

**BEFORE THE ENVIRONMENT COURT**

Decision No. [2014] NZEnvC 103

**IN THE MATTER** of an appeal under Clause 14(1) of the First  
Schedule of the Resource Management Act  
1991 (**the Act**)

**BETWEEN** MILFORD CENTRE LIMITED  
(ENV-2013-AKL-000030)  
Appellant

**AND** AUCKLAND COUNCIL  
Respondent

**Court:** In chambers at Auckland  
Environment Judge J A Smith, sitting alone pursuant to Section 279  
of the Act

**Submissions:** Ms B Carruthers and Ms B Kelly for Milford Centre Limited (**MCL**)  
Mr B Loutit and Ms D Hartley for the Auckland Council (**the**  
**Council**)  
Mr M Maclean for Milford Residents' Association Incorporated and  
Ors (**the Residents**)  
Ms J van den Bergen for the National Trading Company of New  
Zealand Limited (**the National Trading Company**)  
Mr W McCandless for himself

**Date of Decision:** 1 May 2014

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**FINAL DECISION AS TO WORDING OF PLAN CHANGE, AND AS TO COSTS**

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**A. Plan Change 34 is adopted as set out in Annexure A, subject to:**

**1. New penultimate sentence at 15.6.2.2 *Explanation and Reasons* to read:**

Non-residential activity is not anticipated above RL21 (see Appendix 15P) and is therefore provided as a full discretionary activity.

**2. New 15.5.1.4(b) to read:**

(b) In the case of the Milford Intensive Residential Development Overlay Area as defined by Appendix 15P, notification will be determined on a case by case basis in accordance with s 95D of the RMA.

**3. New 15.7.2.8(xii) to read:**

xii. Building(s) taller than RL21m in Envelopes 5, 6, 7, and 8 shown on Appendix 15P shall be accompanied by an appropriate development interface with the existing carpark area and mall roof area.

**B. As to costs, MCL is to pay as a contribution to the costs of:**

**1. the Council, the sum of \$20,000; and**

**2. the Residents, the sum of \$5,000.**

**Such sums may be enforced by payment in the North Shore District Court, and receipt by counsel of said sums shall constitute receipt by the aforementioned parties.**



## REASONS FOR DECISION

### Introduction

[1] By Decision No. [2014] EnvC23, this Court concluded that Plan Change 34 (PC34) should proceed subject to finalisation of conditions in accordance with height limits set by the Court.

[2] Directions to finalise the plan change and costs were made. The Court will deal with each in turn.

### Agreed wording changes

[3] Three of the parties filed a memorandum as to the changes sought to Plan Change 34. Subsequently, this Court directed further consultation with the other parties and submissions were received from the National Trading Company and from Mr McCandless. We consider that the concerns of the National Trading Company were valid and the changes to wording agreed between themselves and MCL were properly incorporated in this agreed version of the Plan. A track-change version provided to the Court shows in highlighted form the additions made to the Plan to meet the concerns of the National Trading Company, particularly in *15.4.2A*. No changes are made to the earlier agreed wording and the additions are unexceptional.

[4] A clean version of that is annexed hereto as **A**, and we understand from comparison with Exhibit B to the joint memorandum, represents the matters agreed between the parties in that document with the addition of those for the National Trading Company.

[5] There remains two further issues:

[a] The concerns of Mr McCandless; and



[b] Whether changes sought by Ms K Hardy are necessary to reflect the Court's decision, particularly to *15.5.1.4 Unlimited Discretionary Activities* and *15.7.2.8 New Buildings and alterations to existing buildings located within the Milford Intensive Residential Development Overlay Area*.

***Mr McCandless***

*Issue One*

[6] Mr McCandless properly makes the point that this plan change was intended to provide for residential activity and there now appears to be some words inserted which suggest that *any activity* or *non-residential activity* should be included.

[7] I agree with Mr McCandless that the Court has only allowed residential activity above RL21 on Platforms 1 – 8. Whether that might include residential parking is a matter which was not dealt with at the hearing, and I see no particular reason for us to comment further upon it. There are references throughout as to residential buildings, and it is probably sufficient for current purposes, the Court makes it clear that the entire plan change is predicated on an argument that we are talking about residential activity only of 21m. Whether this might include residential carparking is a matter which might be considered in due course.

[8] In those circumstances I would add to *15.6.2.2 Explanation and Reasons – Local 1 and Suburban 2 Zones* before the last sentence:

The intent is that residential activity only is to be anticipated above RL21 in the Milford Centre within the overlay area.

[9] Its inclusion in *15.5.1.5 Discretionary Activities* as a full discretionary activity needs to be reinforced by general anticipation that this is not for other activities.

[10] Accordingly, I consider that we need to include within *15.6.2.2 Explanation and Reasons* a new penultimate sentence reading:

Non-residential activity is not anticipated above RL21 (see Appendix 15P) and is therefore provided as a full discretionary activity.

*Issue Two*

[11] The second issue raised by Mr McCandless relates to the number of units.

[12] Given that the ratio of units is already set out within the decision, I am not as convinced as Mr McCandless that allowing the same number of units will necessarily result in different outcomes. I note that 15.6.2.12.5(c) provides that:

... where a development contains 20 or more units, no more than 30% shall be one bedroom or studio units.

[13] In the circumstances I am satisfied that the overall objective of the development and the decision will still be achieved.

*Other Issues*

[14] Mr McCandless also comments on *15.3.7 Intensive Residential Development* and I understand him to generally agree with its deletion, which has been attended to by the parties.

[15] There was a question of public notification. I am not convinced that there was any decision by the Court to notification in regards to this proposal.

[16] Mr McCandless also suggests that 16.3.8 Explanations should be upgraded to include the new height limits. In my view, those are adequately set out elsewhere within the provisions and although it would be of assistance, I do not consider it necessary to re-include it (Appendix 15P).

[17] The question as to whether or not the applications for consent should be advertised is addressed as part of the issues relating to Ms Hardy's evidence.



*Ms Hardy*

*Issue One*

[18] Annexed hereto as **B** are the suggested changes made in the evidence of Ms Hardy which the Residents support.

[19] The first relates to *15.5.1.4 Limited Discretionary Activities* and the question of notification. The current wording indicates notification will only be considered for a building height of over six storeys, or RL37m, and the scope of submissions shall be limited to matters under *15.7.2.8 New Buildings and alterations to existing buildings located with the Milford Intensive Residential Development Overlay Area*.

[20] This suggests a broader notification basis, not limited by reference to *15.7.2.8*. This is the same issue picked up by Mr McCandless in his submissions and would turn upon the determination under Section 95D of the Act.

[21] Given that the applications would, in any event, be limited discretionary, it seems to me that reference to the particular provisions, or only some of those, is unnecessary.

[22] In the end I agree with Mr McCandless and Ms Hardy that the broader provision for notification at the discretion of the Council under Section 95D is appropriate, and would include within *15.5.1.4* a new (b):

- (b) In the case of the Milford Intensive Residential Development Overlay Area as defined by Appendix 15P, notification will be determined on a case by case basis in accordance with s 95D of the RMA.

*Issue Two*

[23] Secondly, Ms Hardy seeks changes to *15.7.2.8 New Buildings and alterations to existing buildings located with the Milford Intensive Residential Development Overlay Area*.

[24] I have considered these changes carefully and note that there are some additional criteria already included within 15.7.2.8 agreed by the parties. The major difference appears to be the question of interrelationship with landscape, open space, and the broader areas, and also in relation to Building 8. There is also a small spelling correction to item 15, currently xii in A.

[25] As to the changes in 15.7.2.8 generally, I have concluded in the end that the provisions included within (a) are adequate. Accordingly, I would not make any of the amendments to (c) *Design of Buildings* (ix) – (xiv) sought.

[26] In relation to (xv), that's (xii) under A, I agree that the wording is unclear and that better wording would be that suggested by Ms Hardy. Accordingly, I would alter (xii) to read:

- xii. Building(s) taller than RL21m in Envelopes 5, 6, 7, and 8 shown on Appendix 15P shall be accompanied by an appropriate development interface with the existing carpark area and mall roof area.

### **Overall view of changes**

[27] Having looked at these matters in the round, and considered all the submissions of the parties, it seems to me that this in the circumstances represents an appropriate balance of the various matters raised. All parties have to some extent been successful, and accordingly, these matters do not go to the questions of costs which I now move to address.

[28] I therefore direct that the plan changes are to take place as per Annexure A with the changes set out in this decision.

### **Costs**

[29] Both the Council and the Residents have sought orders for costs against the MCL. There appears to be agreement on the law and principles relevant to an order.

[30] Firstly, we note that MCL were largely successful in respect of their appeal in that Plan Change 34 has been adopted, albeit with building heights somewhat lower than sought in their original application and before this Court.

*Failures in MCL's case*

[31] I also acknowledge that the evidence for MCL did not deal in a full or appropriate fashion with the potential for compromise to the heights of the buildings, which was clearly the key issue before the Court. In those circumstances the Auckland Council suggests that if it had not been for the evidence of the Council and the Residents it is likely that the decision of the Court would have been the same, to reject the plan change entirely.

[32] I must say in practical terms, it is far more likely that the Court would have issued an Interim Decision and required the parties to identify in far more detail the appropriate heights of buildings and exchange evidence on this basis.

[33] It is clear that the Court appreciated the Council's leadership in avoiding the extra cost and delay to all parties by undertaking that analysis. Nevertheless, both the Council and the Residents accepted by the commencement of the hearing that the Residential Intensification Overlay was generally appropriate and that the issue before the Court was the height of the various elements.

*Are costs orders justified?*

[34] There is a significant amount of dispute between the various parties as to *who did what* during the mediation and caucusing phases and the cause or effect on the other parties.

[35] In the end, I have concluded that there is no sufficient gravamen to any of these concerns to justify an award of costs in circumstances where MCL has largely been successful.

[36] What I do recognise is that the Council and the Residents were left to *fill the gap* to some extent to establish what they considered was a reasonable level of development.

There was a significant amount of evidence produced by MCL which was not relevant to the hearing because it was agreed by the parties both at the original hearing, in the appeal and during caucusing. To that extent I acknowledge that there is a proper concern raised under the *Bielby*<sup>1</sup> criteria relating to unnecessary costs and length of the hearing in dealing with unmeritorious issues.

[37] Fortunately, neither the Council nor the Residents were inveigled into long arguments as to the merits or otherwise of a residential overlay in this area. They essentially agreed and *got on with it*. Nevertheless, I accept that the Court and parties were faced with conservatively two days of extra hearing time relating to this, and that their witnesses had to at least consider this evidence in case they were questioned upon it. This was notwithstanding it's, at best, marginal relevance to anything that the Court needed to consider.

[38] At the time of hearing it was clear from caucusing that the core issue for the Court to determine what height residential buildings should be allowed to be developed to within the overlay area. I therefore conclude that there is a limited basis to consider an order of costs to the Council and the Residents.

### *Quantum of Costs*

[39] Having concluded that there is a basis to award costs to both the Council and the Residents in relation to the extra time that the matter was engaged, the Court is then left with the difficult of task of trying to evaluate an appropriate order in respect of that.

[40] I acknowledge that both counsel and key witnesses would have had to read this evidence in detail to be sure that it did not contain anything of direct relevance. The Court itself sought to avoid the time engaged in doing so, but was compelled by counsel for MCL to read the evidence, even though it transpired to be largely irrelevant.

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<sup>1</sup> *DFC NZ Ltd v Bielby*, (1991) 1 NZLR 587

[41] That time, together with cross-examination of those witnesses would have been significantly more than two days. I think it reasonable to assume that both counsel and witnesses would have taken around a day to read the relevant evidence.

[42] In respect of the Council, they indicate that their total costs were something in the order of \$450,000, post-mediation. In the case of the Residents, this was in the order of \$52,000, post-mediation.

*Evaluation of an award*

[43] Any award of costs in this case must be both arbitrary and nominal. It would be difficult for counsel to attribute clearly the cost to this type of issue on an individual basis, and nor would it be reasonable to expect them to do so. Given that it is essentially a mis-direction of evidence in relation to the matter, it would justify an order to the Crown of costs, but none have been sought. In the case of both the Council and the Residents, their counsel quite properly considered the issue and made the decision that this was not relevant to the case in hand. I appreciate that in doing so, some research and time would have gone into that evaluation and preparation of relevant argument.

[44] In the end I have concluded that I should award the sum of \$20,000 to the Council for the costs of their counsel and experts in dealing with the unnecessary issue and the extra time spent on the matter in Court.

[45] In the case of the Residents, I have concluded that a payment of \$5,000 would be an adequate recompense to them in respect of their similar costs.

[46] I have made an award on the basis that the lead party involved in this case was the Council, and I therefore conclude that most of the this work would have been attended to by the Council. Nevertheless, I accept that there would have still been an obligation on counsel for the Residents to look at the matter and to reach their own conclusions.

[47] When I look at this in the totality of costs, and in fact the project, this is a very small and nominal contribution. Nevertheless, it recognises that these costs should not be properly borne by the Auckland ratepayer and that the plan change was for the benefit of MCL.

**Cost Orders**

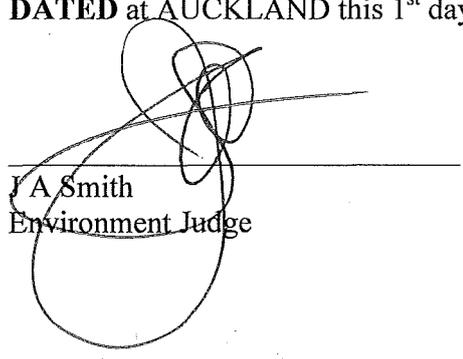
[48] Therefore, this Court orders that MCL is to pay as a contribution to the costs of:

[a] The Council, the sum of \$20,000; and

[b] The Residents, the sum of \$5,000.

[49] Such sums may be enforced by payment in the North Shore District Court, and receipt by counsel of said sums shall constitute receipt by the aforementioned parties.

**DATED** at AUCKLAND this 1<sup>st</sup> day of May 2014



J A Smith  
Environment Judge

## DRAFT DECISION VERSION OF PLAN CHANGE 34 (AS COMPARED TO THE OPERATIVE DISTRICT PLAN)

### Proposed Plan Change 34

New text is shown as underlined and deleted text as ~~strikethrough~~.  
Some existing text (not underlined) is shown to place the amendments in context.

#### Milford Intensive Residential Development Overlay Area

This is a privately initiated plan change

1. *Add an additional item to Section 9.4.1.3 as follows:*

#### Section 9 Subdivision and Development 9.4.1.3 Limited Discretionary Activities

y) Siteworks and subdivision within the Milford Intensive Residential Development Overlay Area.

2. *Insert additional text to Rule 10.5 as follows:*

#### Section 10 Pollution, Hazardous Substances and Waste Management

##### 10.5 Noise: Rules

j) New buildings and alterations to existing buildings to be used for residential purposes in the Milford Intensive Residential Development Overlay Area must meet the following:

- Noise received in all habitable rooms shall not exceed 35 dBA L10(15min) between 2300 hours and 0700 hours. If this cannot be achieved with ventilating windows open, the noise limit shall be complied with including the noise generated by any mechanical ventilation system.
- The external noise level incident on the facade shall be based on the following spectrum:

<i>Octave Band Centre Frequency</i>							
<u>63Hz</u>	<u>125Hz</u>	<u>250Hz</u>	<u>500Hz</u>	<u>1000Hz</u>	<u>2000Hz</u>	<u>4000Hz</u>	<u>A-weighted</u>
<u>74dB</u>	<u>67dB</u>	<u>66dB</u>	<u>61dB</u>	<u>59dB</u>	<u>59dB</u>	<u>54dB</u>	<u>65dB</u>

- An Acoustic Design Report shall be obtained from a suitably qualified Acoustic Expert confirming that the building will be constructed to meet the above requirements.

3. *Amend Table 12.1 as follows:*

#### Section 12 Transportation 12.4.2.1 Parking Standards

Table 12.1 Parking Standards	
Activity	Parking Spaces Required
****	****
Residential Units, Apartment Buildings, Intensive Housing and Minor Residential Units	<p>One for each residential unit with a gross floor area of 50m<sup>2</sup> or less</p> <p>Two for each residential unit with a gross floor area in excess of 50m<sup>2</sup></p> <p><u>In the Milford Intensive Residential Development Overlay Area the total number of car parking spaces shall be calculated by using the following standards and shall be dedicated for the residential use only:</u></p> <p><u>Studio/1 bedroom residential unit – 1 space</u>  <u>2 bedroom residential unit – 1.5 spaces</u>  <u>3 or more bedroom residential unit – 2 spaces</u></p> <p><u>Maximum Car Parking Requirement – an average of 2 spaces per residential unit</u></p> <p><u>Minimum Cycle Parking Requirement – one cycle park per unit</u></p>
Residential Units, Apartment Buildings, Intensive Housing, Terraced Housing and other similar forms of intensive residential development	<p>Visitor parking spaces on-site at the rate of 0.5 spaces for each unit over 50 m<sup>2</sup> gross floor area, such spaces to be in addition to those required for private use by unit occupiers (for assessment of applications see Rule 16.7.3.6 in addition to 12.5)</p> <p><u>In the Milford Intensive Residential Development Overlay Area the requirement for visitor parking spaces to be provided shall be 0.1 spaces for each unit and be dedicated for visitor parking only.</u></p>

## Section 15 Business

### 4. Section 15.3.4 - Add/ delete text as follows (underlined, ~~struckthrough~~):

#### 15.3.4 Control of Adverse Effects

##### *Objective*

To ensure that the adverse environmental effects of business and other activities in business areas are avoided, remedied or mitigated.

##### *Policies*

1. By requiring that business activities and other activities in business areas avoid, remedy or mitigate adverse environmental effects.

**5. Section 15.3.7 - Add/ delete text as follows (underlined, struckthrough):**

**15.3.7 Intensive Residential Development**

The provisions of Section 16.3.8 Intensive residential development apply, with the exception of the Business 11 zone and the Milford Centre site (see Appendix 15P).

**Section 15.4 - Add/ delete text as follows (underlined, struckthrough):**

**15.4 Zoning Framework: Objectives and Policies**

**15.4.2 Suburban 2 Zone**

**Objective**

To manage the effects of activities in suburban centres in a manner which:

1. Helps to minimise average vehicle trip lengths, by recognising the shopping role that suburban centres serve or could potentially serve for existing suburbs or proposed suburbs
2. Makes efficient use of natural and physical resources
3. Avoids, remedies or mitigates the adverse effects of activities on the amenity of residential properties
4. Requires new development to achieve a high quality design and built form, to integrate with the surrounding streetscape and buildings and to contribute to the centre's "sense of place"

**Policies**

1. By enabling the retention of a substantial shopping role in suburban centres, including significant food retailing, and by enabling new suburban centres to serve new suburbs.
2. By enabling a wide range of business activities to establish in suburban centres in order to ensure that efficient use is made of the resource that they represent.
3. By ensuring that those potential adverse effects of activities in suburban centres on the amenity of adjoining residential areas are avoided, remedied or mitigated.
4. By requiring that new development achieves integration with existing development and the surrounding area, including any building of particular character, those heritage buildings listed in Schedule 11A, and any Notable Trees listed in Schedule 8C, of the District Plan.
5. By requiring that all new buildings and additions and alterations to existing buildings make a positive contribution to the surrounding amenity, and help to achieve high quality urban design outcomes, including a comprehensively planned, well integrated and attractive centre with an active, attractive, safe and convenient pedestrian environment. Additions and alterations to existing buildings should also be in character with the building being added to or altered.
6. By assessing Limited Discretionary activity applications for new buildings, most external alterations and those additions of more than 15m<sup>2</sup> to the footprint of existing buildings against detailed assessment criteria relating to building form and design.

**Methods**

All policies will be implemented by rules.

**Explanation and Reasons**

*This zone is applied to twelve existing suburban centres and to two proposed centres at Greville Road and Unsworth Drive. The zone is designed primarily for business activities with a high intensity of operation, although it is not restricted to the largely retail range of activities within this category.*

*Apart from the floor area controls in the Local 1 zone, the range of controls applied to activities in the Suburban 2 zone is almost identical with that in the Local 1 zone. However, in recognition of the size and significance of the suburban centres, the District Plan is seeking to achieve high quality urban design outcomes. High quality urban design will ensure that the particular qualities and characteristics associated with each centre, including sense of place, vibrancy, and amenity are protected and enhanced. New buildings, additions of greater than 15m<sup>2</sup>, and significant external alterations to existing buildings will require consent as a Limited Discretionary activity, and will be assessed against detailed criteria related to design in the Section 15A, Urban Design Code. Where a site is adjoined or opposite land zoned Residential 3, or is in close proximity to a heritage commercial building, (Scheduled in Appendix 11A of the District Plan), any new building will be required to respond appropriately to the character of heritage commercial buildings (not residential buildings) through specifically targeted assessment criteria in Section 15A, Urban Design Code.*

*The larger size of centres to which this zoning is applied will mean that comparatively a smaller proportion of sites within each of the centres will be subject to the stricter Buffer Strip controls.*

*The expectation that Suburban 2 zoned areas will have some larger stores indicates a need for comprehensive design of buildings and sites, with emphasis on integration of development and access, and for landscaping.*

#### **15.4.2A Objective – Milford Intensive Residential Development Overlay Area**

To enable intensive residential uses in high quality buildings in a way that maintains the amenity of surrounding residential and business areas.

#### **Policies – Milford Intensive Residential Development Overlay Area**

1. By requiring high quality urban design that shows creativity, innovation and responsiveness to the local context in a way that contributes positively to the amenity and character of Milford.
2. By requiring development to be contained within the building envelopes (including prescribed heights) in Appendix 15P.
3. By providing for buildings of varying height and mass within the platforms and maximum heights of Appendix 15P, to promote a noticeable transition in built form and interest and variety to the building skyline.
4. By requiring a built form outcome that enables an active built edge around the perimeter of the site with some provision for building height variances to avoid a monotonous street edge.
5. By ensuring buildings minimise effects on adjacent sites in terms of shading, dominance and loss of privacy to main living spaces and outdoor living courts.
6. By requiring buildings to be designed to respond to their particular street context and the character and amenity of Milford.
7. By ensuring, where buildings are set back from the street, that any spaces between the ground floor of the building/s and the street contribute positively to streetscape amenity.
8. By ensuring that public and private entrances, both pedestrian and vehicular, to all buildings are clearly legible including, where practicable, being clearly visible from the street.

9. By enabling apartments to be located within tall building forms within envelopes and maximum heights in Appendix 15P where such structures are designed to high quality architectural standard.
10. By requiring apartment design to achieve a good standard of amenity for occupiers.
11. By mitigating any adverse effects of outlook from main living areas, including any modification that may be required where the mall roof is a dominant component of outlook.
12. By requiring all new and alterations to existing building development to achieve a high standard of building design.
13. By requiring parking that recognises the advantages of a town centre location while still providing for the use of private motor vehicles and cycles.
14. By ensuring any non-residential activity above RL 21m is related to or not incompatible with the primary purpose of the overlay to encourage residential intensification.
15. By ensuring intensive residential development does not compromise the ability of existing non-residential activities to continue their legitimately established operations.

#### **Explanation and Reasons**

The Milford Intensive Residential Overlay Area allows buildings intended for residential use as apartments. Tall buildings within the maximum heights and building envelopes in Appendix 15P may be erected in this area which will be seen from nearby and distant locations. These buildings will contribute to a changed character for the Milford town centre and it is important that they be designed in such a way as will ensure a human scale on the street and the protection of street character and amenity. In this regard the main street (Kitchener Road) and Milford Road are seen to be of particular importance.

The articulation and modulation of buildings, and appropriate interfaces with the street is also important. A high quality of building design and urban design will be required through assessment processes conducted via required resource consents for all new development and alterations to existing buildings.

Parking standards reflect the accessibility of alternative modes of transport in Milford, including buses, walking and cycling possibilities and the proximity to a range of services and facilities.

It is important that intensive residential development does not compromise the ability of existing non-residential activities to continue their operations. Rules applying to the establishment of intensive residential development, including parking standards and Noise Rule 10.5.c(i), are designed to ensure intensive residential development does not compromise the ability of existing non-residential activities to continue their legitimately established operations. Non compliance with those standards may require limited notification of adjacent properties.

#### **6. Section 15.5 - Add text as follows (underlined):**

##### **15.5 Rules: Business Activities**

*Amend Rule 15.5.1.4 as follows:*

##### **15.5.1.4 Limited Discretionary Activities**

4. In the Business 1- 4 zones, or the Business 9 zone on Hinemoa Street, (between Rugby and Brassey Roads only) and is:

- 
- a) Any new building,
  - b) Additions to an existing building, not provided for as a permitted activity,
  - c) Alterations to an existing building not provided for as either a permitted or controlled activity,

provided that any new building or alteration to existing building in the Milford Intensive Residential Development Overlay Area shall comply with the standards in Rule 15.6.2.12 in order to remain a Limited Discretionary Activity.

Note: For the purpose of this rule, "Additions" excludes signs, signs being the subject of Section 13, Signs.

Provided that:-

- (a) in accordance with Section 95A(3) and 95B(2) of the RMA the Council shall, except in the case of (b) below, consider an application for resource consent under clause 4 above without public notification and without the need to obtain the written approval of, or serve notice on, affected parties. If the Council considers that special circumstances exist in relation to any such application, it may require the application to be publicly notified. Refer to Rule 3.3.2, Notification Processes for Resource Consents- Applications Requiring Multiple Resource Consents.
- (b) in the case of the Milford Intensive Residential Development Overlay Area notification of a consent application for any new building that exceeds a height of RL 37m or six storeys above ground level will be determined on a case by case basis in accordance with ss 95A - 95D of the RMA and Council shall limit the scope of submissions to be considered to those matters identified in 15.7.2.8.

*Amend Rule 15.5.1.5 as follows:*

#### **15.5.1.5 Discretionary Activities**

Any activity shall have Discretionary activity status provided that it:

- a) Is not listed as a Non-Complying activity in Section 15.5.1.6 of this Plan; and
- b) Can comply with the controls in Rule 15.6.1.5 to 15.6.1.17 inclusive; and
- c) Falls within any of the following circumstances:

...

- Any activity in the Milford Intensive Residential Development Overlay Area that does not comply with the standards in Rule 15.6.2.12, provided that any activity exceeding the maximum height standard is a non-complying activity.
- Non residential activity in the Milford Intensive Residential Development Overlay Area above RL 21.00 (see the map in Appendix 15P)

*Amend Rule 15.5.1.6 as follows:*

#### **15.5.1.6 Non-Complying Activities**

...

- e) In the Milford Intensive Residential Development Overlay Area, any activity that exceeds the maximum heights stated in Rule 15.6.2.12.

7. **Section 15.6 - Add text as follows (underlined):**

**15.6 Rules: Business Controls**

**15.6.1 Activity Controls**

**15.6.1.9 Residential Development**

Rule 15.6.1.9 does not apply to the Milford Intensive Residential Development Overlay Area (see map in Appendix 15P, and Rule 15.6.2.12)

*(NB notified PC34 amendments to this rule now not proposed here – they have been replaced by specific standards for the plan change land in 15.6.2.12)*

**15.6.2 Development Controls for Permitted and Controlled Activities**

**15.6.2.2 Maximum Height and Floor Area Ratio**

.....

Table 15.3 Maximum Height and Floor Area Ratio Controls			
Business Zone	Maximum Height	Floor Area Ratio	
		Basic	With Bonus
...	...		
2	<p>9m, except for Browns Bay, Highbury (refer to map Appendix 15B), <u>Milford (refer to Appendix 15P)</u> and the Glenfield Mall Shopping Centre (Lot 1, DP61951) In relation to Browns Bay the maximum height shall be 12.5m.</p> <p>In relation to the Glenfield Mall Shopping Centre, those parts of the site which lie within 100m of the centre line of Glenfield Road shall have a height limit of 12m. For the remainder of the site the height limit shall be 9m</p>		

**Explanation and Reasons**

**Local 1 and Suburban 2 Zones**

*There is some scope for the development of landmarks and for residential and business activity to locate on upper levels. The Control Flexibility provisions can respond to difficult circumstances and to opportunities that do not adversely affect residential and open space amenity. Highbury has had relatively recent investigations into development height, and the resulting implementation of these specific height controls is continued with only minor modifications. To encourage intensification within the Milford town centre, specific height limits apply to the Milford Intensive Residential Development Overlay Area (see Rule 15.6.2.12). Centre Plans are expected to more specifically address building height in other areas.*

**15.6.2.3 Building Height in Relation to Boundary**

.....

**Explanation and Reasons**

.....

Modified controls apply to the Milford Intensive Residential Development Overlay Area that enable buildings within the envelopes shown on the overlay plan to achieve an appropriate scale, bulk, location and street frontage, and provide enhanced opportunities for passive surveillance of the streetscape whilst still maintaining a good degree of amenity within adjacent residential areas.

**15.6.2.12 Requirements for Development in the Milford Intensive Residential Development Overlay Area**

The following standards must be complied with in any application for a Limited Discretionary Activity for residential units / apartments in Building Envelopes 1 – 9 of the Milford Intensive Residential Development Overlay Area (See Appendix 15P):-

1. The total number of residential units shall not exceed 250 units
2. The maximum footprint of buildings shall be in accordance with Appendix 15P
3. The maximum height of buildings shall be in accordance with Appendix 15P.
4. The maximum height of buildings in relation to boundaries shall be in accordance with Appendix 15C, subject to the exemption specified in Appendix 15P.
5. Each residential unit in the Milford Intensive Residential Development Overlay Area (see map in Appendix 15P) shall provide:
  - a) Balconies with:
    1. i) a minimum area of 4m<sup>2</sup> and a minimum dimension of 1.5 metres for units 55m<sup>2</sup> or less.
    - ii) a minimum area of 6m<sup>2</sup> and a minimum dimension of 1.8 metres for units 56m<sup>2</sup> – 70m<sup>2</sup>.
    - iii) a minimum area of 8m<sup>2</sup> and a minimum dimension of 1.8 metres for units over 70m<sup>2</sup>.
  - b) The main glazing of each residential unit shall be provided with an outlook area of open space, unimpeded by buildings and immediately adjacent to that glazing. Any outlook area must have a minimum dimension of 10 metres, measured at right angles to the wall of the building within which the glazing is located, provided that there shall be a minimum separation distance of 20 metres between the main glazing of one unit and that of another unit situated on the same or on an adjoining site or delineated area unless the main glazing is offset so that it is not possible to draw a horizontal angle of less than 120 degrees from one window to another.

The outlook area may comprise the following components:

- i) An area of on-site space which must be kept free of structures.
- ii) Areas of road reserve.
- iii) Areas of public open space.

- c) The minimum sizes of units / apartments shall be as follows:
- i) Studio = 40m<sup>2</sup>
  - ii) One bedroom unit = 50m<sup>2</sup>
  - iii) Two bedroom units = 75m<sup>2</sup>
  - iv) Three or more bedroom units = 95m<sup>2</sup>
- Provided that where a development contains 20 or more units, no more than 30% shall be one bedroom or studio units.
6. Any application for resource consent which includes buildings fronting onto Omana Rd shall include a detailed design of a pedestrian footpath located along the full length of the site boundary with Omana Road. The design shall be in accordance with the Auckland Transport Code of Practice and shall be constructed prior to the occupation of any buildings fronting on onto Omana Rd.
7. Any application for resource consent shall be accompanied by a plan illustrating the provisions to be made for pedestrian and cycle access to the site, including an illustration of how this access is to be linked to bus stops, bus routes and the regional cycle network.
8. The peak hourly traffic flow generated by the residential units during the weekday peak periods of 7:00 to 9:00 am and 4:00 to 6:00 pm shall not exceed 141 vehicle trips.

### **Explanation and Reasons**

The standards for Limited Discretionary Activities within the Milford Intensive Residential Development Overlay Area are derived from an analysis of effects, including likely traffic generation, effects of building dominance and shading residential character and amenity and the need to support and encourage active travel modes. These standards are a prerequisite to the activity status remaining Limited Discretionary.

### **9. Section 15.7 - Add text as follows (underlined):**

**15.7.2.7 New buildings and Alterations to existing Buildings- Business 1, 2, 3 and 4 Zones, and Business 9 on Hinemoa Street (between Brassey and Rugby Roads only (included here for context only)**

- a) When assessing an application for a Limited Discretionary activity in the Business 1, 2, 3 and 4 zones, and in the Business 9 zone in Hinemoa Street, (between Rugby and Brassey Roads only), the Council will consider the assessment criteria contained in Section 15A of the District Plan, Urban Design Code, and any other relevant assessment criteria in Section 15.
- b) Compliance with the Urban Design Code should be demonstrated in the Context Analysis and Design Statement required by Rule 15.6.2.11 submitted as part of the application for consent. In the Business 4 zone compliance with the Albany Structure Plan should also be demonstrated in the Context Analysis.
- c) Where a site is located within the Buffer Strip, the assessment criteria in Rule 15.7.1.6, "Buffer Strip Development" also apply.

**15.7.2.8 New Buildings and alterations to existing buildings located within the Milford Intensive Residential Development Overlay Area (see Appendix 15P)**

When considering proposals for new buildings and alterations to buildings as a Limited Discretionary Activity or a Discretionary Activity, applications will be assessed in terms of 15.6.2.11, 15.7.2.7, Appendix 15A and the following additional criteria:

(a) A context analysis is to be provided in accordance with Rule 15.6.2.11 for all Limited Discretionary and Discretionary Activity consent applications.

(b) Height and Bulk of Buildings

- i. Buildings shall not visually dominate their immediate or wider surrounding environment.
- ii. Building height shall be aesthetically coherent with the town centre, shopping mall and surrounding residential area.

(c) Design of Buildings

- i. Buildings shall be constructed within the building envelopes in Appendix 15P, with the final height and bulk of buildings within those envelopes to be determined by reference to the Policies in 15.4.2A, the standards in Rule 15.6.2.12 and the following assessment criteria.
- ii. Building design shall be of a high quality, provide variation and should be complementary to the local context at every scale - street, neighbourhood and centre.
- iii. Buildings shall be designed to provide a distinctive silhouette so when viewed from within and around Milford they make a positive contribution to the collective skyline of the town centre.
- iv. Buildings shall avoid a boxy dominant massing by utilising creative architectural solutions that provide interest in the facade such as modulation, relief and surface detailing and avoiding blank walls facing the street.
- v. Buildings shall be designed with an appropriate scale at the street level to integrate with the adjacent buildings and open space.
- vi. The design of balustrades and the design and location of full height windows shall provide for at least partial screening of personal effects when viewed from the street or wider surrounds.
- vii. The height, bulk, streetscape frontage and external appearance of building(s) occupying Envelope 1 shown on Appendix 15P shall be designed to integrate with their context and enhance the landmark nature of the site.
- viii. The upper levels of buildings within envelopes 1, 3 and 5 (built form above adjoining envelopes) will be seen in the round and shall be architecturally articulated and modulated to acknowledge their exposure to public view and shall be designed and constructed from materials that will reduce their apparent visual bulk.
- ix. Building 1 shall be designed to respond positively to the wider Omana Road context including proximity to the Milford Ridge and the Milford Estuary and visual and amenity effects of the building from the wider Milford context. Particular regard shall be had to the effects of:
  - a. Building dominance.
  - b. Neighbourhood privacy (see 15.7.2.8(e))
  - c. Milford character and amenity.
  - d. Connectivity between the existing residential neighbourhood and any new residential apartment buildings through the location and design of building access and pedestrian connections to and from that access.
  - e. Milford pedestrian amenity area (village square).
- x. Building 3 shall be designed to respond to the wider Omana Road context including proximity of the building to neighbouring residential zone and visual and amenity effects of the building from the wider Milford area. Particular regard shall be had to the effects of:

- a. Building dominance.
  - b. Neighbourhood privacy (see 15.7.2.8(e))
  - c. Milford character and amenity.
  - d. Connectivity between the existing residential neighbourhood and any new residential apartment buildings through the location and design of building access and pedestrian connections to and from that access.
- xi. Building 5 shall be designed to respond to the wider Milford Road context including visual and amenity effects of the building on the residential neighbourhood. Particular regard shall be had to the effects of:
- a. Building dominance.
  - b. Neighbourhood privacy (see 15.7.2.8(e))
  - c. Milford character and amenity.
  - d. Connectivity between the existing residential neighbourhood and any new residential apartment buildings through the location and design of building access and pedestrian connections to and from that access.
- xii. Building(s) taller than RL21m in Envelopes 5, 6, 7 and 8 shown on Appendix 15P shall be accompanied by an appropriate development interface in the existing carpark area adjoining the corner of Milford Road and Ihumata Road.
- xiii. Where main living areas overlook the mall roof the mall roof shall be modified or screened as appropriate to avoid or mitigate any glare or unsightly components.
- xiv. The design of apartments shall be consistent with the overall intentions for apartments as set out in *The Good Solutions Guide for Apartments* (ISBN 978-0-473-11999-7), and in particular, Part C of that Guide.
- xv. Buildings within Envelopes 5,6,7,8 and 9, shall be suitably sleeved along the Ihumata and Milford Road frontages to ensure that the total development achieves a positive interface with the streetscape.
- xvi. Any above ground carparking shall be designed to avoid a utilitarian visual interface with the surrounding residential environment.

(d) Pedestrians and Cycling

- (i) Pedestrian connections are to be provided through the site and in particular, mid-block connections between Kitchener Road and Milford Road.  
*Note: It is expected that connections through the site will be publicly accessible at least during the hours that the Milford Shopping Centre is open.*
- (ii) Facilities are to be provided for cyclists (in accordance with the ARTA Guidance Note for Cycle Parking Facilities 2007).
- (iii) The wind environment at pedestrian level shall be suitable for pedestrians and the applicant is to provide a wind assessment to confirm this.

(e) Privacy in respect of Residential Activities:

- (i) Building layout, orientation windows and balconies are to be designed to prevent overlooking of the private open space of other residential dwellings (both within and outside the site).

(f) Daylight and Sunlight in respect of Residential Activities

- (i) Habitable rooms and outdoor spaces shall allow for solar admission and sun access during the shortest winter day (as a guide, habitable rooms for at least 70 percent of the units should receive sun access for a minimum of three hours between 9 am and 3 pm on the winter solstice (June 21)).
- (ii) Glazing is to be of sufficient size and appropriately located to allow natural light into rooms to allow daily activities to occur without the need for artificial lighting.
- (iii) Design devices such as overhangs, vertical screens, heat-absorbing materials (such as tiles) and reflective glass are to be used to help to regulate summer and winter solar gain and provide passive sources of heating.

(iv) Apartments are to have adequate ceiling heights and appropriate depths to maintain apartment amenity by allowing daylight penetration.

(g) Reverse Sensitivity

i. Residential apartments shall be designed to avoid the effects of mall operations, including but not limited to issues such as mechanical ventilation, noise, traffic and loading.

(h) Traffic Generation

Refer to the assessment criteria in Rule 12.5.1.3

## Appendices

### Appendix 15C: Sloping Height Planes, Building Height in Relation to Boundary for Business Zones *(Note, with these amendments the existing rule remains unchanged)*

#### For all business zoned sites

No part of any building on a site zoned Business 1, 2, 3, 4, 5, 6, 7, 8, 9 shall exceed a height of 2.5 metres plus the horizontal distance between that part of the building & the nearest part of any residential zone boundary, or any land designated for a school at the time the Plan is notified (e.g. Birkenhead Primary School).

#### For sites zoned Business 1, 2, 7, 8, 9, 10

No part of any building on a site zoned Business 1, 2, 7, 8, 9, 10 shall exceed a height of 10 metres plus the horizontal distance between that part of the building and the nearest part of any recreation zone boundary.

#### [For sites zoned Business 2, Business 3 Areas A, B, D and Business 11

No part of any building on a site zoned Business 2 or 3 Area A, B or D shall exceed a height of 10 metres plus the horizontal distance between that part of the building and the nearest part of any road boundary.]

### 10. Amend Table 15A.1 (Urban Design Code) as follows:

Town Centre	Exempted Street	Reason for Exemption
Milford	Omana Road	Topography

### 11. Add a new Appendix 15P (next page)

*Note the amendment to the Height to Boundary exemption clause that applies by way of an asterisk (\*), to read as follows:*

**“\* BUILDING EXEMPTED FROM COMPLYING WITH RULE 15.6.2.3 AND OPERATIVE DISTRICT PLAN APPENDIX 15C HEIGHT IN RELATION TO BOUNDARY CONTROLS B AND C”**

## ADDITIONAL AMENDMENTS TO DRAFT DECISION VERSION OF PLAN CHANGE 34 SOUGHT BY K HARDY

### Proposed Plan Change 34

Additional amendments to the Draft decisions version sought by K Hardy are shown  
**highlighted.**

### Milford Intensive Residential Development Overlay Area

This is a privately initiated plan change

...

#### 1. Section 15.5 - Add text as follows (underlined):

##### 15.5 Rules: Business Activities

Amend Rule 15.5.1.4 as follows:

##### 15.5.1.4 Limited Discretionary Activities

4. In the Business 1- 4 zones, or the Business 9 zone on Hinemoa Street, (between Rugby and Brassey Roads only) and is:
  - a) Any new building,
  - b) Additions to an existing building, not provided for as a permitted activity,
  - c) Alterations to an existing building not provided for as either a permitted or controlled activity,

provided that any new building or alteration to existing building in the Milford Intensive Residential Development Overlay Area shall comply with the standards in Rule 15.6.2.12 in order to remain a Limited Discretionary Activity.

Note: For the purpose of this rule, "Additions" excludes signs, signs being the subject of Section 13, Signs.

Provided that:-

(a) in accordance with Section 95A(3) and 95B(2) of the RMA the Council shall, except in the case of (b) below, consider an application for resource consent under clause 4 above without public notification and without the need to obtain the written approval of, or serve notice on, affected parties. If the Council considers that special circumstances exist in relation to any such application, it may require the application to be publicly notified. Refer to Rule 3.3.2, Notification Processes for Resource Consents- Applications Requiring Multiple Resource Consents.

**(b)** in the case of the Milford Intensive Residential Development Overlay Area notification of a consent application for any new building that exceeds a height of RL 37m or six storeys above ground level will be determined on a case-by-case basis in accordance with ss 95A-95D of the RMA and Council shall limit the scope of submissions to be considered to those matters identified in 15.7.2.8.



(b) in the case of Milford Intensive Residential Development Overlay Area as defined in Appendix 15P, notification will be determined on a case by case basis in accordance with s95D of the RMA

...

#### 15.7.2.8 New Buildings and alterations to existing buildings located within the Milford Intensive Residential Development Overlay Area (see Appendix 15P)

When considering proposals for new buildings and alterations to buildings as a Limited Discretionary Activity or a Discretionary Activity, applications will be assessed in terms of 15.6.2.11, 15.7.2.7, Appendix 15A and the following additional criteria:

...

##### (c) Design of Buildings

- ix. Building 1 shall be designed to respond positively to the wider Omana Road context including proximity to the Milford Ridge and the Milford Estuary and visual and amenity effects of the building from the wider Milford context. Particular regard shall be had to the effects of:
  - a. Building dominance.
  - b. Neighbourhood privacy (see 15.7.2.8(e))
  - c. Milford character and amenity.
  - d. Connectivity between the existing residential neighbourhood and any new residential apartment buildings through the location and design of building access ~~and~~ pedestrian connections to and from that access landscaping and openspace.
  - e. Milford pedestrian amenity area (village square).
- x. Building 3 shall be designed to respond to the wider Omana Road context including proximity of the building to neighbouring residential zone and visual and amenity effects of the building from the wider Milford area. Particular regard shall be had to the effects of:
  - a. Building dominance.
  - b. Neighbourhood privacy (see 15.7.2.8(e))
  - c. Milford character and amenity.
  - d. Connectivity between the existing residential neighbourhood and any new residential apartment buildings through the location and design of building access ~~and~~ pedestrian connections to and from that access landscaping and openspace.
- xi. Building 5 shall be designed to respond to the wider Milford Road context including visual and amenity effects of the building on the residential neighbourhood. Particular regard shall be had to the effects of:
  - a. Building dominance.
  - b. Neighbourhood privacy (see 15.7.2.8(e))
  - c. Milford character and amenity.
  - d. Connectivity between the existing residential neighbourhood and any new residential apartment buildings through the location and design of building access ~~and~~ pedestrian connections to and from that access landscaping and openspace.
- xii. Building design shall integrate with the wider context and distant views of the building. The design detail, especially at the footpath level, should provide a human scale and interesting frontage.



- xiii. Building frontage, front yard private terraces or open landscaping should be integrated with the footpath, street trees and opposite housing to create a pleasant and coherent streetscape.
- xiv. Building 8 shall be designed to respond to the wider Milford Road context including visual and amenity effects of the building on the residential neighbourhood. Particular regard shall be had to:
- a) Building dominance.
  - b) Neighbourhood privacy and in particular consideration of the need to address the design treatment and number of windows on the eastern wall of the building envelope.
  - c) Milford character and amenity.
  - d) Connectivity between the existing residential neighbourhood and any new residential apartment buildings through the location and design of building access, landscaping and open space.
- xv. Building(s) taller than RL21m in Envelopes 5, 6, 7 and 8 shown on Appendix 15P shall be accompanied by an appropriate development interface inwith the existing carpark area and mall roof area adjoining the corner of Milford Road and Ihumata Road.

