

**In the High Court of New Zealand  
Auckland Registry**

**CIV-2016-404-**

Under the Local Government (Auckland Transitional Provisions) Act 2010 ('the Act')

In the matter of an appeal pursuant to s 158 of the Act

Between **Stephen Hollander**, Company Director, of 82 Kahikatea Road, Dairy Flat, Auckland

**Appellant**

And **Auckland Council** a unitary authority established under the Local Government (Auckland Council) Act 2009

**Respondent**

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**Notice of appeal**

Dated 16 September 2016

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**Berry & Co**

Solicitor: **Katia Fraser**

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P O Box 179 Queenstown 9300

Counsel Acting: **Matthew Casey QC / Asher Davidson**

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**To** The Registrar, High Court, Auckland

And

**To** Auckland Council

**This document notifies you that –**

1. **Stephen Hollander** ('the **appellant**') appeals to the High Court at Auckland against the decision of the Auckland Council ('the **respondent**') in respect of a provision and/or matter relating to the Proposed Auckland Unitary Plan ('**PAUP**'), namely that part of the decision to zone the appellant's land Mixed Rural Zone.

**Standing**

2. A submission on the PAUP was made on behalf of "Dairy Flat West Landowners" (submitter 6391), being landowners (including the appellant) within an area of land bounded by Dairy Flat Highway, Kahikatea Flat road, Selman Road and Wilks Road West, Dairy Flat, Auckland ('**the Land**'). The submission sought a change of zoning from Rural Production to Countryside Living.
3. The respondent accepted a recommendation of the Auckland Unitary Plan Independent Hearings Panel ('the **Panel**') which resulted in:
  - (a) A provision being included in the PAUP, namely that the Land was zoned Mixed Rural rather than the zoning sought by the appellant; and/or
  - (b) A matter being excluded from the PAUP, namely the Land was not zoned Countryside Living Zone as sought in the submission.
4. The appellant therefore has standing to appeal to the High Court under s 158 of the Act on questions of law.

**Decision Appealed**

5. The decision appealed is that part of the respondent's decision on the PAUP to zone the Site Mixed Rural, rather than the most appropriate zone, being Countryside Living.

6. By accepting the recommendation by the Panel without more, the respondent accepted and was bound by the reasoning (if any) of the Panel. Therefore, the respondent's decision suffers from the same errors as the Panel's recommendations.

### **The errors of law**

7. In making its recommendation that the Land be zoned Rural Production, the Panel, and therefore the respondent, made the following errors:
  - (a) Failed to provide reasons sufficient to allow the appellant to ascertain whether the decision/recommendation was correct in law. In particular, the only part of the recommendation that the appellant has identified as potentially relating to the recommendation to retain Mixed Rural zoning on the Land is at page 21-22 of the Panel's "*Report to Auckland Council – Changes to Rural Urban Boundary, rezoning and precincts*" (**Report**). While the Report gave generic reasons why the Panel had not applied the Countryside Living zone to land sought to be rezoned, none of those reasons applied to the Land.
  - (b) Failed to apply the correct legal test. In particular:
    - (i) In taking an area-wide approach, the Panel failed to consider whether the Mixed Rural Zone was the optimal planning outcome for the Land having regard to the particular characteristics of the Land;
    - (ii) Failed to assess the benefits and costs of the Mixed Rural and Countryside Living zones as applying to the Land;
    - (iii) Did not consider whether the Mixed Rural zone or the Countryside Living zone was the optimal planning outcome for the Land.
  - (c) Made findings contrary to the true and only reasonable conclusion available on the evidence. In particular:
    - (i) The evidence of both the submitter and the respondent was in support of Countryside Living zoning applying to the land,

and there was no evidence supporting Rural Production zoning;

- (ii) In its Report, the Panel gave reasons for applying the Countryside Living zone to land previously zoned for rural purposes. The evidence before the Panel was that all of those reasons applied to the Land. The true and only reasonable conclusion, applying the Panel's reasoning, was that the Land ought to have been rezoned to Countryside Living. The reasons included the Land's location such as to buffer the edge of future urban expansion; not including elite soils; being located in close proximity to existing urban areas; and having comparatively small lot sizes not used for commercial production purposes.

### **Questions of law**

- 8. The following questions of law arise:
  - (a) Where the Panel's recommendation is relied upon for the respondent's decision, does the respondent's decision suffer from the same errors of law as the Panel's recommendation?
  - (b) Was the Panel required to give reasons sufficient to determine whether its recommendation suffered from errors of law?
  - (c) Did the Panel provide sufficient reasons for its recommendation to zone the Land Mixed Rural?
  - (d) Did the Panel apply the correct legal test to determining the zoning of the Land?
  - (e) Did the Panel make factual findings which contradicted the true and only reasonable conclusions available on the evidence?

### **Grounds of appeal**

- 9. The grounds of the appeal are as set out in paragraphs 7 and 8 above. The Panel's recommendations, insofar as they related to the zoning of the Land, suffered from a number of errors of law, which were carried over to the respondent's decision which adopted the recommendation without more.

### **Relief sought**

10. That this appeal be allowed.
11. That the issue of the appropriate zoning of the Land be referred back to the respondent and/or Panel to reconsider the relevant part of its decision/recommendation in relation to the zoning of the Land.
12. That the respondent/Panel provide the appellant with the opportunity to provide further relevant evidence and submissions in relation to the zoning of the Land.
13. Such further or other relief as is appropriate to the circumstances.
14. The costs of and incidental to this appeal.

**Dated** at Auckland this 16<sup>th</sup> day of September 2016.



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Matthew Casey QC / Asher Davidson  
Counsel for appellant

**This notice of appeal** is filed by Katia Fraser, solicitor for the appellant. The address for service of the appellant is 2nd Floor, Chester Building Corner of Camp & Shotover Streets, Queenstown

Documents for service on the appellant may be:

- (a) Left at the address for service.
- (b) Posted to the solicitor at P O Box 179, Queenstown 9300.
- (c) Transmitted to the solicitor by fax to (03) 441 0307.
- (d) Emailed to the solicitor at kfraser.lawyer@xtra.co.nz.



Under Under the Local Government (Auckland Transitional Provisions) Act 2010 ('the Act')

In the matter of an appeal pursuant to s 158 of the Act

Between **Stephen Hollander**, Company Director, of 82 Kahikatea Road, Dairy Flat, Auckland

**Appellant**

And **Auckland Council** a unitary authority established under the Local Government (Auckland Council) Act 2009

**Respondent**

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**Without notice application by appellant for directions under Rule 20.6 and 20.7, with memorandum of counsel**

Dated 16 September 2016

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**Berry & Co**

Solicitor: **Katia Fraser**

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Counsel Acting: **Matthew Casey QC / Asher Davidson**

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**To** The Registrar  
High Court  
Auckland

**This document notifies you that –**

1. The appellant, Stephen Hollander, will apply to the Court for orders:
  - (a) pursuant to rule 20.6(1)(c), confirming that service of the appeal is required on the parties listed in Annexure A only; or in the alternative
  - (b) pursuant to rule 20.7, dispensing with service of the notice of appeal other than on those persons listed in Annexure A.
2. The grounds on which the orders are sought are as follows:
  - (a) The appeal relates to an area of land bounded by Dairy Flat Highway, Kahikatea Flat Road, Selman Road and Wilks Road West, Dairy Flat, Auckland (**'the Block'**).
  - (b) The appeal relates to a decision by the respondent as to the zoning of the Block in the Proposed Auckland Unitary Plan (**'PAUP'**).
  - (c) The right of appeal arises from a submission on the PAUP lodged by a group of landowners within the Block, of which the appellant is one. All other landowners who formed part of the group who made the original submission are identified as affected parties and will be served.
  - (d) Further, the appellant intends to serve all other landowners within the Block.
  - (e) The Local Government (Auckland Transitional Provisions) Act 2010 ('the Act') provides the opportunity for persons who considered themselves affected by the submission to make further submissions, only one such further submission was lodged, by Waste Management NZ Ltd. Waste Management NZ Ltd later formally withdrew that further submission as it related to the Block and it is not proposed that it be served.

- (f) The appellant is not otherwise aware of any person who is directly affected by the appeal.
  - (g) The appellant takes the view that, other than those persons listed in Annexure A, there are no parties directly affected by the appeal that are required to be served under rule 20.6(1)(c).
  - (h) An order dispensing with service is sought out of an abundance of caution.
3. The application is made in reliance on rules 20.6(1)(c) and 20.7 High Court Rules.
  4. The attention of the Court is respectfully drawn to the memorandum of counsel set out below.

Date: 16 September 2016



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Matthew Casey QC / Asher Davidson  
Counsel for Appellant

**Memorandum of Counsel in relation to directions**

1. These directions are sought because, while the appellant takes the view that there are no parties who are required to be served under rule 20.6(1)(c) other than those listed in Annexure A, it acknowledges that there is some uncertainty about who should be served.
2. This appeal is made under s 158(1) of the Act, and asserts that the respondent's decision to zone the Site as Mixed Rural Zone suffered from errors of law.
3. The relief sought is that the matter be referred back to the respondent, or the Independent Hearings Panel who made recommendations on which the respondent relied, for reconsideration of the appropriate zone to apply to the Block.
4. Under rule 20.6(1)(c), a copy of the notice of appeal is required to be served on every party directly affected by the appeal.

5. There is a question as to who may be considered to be directly affected, and the appellant seeks directions from the Court to ensure it complies with its service obligations.
6. The appellant's position is that the only parties required to be served under rule 20.6(1)(c) are:
  - (a) The respondent;
  - (b) Other landowners who jointly lodged the original submission;
  - (c) Other landowners within the Block.
7. The reasons for the appellants' position are that:
  - (a) All owners of land within the Block that is subject to the appeal will be served;
  - (b) The one party that made a further submission on the appellant's submission seeking to change the zoning of the Site from Mixed Rural zone to Countryside Living zone later withdrew its further submission on that point. Had any other person been directly affected by a change in zone for the Site, they can be reasonably expected to have made a further submission;
  - (c) Under s 129 of the Act, only those persons who made a submission and stated in their submission that they wished to be heard were entitled to speak at a hearing session. The Act also limits the right of appeal to those who made a submission (other than where a decision was out of scope).
  - (d) Given the statutory scheme of limiting the right of participation to those who have involved themselves in the submission process, it is reasonable to interpret "directly affected" in rule 20.6(1)(c) to mean those persons who made a further submission on the appellant's submission on the zoning of the Block. The appellant has chosen to treat landowners within the Block as directly affected also.
8. In the event that the Court does not accept that there are no other parties directly affected, the appellant seeks an order under rule 20.7 dispensing with service on any party other than the respondent. If the respondent considers that there are other persons who are or might be

affected by the appeal, it can be expected to advise the appellant who can then serve those persons.

9. Although this application is made without notice, the appellant will serve it (and this memorandum) on the respondent and the other parties served under rule 20.6(1)(c) so that it is aware of the position regarding service.

## **Annexure A – Names and Addresses of Persons to be Served**

1. Helen and Gordon Forsyth  
62 Kahikatea Flat Road  
RD 4  
Albany 0794
2. Cherry and Kelvin Neville  
100 Kahikatea Flat Road  
RD 4  
Albany 0794
3. Glenys and Stephen Munn  
118 Kahikatea Flat Road  
RD 4  
Albany 0794
4. Peter and Hilary Colebourne  
120 Kahikatea Flat Road  
RD 4  
Albany 0794
5. Di Zhao Cao and Tony Fong  
1509 Dairy Flat Highway  
RD 4  
Albany 0794
6. R A Falloon Limited  
24 Kahikatea Flat Road  
RD 4  
Albany 0794
7. John and Samantha Handley  
46 Selman Road  
RD 4  
Albany 0794
8. Lipeng Liu and Guisuo Liu  
52 Kahikatea Flat Road  
RD 4  
Albany 0794
9. Rangiwai Corporate Trustee Limited  
57 Wilks Road West  
RD 4  
Albany 0794
10. Sara Jane and Grant Warren Hand  
59 Wilks Road West  
RD 4  
Albany 0794
11. John Gerard Lane and Annette Philippa Dyer  
60 Selman Road  
RD 4  
Albany 0794
12. Gregory Paul Hope, Lisa Anne Hope, Christopher Charles Hope, Dennis

Lee Wright  
71 Wilks Road West  
RD 4  
Albany 0794

13. Ernest West  
79 Wilks Road West  
RD 4  
Albany 0794
14. Denis Edwin and Imelda Mary Widdowson  
93 Wilks Road West  
RD 4  
Albany 0794
15. Stanley Lennon Painton  
1453 Dairy Flat Highway  
RD 4  
Albany 0794
16. Owen Woods and Gwyneth Florence Slattery  
1455 Dairy Flat Highway  
RD 4  
Albany 0794
17. Simpson Corporate Trustee Limited  
1487 Dairy Flat Highway  
RD 4  
Albany 0794
18. Graham Roy and Valerie May Turner  
1489 Dairy Flat Highway  
RD 4  
Albany 0794
19. Xueqing Huang and Li Li  
1491 Dairy Flat Highway  
RD 4  
Albany 0794
20. David Loo  
31 Wilks Road West  
RD4  
Albany 0794