

In the High Court of New Zealand
Auckland Registry
CIV-2016-404-

under the Local Government (Auckland Transitional
Provisions) Act 2010, the Resource Management Act 1991
and Part 20 of the High Court Rules

in the matter of an appeal on questions of law under s 158 of
the Local Government (Auckland Transitional Provisions) Act
2010

between

VIADUCT HARBOUR HOLDINGS LIMITED

a duly incorporated company carrying on business in
property investment and having its registered office at
Level 5, 16 Viaduct Harbour Avenue, Auckland
Appellant

and

NOTICE OF APPEAL

13 SEPTEMBER 2016

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AUCKLAND COUNCIL

a local authority established under the Local Government
(Auckland Council) Act 2009
Respondent

NOTICE OF APPEAL

TO: The Registrar of the High Court at Auckland

AND TO: The Respondent

This document notifies you that –

The Appellant appeals under s 158(1) of the Local Government (Auckland Transitional Provisions) Act (**Act**) against recommendations of the Auckland Unitary Plan Independent Hearings Panel (**Panel**) on the Auckland proposed plan (**Plan**) accepted by the Respondent.

Matters appealed against

1. The Appellant appeals against the Respondent's decision to accept the following recommendations in the Panel's July 2016 report on hearing topics 050-054:
 - (a) The creation of a Sub-Precinct C within part of the Viaduct Harbour area of Auckland (Sub-Precinct A of Viaduct Harbour Precinct) (**Sub-Precinct A**) where office use is to be discretionary (rather than a permitted activity as notified in the Plan for all of the City Centre Precincts including Viaduct Harbour Precinct).
 - (b) The omission in Sub-Precinct C of the two metre "roof bonus" addition to maximum permitted height restriction provided for in the operative Auckland District Plan Central Area Section 2004 (**roof bonus**).
 - (c) The inclusion of the part of Viaduct Harbour Precinct known as "Lighter Quay" within Sub-Precinct C.

Standing and jurisdictional issues

2. The Appellant submitted in respect of matters 1(a) and 1(b) (opposing the creation of Sub-Precinct C and seeking for the roof bonus to be retained on all sites in the Precinct as under the Operative District Plan).
3. It is unclear whether the correct appellate pathway for matter 1(c) is to the Environment Court under s 156(3) or this Court under s 158(1). This is because while the matter was outside the scope of submission, the Panel failed to identify this, and this identification is arguably required to create jurisdiction in the Environment Court under s 156(3)(b). The Appellant has filed in both Courts to protect its position and will seek directions concerning the correct appellate pathway.

Errors of law

4. In relation to the creation of Sub-Precinct C:
 - (a) The decision to create Sub-Precinct C was so unreasonable as to amount to an error of law.

- (b) The Panel and/or Council failed to provide any or sufficient reasons for the creation of Sub-Precinct C. Detailed reasons were required given that this was a key contested issue.
- 5. In relation to the roof bonus:
 - (a) The Panel failed to identify this recommendation as being beyond the scope of submissions.
 - (b) The Panel's decision was not made with reference to any evidence.
 - (c) The decision to remove the roof bonus from sites within Sub-Precinct C was so unreasonable as to amount to an error of law.
 - (d) The Panel and/or Council failed to provide any or sufficient reasons for the removal of the roof bonus.
- 6. In relation to the inclusion of the part of Viaduct Harbour Precinct known as "Lighter Quay" within Sub-Precinct C:
 - (a) The Panel failed to identify this recommendation as being beyond the scope of submissions.
 - (b) The Panel's decision was not made with reference to any evidence.
 - (c) The decision to include Lighter Quay within Sub-Precinct C was so unreasonable as to amount to an error of law.

Relief sought

- 7. The Appellant seeks:
 - (a) An order setting aside the Council's decision and the Panel's recommendations and remitting the relevant matters for reconsideration;
 - (b) Any other relief the Court sees fit; and
 - (c) Costs.



Davey Salmon / Robert Schultz
Counsel for the Appellant

This document is filed by Davey Salmon solicitor for the Appellant of the firm LeeSalmonLong.

Documents for the Appellant may be served at the offices of LeeSalmonLong situated on Level 16, Vero Centre, 48 Shortland Street, Auckland, or may be posted to P O Box 2026, Shortland Street, Auckland.