

Before the Environment Court

ENV-2016-AKL-

In the Matter

of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) and the Resource Management Act 1991 (**RMA**)

And

In the Matter

of an appeal under section 156 of the LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on the proposed Auckland Unitary Plan (**the Unitary Plan**)

Between

South Epsom Planning Group Inc and Three Kings United Inc

Appellants

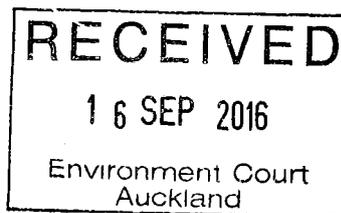
And

Auckland Council

Respondent

Notice of Appeal

Dated 16 September 2016



Rob Enright
Barrister
Northern Steamship
Level 1, 122 Quay Street
Britomart
Auckland 1010
e: rob@publiclaw9.com
m: 021 276 5787

To: the Registrar
Environment Court
Auckland

- 1 South Epsom Planning Group Inc and Three Kings United Group Inc (**Societies**) appeal against a decision of the Auckland Council (**Council**) on provisions of the proposed Auckland Unitary Plan.
- 2 The Societies appeal the Council's decision under section 156(3) of the LGATPA. The Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) recommended approval of the Three Kings precinct as being within scope. The Hearings Panel was wrong and there was no scope in relation to:
 - (A) Maximum building height;
 - (B) Excavation and quarrying of Council owned land;
 - (C) Location of buildings on Fletcher and Council land (building footprints).
- 3 Council adopted that recommendation. It therefore made a decision beyond the scope of any submission to the Proposed Plan on provisions identified above. The Council's decision resulted in precinct provisions being included in the proposed plan different from those in the notified version. The Societies are unduly prejudiced by the precinct decision.
- 4 The Societies provide further details of the reasons for appeal below.
- 5 The Societies are not trade competitors for the purposes of section 308D of the Resource Management Act 1991.
- 6 The Societies received notice of the decision on 19 August 2016.
- 7 The decision that the Societies are appealing is the recommendation to include the Three Kings Precinct in the decisions version of the proposed plan:

333 Three Kings Precinct

1. Summary of recommendations

The Panel recommends that the Three Kings Precinct is included in the Unitary Plan as largely agreed between the Council and the

predominant land owner, Fletcher Construction Developments Limited (Fletcher).

The Panel also recommends that the Three Kings Residential Design Guide is included in the Unitary Plan.

This precinct was heard in Topic 081.

- 8 This appeal relates to the recommendations in the Hearings Panel “Report to Auckland Council Hearing Topics 016, 017; Changes to the Rural Urban Boundary; 080, 081 Rezoning and precincts” at pp 64-73 (**precinct decision/Three Kings precinct**). Council adopted without alteration the precinct decision. Accordingly, reasons given by the Hearings Panel are also reasons of Council as decision-maker.
- 9 Recommendations made by the Hearings Panel are to be read as an integrated whole, meaning that other recommendations (and Council’s decision adopting same) may have some relevance to the appeal (such as Topic 080). Also relevant is the Hearings Panel’s “Overview of Recommendations” (in particular “Scope”, which outlines case law, methodology and approach to scope).
- 10 The reasons for the appeal are as follows (*references to Unitary Plan provisions are to the decisions version unless otherwise stated*):
- 11 Scope is defined by reference to the plan provisions as notified, relief sought in submissions made on the proposed plan, consequential amendment, and the test as to scope identified in High Court authority including the “Clearwater” tests. Relevant case law was referred to and adopted by the Hearings Panel at [4.2] of its “Overview of Recommendations.”
- 12 In rezoning the Three Kings precinct, the Hearings Panel acted outside s144(5) LGATPA and the High Court authority it cited. Decisions on scope have material consequences. There is “potential for adversely affected persons to be disenfranchised and unable to ascertain that their interests

have been appropriately addressed.”¹ Maximum building height exceeded relief sought by all relevant submitters. Building footprint affects density of development. Blasting “has potential adverse effects which cannot readily be identified and are peculiar to the circumstances of the Site.” Quarrying “..was completed some years ago. Therefore any renewal of that activity will need rigorous assessment..”²

13 Provisions of the Three Kings Precinct in relation Maximum building height, Excavation and quarrying of Council owned land, Location of buildings on Fletcher and Council land (building footprints):

- (A) Are outside the scope of relief of the notified plan and primary / further submissions on the Three Kings Precinct;
- (B) Were not the subject of any s32AA RMA or statutory analysis;
- (C) Are not in accordance with the purpose of the RMA, relevant statutory provisions, and does not have regard to relevant provisions of Part 2 RMA, in sections 5, 6(b) and 7 RMA.

14 We seek the following relief:

- Deletion of the out of scope provisions and replacement with provisions identified in the primary and further submissions of the Appellants;
- a merits hearing on same;
- costs.

15 An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. *

¹ [2016] NZEnvC 140 Ngati Te Ata Waiohua & Ngati Tamaoho Trust v Auckland Council at [211]

² Ibid at [211]

16 We **attach** the following documents to this notice:

Dated this 15th day of September 2016



Authorised representative for Societies

This Notice of Appeal is filed by Colin Lucas, Solicitor for the Appellants, of the firm Sellar Bone. Documents for service on the Appellant may be served by courier, post or email at the following address, with copy by email to Counsel:

Solicitors:

Sellar Bone
3 Owens Road (Ground Floor)
Epsom
Auckland 1023
t: 09 623 7541
m: 0274 479-921
e: colinl@sellarbone.co.nz
Attention: Colin Lucas

Counsel:

Rob Enright on email at rob@publiclaw9.com

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, 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 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to unitaryplan.ecappeals@justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unitaryplan@aucklandcouncil.govt.nz) and the appellant.

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 RMA.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

Advice

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