of the Resource Management Act in the opinion of the Commissioners.

D. THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED:

Overall, this application was considered to be a **non-complying activity** and was considered in terms of sections 104, 104D, and Part II of the Act.

E. THE RELEVANT PROVISIONS OF ANY DISTRICT PLAN OR POLICY STATEMENT THAT WERE CONSIDERED:

The relevant provisions of the District Plan and the Regional Policy Statement that were considered by the Commissioners in reaching this decision are summarised in sections 4 and 8 of the reporting planner's report.

F. THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:

The principal issues that were in contention as a result of the application are set out in sections 1.2 and 6 of the reporting planner's report. In summary,

the principal issues related to matters of; residential amenities on- and off-site including shading, privacy, and domination; noise generation, construction effects, traffic generation and the impact of introducing an activity of the scale, height and intensity proposed within this Harbour View North Special Area which adjoins low scale residential activities.

G. SUMMARY OF EVIDENCE HEARD:

Evidence that was heard by the Commissioners comprised the following:

- The applicant was represented by an architectural designer, Mr Antonius Peters. Mr Peters presented a design submission which referenced the history and responded to submissions. Mr Peters tabled (i) revised plans, (ii) visual representations including a visual display to the Commissioners, and (iii) shading diagrams; and introduced the following evidence on behalf of the applicant:
 - Statement of evidence from Terry McCarthy, Geotechnical Engineer: Soil and Rock Consultants Ltd regarding geotechnical and other engineering matters.
 - Statement of evidence from Phillip Brown, Director at Traffic Engineering and Management, in relation to traffic engineering matters.
 - Oral evidence from Shaun Finnigan, Environmental Engineer of Fraser Thomas Consulting Ltd, in relation to servicing and infrastructural proposals to serve the building referencing the reports submitted in support of the application.
 - Oral evidence from Rachel Foster of Maunsell Consulting Ltd, in relation to noise generation and attenuation referencing and tabling the report submitted in support of the application.
 - A statement of evidence prepared by Chris Hinton, Landscape Architect engaged by the applicant was tabled. Mr Peters, spoke on behalf of Mr Hinton in relation to landscape planting matters.
 - A statement of evidence from Conway Stewart, Planning Consultant regarding planning matters.

The applicant's agents were provided with an opportunity to consider all submissions and provide a right of reply.

Evidence presented on behalf of the submitters:

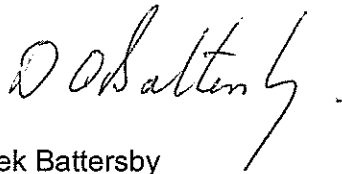
- Oral submission from R. Taylor in relation to shading, landscape effects, ventilation, neighbourhood character, and infrastructural capacity including stormwater and the road network.
- Oral submission from D. Taylor regarding height and shading, Eco-City principles, traffic effects including congestion.

- Oral submission from K. Taylor provided subjective commentary and highlighted the context of the established neighbourhood noting that the building was 'ugly' and 'disingenuous' to its location.
- Oral submission from G. Smith on behalf of the Te Atatu Business Association Incorporated. Mr Smith accepted that apartments were likely on the site, but considered that this particular proposal would detract from the location. Mr Smith considered that the Bella Vista Apartment Building was of an appropriate height and recommended the adopted Te Atatu Town Centre Concept and Implementation Plan (TCCIP) should be adhered to.
- Oral submission from M. Kelderman. The original submission was tabled for the Commissioners regarding height and design of the building, providing a subjective commentary and identifying the extent of infringements and highlighting the impact that this would have on character of the locality.
- Statement of evidence on behalf of I. Jackson read by Mr I. Boyd-Bell regarding the effects the proposal would have on Ms. Jackson's property including a loss of amenity.
- Oral evidence from M. Bain with supplementary visual simulation displays demonstrating the bulk (printed information provided) and shading (visual display only) of the proposed building.
- Statement of evidence from R. and J. Stratton regarding the impacts and effects of the proposed development.
- Statement of evidence from G. Rowan regarding the impacts and effects of the proposed development including a commentary on the regulatory context of the application.
- Oral evidence from N. Sullivan regarding amenity and traffic impacts of the proposed development.
- Statement of evidence from C. Coste regarding the intensity and height of the proposed development and its impact on the views and landscape of the area.
- Oral evidence from C. Carlyle, including tabled Harbourview Development Documents (historic), regarding development controls, the extent of infringements, and bulk and scale of the proposed development.
- Oral submission by J. Comes on behalf of Te Atatu Residents and Ratepayers Association, questioning the supporting documentation, scale and intensity, and proposed amenity of the development.
- A written submission was provided by Chris Hansen, Planning Consultant of Sinclair Knight Merz on behalf of Vision 7 Limited, owners of No. 549 Te Atatu Road. This submission raised points in relation to traffic effects, access, waste management and urban design matters

H. THE MAIN FINDINGS OF FACT:

The main findings of fact, as determined by the Commissioners, are summarised in the reasons for refusing consent, in Part C above.

Decision dated this 20th day of May 2009

A handwritten signature in black ink, appearing to read 'D Battersby', with a small dot at the end.

Derek Battersby
On behalf of:
Vanessa Neeson
Chairperson

For Hearing Panel: Commissioner Vanessa Neeson
Commissioner Derek Battersby
Commissioner John Childs