

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

IN THE MATTER of the Local Government (Auckland Transitional
Provisions) Act 2010 ("LGATPA") and the
Resource Management Act 1991 ("RMA")

AND of appeals under section 156(1) of the LGATPA

CIV-2016-404-2336

BETWEEN ALBANY NORTH LANDOWNERS

Plaintiff

AND AUCKLAND COUNCIL

Defendant

[Continued over page]

**JOINT MEMORANDUM OF COUNSEL ON BEHALF OF THE AUCKLAND
COUNCIL, APPELLANTS, APPLICANTS AND s.301 PARTIES REGARDING
CASE MANAGEMENT FOLLOWING THE PRELIMINARY SCOPE DECISION**

Dated 27th day of February 2017

**BROOKFIELDS
LAWYERS**

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R J Somerville QC

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Barristers Chambers
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DUNEDIN

CIV-2016-404-2298

BETWEEN AUCKLAND MEMORIAL PARK LIMITED
Plaintiff
AND AUCKLAND COUNCIL
Defendant

CIV-2016-404-2323

BETWEEN AUCKLAND UNIVERSITY OF
TECHNOLOGY
Plaintiff
AND AUCKLAND COUNCIL
Defendant

CIV-2016-404-2333

BETWEEN FRANCO BELGIORNO-NETTIS
Plaintiff
AND AUCKLAND COUNCIL
Defendant

CIV-2016-404-2335

BETWEEN FRANCO BELGIORNO-NETTIS
Plaintiff
AND AUCKLAND COUNCIL
Defendant

CIV-2016-404-2351

BETWEEN BUNNINGS LIMITED
Plaintiff
AND AUCKLAND COUNCIL
Defendant

CIV-2016-404-2326

BETWEEN CHARACTER COALITION INC. LTD. AND
ANOR

Plaintiff

AND AUCKLAND COUNCIL

Defendant

CIV-2016-404-2327

BETWEEN CHARACTER COALITION INC. LTD. AND
ANOR

Plaintiff

AND AUCKLAND COUNCIL

Defendant

CIV-2016-404-2322

BETWEEN STEPHEN HOLLANDER

Plaintiff

AND AUCKLAND COUNCIL

Defendant

CIV-2016-404-2321

BETWEEN HOWICK RATEPAYERS AND RESIDENTS
ASSOCIATION INCORPORATED AND
ANOR

Plaintiff

AND AUCKLAND COUNCIL

Defendant

CIV-2016-404-2320

BETWEEN JPR ENTERPRISES & ORS

Plaintiff

AND AUCKLAND COUNCIL

Defendant

CIV-2016-404-2324

BETWEEN NORTH EASTERN INVESTMENTS
LIMITED & ANOR

Plaintiff

AND AUCKLAND COUNCIL

Defendant

CIV-2016-404-2325

BETWEEN NORTH EASTERN INVESTMENTS
LIMITED & ANOR

Plaintiff

AND AUCKLAND COUNCIL

Defendant

CIV-2016-404-2349

BETWEEN THE STRAITS PROTECTION SOCIETY
INCORPORATED

Plaintiff

AND AUCKLAND COUNCIL

Defendant

CIV-2016-404-2350

BETWEEN STRAND HOLDINGS LIMITED

Plaintiff

AND AUCKLAND COUNCIL

Defendant

CIV-2016-404-2344

BETWEEN SUMMERSET GROUP HOLDINGS
LIMITED

Plaintiff

AND AUCKLAND COUNCIL

Defendant

CIV-2016-404-2305

BETWEEN VALERIE CLOSE RESIDENTS GROUP
Plaintiff
AND AUCKLAND COUNCIL
Defendant

CIV-2016-404-2341

BETWEEN VILLAGE NEW ZEALAND LIMITED
Plaintiff
AND AUCKLAND COUNCIL
Defendant

CIV-2016-404-2316

BETWEEN WALLACE GROUP LIMITED
Plaintiff
AND AUCKLAND COUNCIL
Defendant

CIV-2016-404-2331

BETWEEN MAN O'WAR FARM LIMITED
Plaintiff
AND AUCKLAND COUNCIL
Defendant

CIV-2016-404-2302

BETWEEN SOUTH EPSOM PLANNING GROUP
INCORPORATED & ANOR
Plaintiff
AND AUCKLAND COUNCIL
Defendant

Section 301 Parties:

HOUSING NEW ZEALAND CORPORATION

MINISTER FOR THE ENVIRONMENT

NGATI WHATUA ORAKEI WHAI RAWA LTD

PROPERTY COUNCIL OF NEW ZEALAND

TING HOLDINGS LIMITED

SUMMERSET GROUP HOLDINGS LIMITED AND EQUINOX
CAPITAL LIMITED

MAY IT PLEASE THE COURT:

Introduction

1. This joint memorandum is filed on behalf of parties who appeared in the High Court scope hearing (the **Preliminary Hearing**) that addressed preliminary questions on whether the recommendations made by the Auckland Unitary Plan Independent Hearings Panel (the **IHP**), and subsequently adopted by the Auckland Council (the **Council**), on the proposed Auckland Unitary Plan (the **PAUP**) were within the scope of the submissions.
2. The High Court decision, delivered on 13 February 2017 (the **Decision**),¹ provides parties with guidance on the issue of scope as well as specific determinations for ten ‘test cases’. It has implications for a number of appeals and judicial review challenges brought against the IHP and the Council that raise issues of scope. The Decision invited parties to file a joint memorandum in respect of relevant affected appeals for case management purposes by 27 February 2017.²
3. This joint memorandum responds to that invitation and addresses the case management of the following High Court appeals / applications for review where appellants/applicants appeared at the Preliminary Hearing. The case management of other appeals and judicial review challenges which allege a lack of scope will be dealt with in subsequent memoranda.³
 - (a) Albany North Landowners Group (**ANL**)
 - (b) Character Coalition Incorporated and Auckland 2040 Incorporated (the **Coalition and Auckland 2040**) (appeal and review)
 - (c) Howick Ratepayers and Residents Association Incorporate and W Moffatt (**HRRA**)

¹ **Albany North Landowners v Auckland Council** [2016] NZHC 138.

² At [304].

³ Namely, the proceedings brought by Horticulture New Zealand (appeal) and Bunnings Limited (judicial review challenge).

- (d) Straits Protection Society Incorporated (**Straits**) (review)
 - (e) Strand Holdings Limited (**Strand**) (review)
 - (f) Summerset Group Holdings Limited (**Summerset**)
 - (g) Wallace Group Limited (**WGL**)
 - (h) Man O'War Farm Limited (**Man O'War**).
4. We address each appeal / judicial review challenge in turn.

Albany North Landowners CIV-2016-404-2336

5. ANL appealed the Council's decision to adopt the recommendations of the IHP to zone its site Future Urban Zone on the basis that it was beyond the scope of submissions. The ANL site was the subject of one of the test cases in the Preliminary Hearing. The Decision found that there was scope in submissions on the PAUP for the rezoning and His Honour Justice Whata stated he considered the appeal should be dismissed on the question of scope.⁴
6. In light of the Decision, Counsel for ANL has confirmed it will withdraw its appeal. A copy of the notice of withdrawal is attached and marked "A".
7. The Council and ANL agree that costs shall lie where they fall.

Character Coalition and Auckland 2040 CIV-2016-404-2326 / CIV-2016-404-2327

8. The Coalition and Auckland 2040 filed appeal and judicial review proceedings challenging the decision of the Council to accept certain zoning recommendations of the IHP in relation to approximately 29,000 residential properties. The High Court determined that the zoning recommendations were within the scope of submissions on the PAUP requesting changes to residential zoning. The Decision also determined that the IHP provided sufficient reasoning for its residential zoning recommendations.

⁴ At [303].

9. In light of the Decision, Counsel for the Coalition and Auckland 2040 has confirmed it will withdraw its appeal and judicial review challenge. A copy of the notice of withdrawal is attached and marked “B”.
10. The Council, HNZ, the Minister for the Environment and the Coalition and Auckland 2040 agree that costs should lie where they fall.

**Howick Ratepayers and Residents Association Incorporate and W Moffatt
CIV-2016-404-2321**

11. HRRA appealed the Council’s decision to accept the recommendations of the IHP in relation to the rezoning of 65 properties in Howick, which HRRA argued were not sought by any submission made on the PAUP or identified by the IHP as being out of scope. The Decision confirmed that the subject Howick rezoning recommendations were within the scope of submissions on the PAUP through a test case introduced during the Preliminary hearing.
12. In light of the Decision, Counsel for HRRA has confirmed it will withdraw its appeal. A copy of the notice of withdrawal is attached and marked “C”.
13. The Council and HRRA agree that costs should lie where they fall. HNZ also does not seek costs against HRRA.

Straits Protection Society Incorporated CIV-2016-404-2349

14. Straits brought judicial review proceedings challenging the Council’s decision to accept the recommendation of the IHP to delete the Rural Urban Boundary (RUB) for the Hauraki Gulf Islands. The first ground for review was an alleged lack of scope. The Decision has provided guidance in terms of scope and the applicant and the Council can now apply this guidance to the Straits application for review. Having said that, Straits is still considering its options in relation to the Decision. The parties propose that the Court be updated at the next case management conference as to progress with resolving all four grounds of review.
15. In the meantime, the parties are in settlement discussions in relation to the proceeding.

Strand Holdings Limited CIV-2016-404-2350

16. SHL brought judicial review proceedings challenging the Council's decision to accept the IHP's recommendation to relocate the origin point of the Dilworth View Protection Plan (the **Viewshaft**). Ngati Whatua Orakei Whai Rawa Ltd (**Whai Rawa**) joined the appeal, supporting the Council's decision and submitting that its submission on the PAUP provided scope for the relocation of the Viewshaft.
17. The relocation of the Viewshaft was the subject of one of the test cases in the Preliminary Hearing. The High Court found that Whai Rawa's submission was discrete and did not provide scope for relocating the Viewshaft. The Court considered that the SHL challenge should be upheld on the question of scope and the matter referred to the Environment Court for resolution.⁵
18. Counsel for SHL and the Council consider that the High Court should allow the relief sought and refer the matter to the Environment Court for hearing. Whai Rawa will abide the decision of the Court on this matter.
19. Costs have been agreed between the parties.

Summerset Group Holdings Limited CIV-2016-404-2334

20. Summerset appealed the Council's decision to accept the recommendation of the IHP in respect of the zoning of Harrison Road from Light Industry zone to Mixed Housing Suburban zone, without identifying it as beyond the scope of submissions.
21. In light of the Decision Summerset will withdraw its appeal in its entirety.
22. The Council and Summerset agree that costs shall lie where they fall.

Wallace Group Limited CIV-2016-404-2316

23. WGL appealed the Council's decision to accept the recommendation of the IHP in respect of the zoning of the property at 55 Takanini School Road, Takanini (**site**) to a Residential Mixed Housing Suburban zone. The site was notified with a 'split zoning', with the northern portion of the

⁵ At [303].

site zoned Light Industry and the southern portion as Mixed Housing Suburban zone. WGL alleged that the IHP's recommended zoning was beyond the scope of submissions. The site was subject to one of the test cases in the High Court hearing.

24. The High Court determined that:⁶

“...[while] this is not a ‘scope’ case...it was not fair and reasonable in the specific circumstances of this test case to treat the extension of the Mixed Use Zone to the northern portion of the TLC site as appropriate without affording WCL an opportunity to submit on the consequences of that upzoning for its site.”

25. The Decision then states that the WGL appeal should be upheld on the question of scope and should be referred to the Environment Court for resolution.⁷

26. The Council and WGL consider that the appropriate course of action is for the zoning to be determined in the Environment Court.

27. Costs have been agreed between WGL and the Council.

Man O’War Farm Limited CIV-2016-404-2331

28. The Preliminary Hearing addressed Part C of Man O’War’s appeal, relating to the definition of “land that may be subject to coastal hazards”. The definition was the subject of one of the test cases in the Preliminary Hearing. The Decision determined that scope for the definition was established from submissions on the PAUP and His Honour stated he considered the appeal should be dismissed on the question of scope.

29. The Decision does not address the question of whether the definition was *ultra vires*, save to encourage the parties to consider the workability of the definition. On further consideration of this aspect, the Council has this week circulated proposed amended provisions to the parties on a without prejudice basis for their consideration. The parties consider that there is a reasonable prospect of settling this aspect of the appeal and

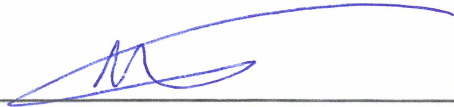
⁶ At [269].

⁷ At [303].

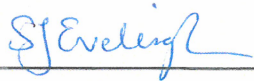
therefore respectfully request further time for further offline discussions to occur.

30. A memorandum addressing this matter is to be filed separately.

Dated: 27 February 2017



**Royden Somerville QC / Katherine
Anderson / Melinda Dickey**
Counsel for Auckland Council



Maree Baker-Galloway / Sarah Eveleigh
Counsel for Albany North Landowners



Richard Brabant / Rob Enright
Counsel for Character Coalition Incorporated and Auckland
2040 Incorporated



Michael Savage
Counsel for Howick Ratepayers and Residents Association
Incorporated

Allison Arthur-Young
Counsel for Strand Holdings Limited

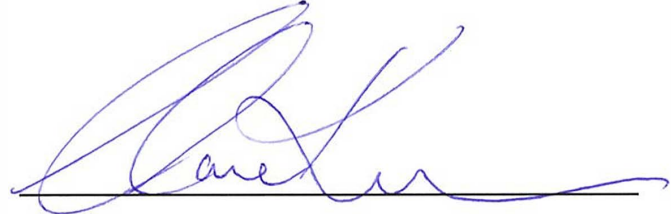
Richard Brabant
Counsel for Wallace Group Limited



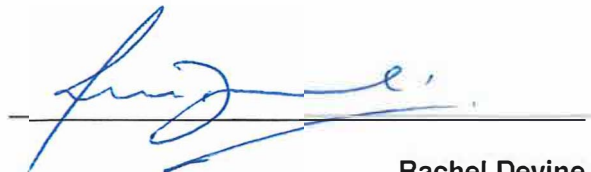
Martin Williams
Counsel for Man O'War Farm Limited



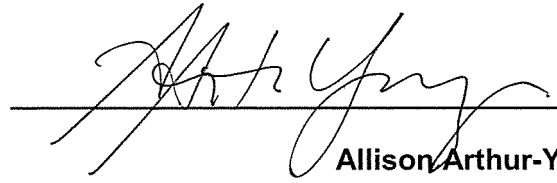
Claire Kirman / A Devine
Counsel for Housing New Zealand Corporation



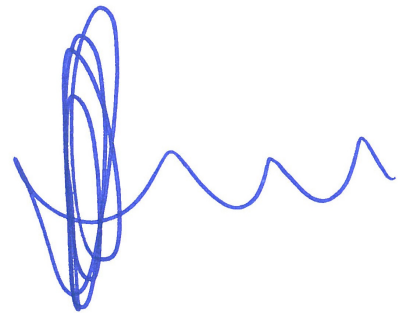
Claire Kirman / A Devine
Counsel for the Minister for the Environment



Rachel Devine
Counsel for Ngati Whatua Orakei Whai Rawa Ltd



Allison Arthur-Young
Counsel for Strand Holdings Limited



Richard Brabant
Counsel for Wallace Group Limited

Martin Williams
Counsel for Man O'War Farm Limited

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Counsel for Housing New Zealand Corporation

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Counsel for the Minister for the Environment



Stephen Quinn and Anne Buchanan

Counsel for Ting Holdings Ltd



Sue Simons

Counsel for Property Council New Zealand

Russell Bartlett

Counsel for Summerset Group Holdings Limited



Rob Enright

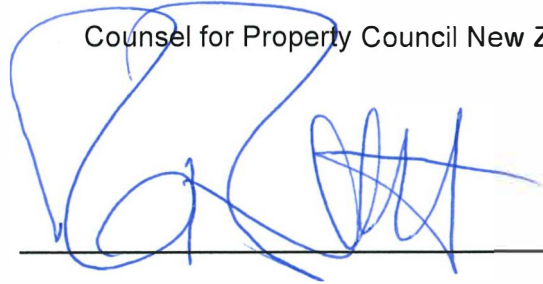
Counsel for Straits Protection Society Incorporated

Stephen Quinn and Anne Buchanan

Counsel for Ting Holdings Ltd

Sue Simons

Counsel for Property Council New Zealand

A handwritten signature in blue ink, appearing to be 'R. Bartlet', is written over a horizontal line.

Russell Bartlet

Counsel for Summerset Group Holdings Limited

"A"

In the High Court of New Zealand
Auckland Registry

CIV-2016-404-2336

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 under Section 158 of the Local Government (Auckland Transitional Provisions) Act 2010
Between	ALBANY NORTH LANDOWNERS' GROUP a submitter on the Proposed Auckland Unitary Plan Appellant
And	AUCKLAND COUNCIL a Local Authority established under the Local Government (Auckland Council) Act 2009 Respondent

Notice of Discontinuance

Date 27 February 2017

Appellant's solicitors:

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**anderson
lloyd.**

Notice of Discontinuance

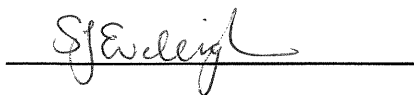
To the Registrar of the High Court at Auckland

And to Auckland Council

This document notifies you that;

- 1 Albany North Landowners' Group discontinues this proceeding against Auckland Council.
- 2 Auckland Council has no issues as to costs. There are no other parties to this proceeding.

Dated 27 February 2017



M A Baker-Galloway/S J Eveleigh
Counsel for the Appellant



M J L Dickey
Counsel for Respondent

"B"

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2016-404-2298

CIV-2016-404-2302

CIV 2016-404-2305

CIV 2016-404-2316

(Continued over)

UNDER

the Judicature Amendment Act 1972

IN THE MATTER

of appeals to decisions made by Auckland Council on the Auckland Unitary Plan under the Local Government (Auckland Transitional Provisions) Act 2010, the Resource Management Act 1991 and applications for judicial review under the Judicature Amendment Act 1972

BETWEEN

**CHARACTER COALITION INCORPORATED AND
AUCKLAND 2040 INCORPORATED**

And the other listed Appellants concerning the Auckland Unitary Plan appeal and Plaintiffs concerning the judicial review proceedings

Appellants/Plaintiffs

AND

AUCKLAND COUNCIL

Respondent

**NOTICE OF DISCONTINUANCE BY
CHARACTER COALITION INCORPORATED & AUCKLAND 2040
INCORPORATED**

28 February 2017

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CIV 2016-404-2320
CIV-2016-404-2321
CIV 2016-404-2322
CIV 2016-404-2323
CIV 2016-404-2323
CIV-2016-404-2324
CIV 2016-404-2325
CIV 2016-404-2326
CIV 2016-404-2327
CIV-2016-404-2331
CIV 2016-404-2336
CIV 2016-404-2341
CIV 2016-404-2344
CIV-2016-404-2349
CIV 2016-404-2350
CIV 2016-404-2351

To the Registrar of the High Court at Auckland
and

To Auckland Council

This document notifies you that—

In light of the Court's decision in *Albany North Landowners & Ors v Auckland Council* [2016] NZHC 138, Character Coalition Inc / Auckland 2040 Inc discontinue both the appeal and judicial review proceedings in CIV 2016 404 2326 / CIV 2016 404 2327.

Date: 28 February 2017

Signature:



Jason Pou

Solicitor for Appellants / Plaintiffs in CIV 2016 404 2326 / CIV 2016 404 2327

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2016-404-2298
CIV-2016-404-2302
CIV-2016-404-2305
CIV-2016-404-2316**

(Continued over)

UNDER	the Judicature Amendment Act 1972
IN THE MATTER	of appeals to decisions made by Auckland Council on the Auckland Unitary Plan under the Local Government (Auckland Transitional Provisions) Act 2010, the Resource Management Act 1991 and applications for judicial review under the Judicature Amendment Act 1972
BETWEEN	Howick Ratepayers and Residents Association Incorporated Appellant
AND	Auckland Council Respondent

NOTICE OF DISCONTINUANCE

Dated: 24 February 2017

JUDICIAL OFFICER: JUSTICE WHATA
CASE OFFICER: MATT AMON

**CIV-2016-404-2320
CIV-2016-404-2321**

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CIV-2016-404-2322
CIV-2016-404-2323
CIV-2016-404-2324
CIV-2016-404-2325
CIV-2016-404-2326
CIV-2016-404-2327
CIV-2016-404-2331
CIV-2016-404-2336
CIV-2016-404-2341
CIV-2016-404-2344
CIV-2016-404-2349
CIV-2016-404-2350
CIV-2016-404-2351

To: The Registrar, High Court, Auckland

Auckland Council

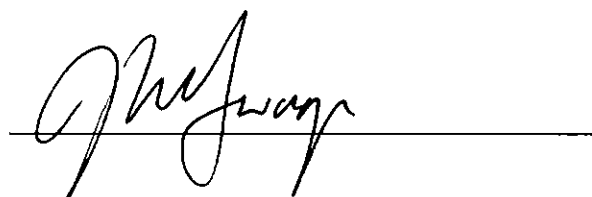
Independent Hearings Panel

Housing Corporation of New Zealand

This document notifies you that -

1. Howick Residents and Ratepayers Association Incorporated discontinues this proceeding against all defendants.

Dated: 24 February 2017

A handwritten signature in black ink, appearing to read 'J M Savage', is written over a horizontal line.

J M Savage

Counsel for the Plaintiff