

BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC 10

IN THE MATTER of s 163 of the Local Government
(Auckland Transitional Provisions) Act 2010
("LGATPA") in relation to the proposed
Auckland Unitary Plan

AND in the matter of 080 Rezoning and Precincts
General

BETWEEN THE PUHOI COMMUNITY FORUM
INCORPORATED

(ENV-2016-AKL-000195)

Appellant

AND AUCKLAND COUNCIL

Respondent

Court: Environment Judge JA Smith, sitting alone pursuant to s 279 of the
Resource Management Act, on the papers

Submissions: M Swain for Puhoi Community Forum Incorporated
M Wakefield for Auckland Council
K Littlejohn for Dickson Yachting Limited (s 274 party)

Date of Decision: 2 February 2017

Date of Issue: 2 February 2017

DECISION OF THE ENVIRONMENT COURT

A: Part 8(4) of the appeal by Puhoi Community Forum Incorporated is amended to
read:

The restoration of the minimum lot size to 4,000m² where the Rural Coastal Settlement
Zone applies to land in Puhoi, more particularly as shown on the attached Map/Plan
marked A. To the extent there is any dispute as to the area covered, the wording of 8(4)
will prevail.

B: Costs are reserved, to be dealt with (if necessary) as part of the substantive
proceedings.

Puhoi Community Forum Inc v Auckland Council



REASONS

Introduction

[1] The Puhoi Community Forum Incorporated (“**the Puhoi Community**”) has filed a memorandum advising that they seek partial withdrawal of the relief sought in their appeal. The Auckland Council has provided a map showing the area they consider to be covered by Puhoi. The map provided, unfortunately, does not show clearly whether all of the areas (the yellow, brown and green areas) are intended to be covered. We have assumed for current purposes that the coding of the map is clearly understood by the parties. Nevertheless, if there is any doubt between the map and the wording of the relief, the wording of the relief would prevail.

[2] Mr Littlejohn, for the s 274 party, has indicated a concern with the scope jurisdiction to reframe the relief; however he notes that these are scope issues that will be dealt with by submissions in accordance with the process already directed. We take this essentially to acknowledge the amendment of the relief, on the basis that it narrows the issues, but Mr Littlejohn still maintains that the relief sought is outside scope.

Consideration

[3] The Puhoi Community filed an appeal seeking a number of items of relief in paragraph [8]. In brief these were:

- (i) a declaration that the recommendations of the hearing panel were beyond the scope of submissions;
- (ii) a declaration that the hearing panel should have identified those recommendations as being beyond the scope of submissions;
- (iii) the rezoning of the land at 97 Saleyards Road, Puhoi and the adjacent land from Coastal and Rural Settlement to Rural Production; and/or
- (iv) the restoration of the minimum lot size to 4,000m²; and/or
- (v) the reduction of the Coastal and Rural Settlement zone (**RCSZ**) at 97 Saleyards Road, Puhoi to the area originally sought by the owner of that land in his submission; and
- (vi) such further or other relief as may be appropriate.



[4] The Puhoi Community has now filed a memorandum identifying partial withdrawal of relief. It notes that the appellant's primary concern is the application of the RCSZ in the Puhoi area, particularly at 97 Saleyards Road, Puhoi and on adjacent land. The memorandum goes on:

3. However, the appellant has become aware that its appeal is preventing the minimum lot size rule for the RCSZ being treated as operative in areas of Auckland other than Puhoi, which is zoned RCSZ. This was not the appellant's intention, and it wishes to amend the relief sought to clarify that the amendment to the minimum lot size sought in paragraph 8(4) of the appeal relates only to the Puhoi area.

4. The appellant therefore formally withdraws the relief sought in paragraph 8(4) of the appeal to the extent that it affects land outside the Puhoi area. Paragraph 8(4) would therefore be confined to seeking "*The restoration of the minimum lot size to 4000m² where the Rural and Coastal Settlement Zone applies to land in Puhoi.*"

5. For the avoidance of doubt, the appellant confirms its relief sought does not extend to seeking a change to the minimum lot size for the RCSZ as it applies to land zoned RCSZ at Kaukapakapa, Auckland.

[5] The Auckland Council has not expressed any concerns with this clarification and in fact has supplied a map, annexed hereto as **A**, showing what it considers to be the Puhoi area. Although no legend is given with the map, we assume that the RCSZ area is that with yellow stripes, but it may in fact include other areas that are marked in brown. Unfortunately, the map is unclear as it stands, but the legend may be well known to the parties. To the extent that the map may assist we have annexed it, but the wording sought by the Puhoi Community would take precedence.

Evaluation

[6] Any reading of the relief sought makes it clear that relief 3, 4 and 5 are inter-related. Because of the separate numbering, there may be a possible interpretation that it sought the minimum lot size of 4,000m² over all Rural Coastal Settlement zones, but it is not clear what that is in relation to if one ignores paragraph 3. Accordingly, I have concluded that it is clear from a proper reading of the relief sought that it was intended to apply to the land at 97 Saleyards Road, Puhoi and the adjacent land which is zoned Coastal and Rural Settlement.

[7] On that basis, paragraph 8(4) does not seek a rezoning of RCSZ land outside Puhoi which is not adjacent to the site. The withdrawal now sought is simply to clarify what I



consider the appeal sought in any event. That being the case, it must follow that the wording of 8(4) should be amended to read:

The restoration of the minimum lot size to 4,000m² where the rural and coastal settlement zone applies to land in Puhoi.

[8] We would add a reference to the map, on the basis that if there is any doubt as to the area covered as shown in Map A, the wording of 8(4) will prevail. We would, therefore, also include the words:

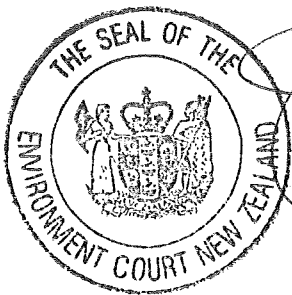
...as shown on the Map attached A. To the extent there is any dispute as to the area covered, the wording of 8(4) will prevail.

Jurisdictional issue

[9] Mr Littlejohn notes the jurisdictional issue is being dealt with by a separate process. Nothing in this amendment affects that jurisdictional question, and the clarification is simply to avoid doubt among council officers and others as to the scope of 8(4). Accordingly, it follows that that issue is unaffected by this amendment. Accordingly, the clause should be amended as indicated.

[10] Any question of costs is reserved for disposition as part of the substantive proceedings.

For the court:



JA Smith
Environment Judge

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Map 1: Extent of Puhoi area (with 97 Saleyards Road shown with a blue outline)

