

ENV-2017-APL-000110

IN THE ENVIRONMENT COURT
AT AUCKLAND

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(3) 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 (**Proposed Plan**).

AND

IN THE MATTER of Proposed Plan Hearing Topic 016 RUB Waiheke Island

BETWEEN Gavin and Carolyn Smart
Appellant

AND AUCKLAND COUNCIL
Respondent



NOTICE OF APPEAL

Dated 27th July 2017

To: The Registrar
 Environment Court
 Auckland

1. We, Gavin and Carolyn Smart, appeal against a decision of the Auckland Council (the **Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).
2. We have the right to appeal the Council's decision –
 - (a) under section 156(3) of the LGATPA because the Council accepted a recommendation of the Hearings Panel that the Hearings Panel had identified as being beyond the scope of the submissions made on the Proposed Plan. The Council's decision resulted in a matter (ie, the RUB) being excluded from the Proposed Plan. Although the removal of the RUB on Waiheke would actually assist us in our aim of getting the street frontage of our property along Tiri Road (and of the two properties either side of us) re-zoned as Residential as per our submission to the Hearings Panel, the removal of the RUB is an extreme move which will possibly adversely affect the whole island. Hence we, and the populace of Waiheke, are unduly prejudiced by the exclusion of the matter.
3. We provide further details of the reasons for our appeal below.
4. We are not a trade competitor for the purposes of section 308D of the RMA.
5. We received notice of the decision on 19 August 2016.
6. We are appealing the Council's decision to completely delete the Rural Urban Boundary for the Hauraki Gulf Islands (specifically, for Waiheke Island). The RUB was covered in the Proposed Plan Hearing within Topic 016: RUB Waiheke Island.
7. The reasons for the appeal are as follows:
 - (a) Although we had made submissions to the Hearing Panel for minor changes to be made to the RUB on Waiheke Island, we did not envisage for the RUB to be completely removed.
 - (b) As long-term residents on Waiheke Island (nearly 30 years), we (and a large portion of the island's populace, see also the report "Essentially Waiheke Refresh 2016") do not want to see unrestrained urban-type development of Waiheke's existing rural areas that removal of the RUB in its entirety would allow.
8. We seek the following relief:
 - (a) that the RUB be re-instated on Hauraki Gulf Islands (specifically, for Waiheke Island), with the proviso that
 - (b) the RUB be fine-tuned to reflect the ability of suitable small areas on the urban fringe to be included within the RUB and not outside of it. Suitable areas to be incorporated within the RUB should include the street frontages of 32, 34 and 36 Tiri Road, Oneroa (as per our original submission to the Hearing Panel), and those areas in Onetangi as outlined in the submission by Ron Walden.
9. An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on

other persons.

10. We attach the following documents to this notice:

- (a) a copy of the Public Notice that appeared in the New Zealand Herald on 29th June 2017, which provides background information about the proceedings and the decision issued by the High Court,
- (b) a copy of the wording of our on-line submission on the proposed plan ("Wording of Smarts Tiri Rd RUB Submission.pdf"),
- (c) a copy of our evidence to the Hearing Panel re our on-line submission on the proposed plan ("Smart Topic016 Hearing Evidence re Shifting RUB Tiri Rd Waiheke Is Final 14 November 2015.pdf"),
- (d) a copy of the evidence from Barry Kaye to the Hearing Panel supporting our submission on the proposed plan ("Barry Kaye Evidence for Smart and Others -Topic 016 Waiheke 16 November 2015.pdf").



Signature of appellants

27th July 2017

Date

Address for service of appellant:

Telephone: 0272893333

Email: GandC.Smart@Xtra.co.nz

Contact person: Gavin Smart

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 unicanplan@ecappeals.justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unicanplan@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.
