

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

**CIV-2016-**

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

**AND**

**IN THE MATTER** An appeal under section 158 of the Local Government (Auckland Transitional Provisions) Act 2010 ("LGATPA") and s 299 of the RMA

**BETWEEN** **Karaka North Village Limited** an incorporated company with its registered office at 30 Walters Road, Takanini

Appellant

**AND** **Auckland Council** a local authority constituted pursuant to the provisions of the Local Government (Auckland Council) Act 2009 having its principal office at 135 Albert Street, Auckland

Respondent

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**NOTICE OF APPEAL BY KARAKA NORTH VILLAGE LIMITED**

**Dated 16 September 2016**

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**Solicitors for the Appellant**

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**To:** The Registrar of the High Court at Auckland  
**And To:** Respondent

**TAKE NOTICE THAT** Karaka North Village (“KNVL”) will appeal to the High Court against the decision of the Auckland Council (“Council”) notified on 19 August 2016, **UPON THE GROUNDS** that the decision is erroneous in law.

### **DECISION APPEALED**

1. KNVL appeals against a decision made by Council on a provision or matter relating to the Proposed Auckland Unitary Plan (“Proposed Plan”). The provision or matter:
  - a. Was the subject of submissions made by KNVL on the Proposed Plan;
  - b. Council accepted a recommendation of the Auckland Unitary Plan Independent Hearings Panel (“Panel”) which resulted in the provision or matter being included in the Proposed Plan;
  - c. Council accepted the recommendation of the Panel to rezone the land subject to the Karaka North Village Precinct (“Zoning Decision”). As Council has accepted the recommendations of the Panel, all references to the findings and reasoning of the Panel in this appeal are to be read as references to the Council decision.
  - d. The provision or matter appealed is the error in the publicly notified Unitary Plan map (“Mapping Decision”) showing the zoning applying to the land within the Karaka North Village Precinct.

### **ERROR OF LAW**

2. The Council adopted without alteration the Precinct and zoning recommendation of the Panel for Karaka North Village but the published zoning map does not show the zoning determined as appropriate by the Panel and described in its Report. It is an error of law for the decision to contain text or maps which do not implement

the Council decision (which adopted without alteration the Panel recommendation).

3. The Mapping Decision does not give effect to the Zoning Decision, and is a decision which, on the evidence, the Council could not reasonably have reached.

### **QUESTION OF LAW**

4. The question of law to be decided is:
  - a. Did the Council err in law by publicly notifying a zoning map showing zones applying to the land subject to the Karaka North Village Precinct, which does not accord with the decision of Council on the submission of KNVL requesting a change of zoning of the land within the proposed Karaka North Village Precinct?

### **GROUNDS OF APPEAL**

5. General grounds of appeal:
  - a. The error of law is to publish a zone map for the land subject to the Karaka North Village Precinct that is incorrect by reference to the Zoning Decision;
  - b. The error of law has resulted in the publicly notified zone map for the land subject to the Karaka North Village Precinct failing to give effect to the Zoning Decision.
6. Specific grounds of appeal:
  - a. KNVL lodged submissions (Submitter Number 5925) and further submissions (Further Submitter number 877) on the Proposed Auckland Unitary Plan ("PAUP").
  - b. KNVL sought (inter-alia) to amend the plan text and zoning maps in the notified version of the PAUP for the Karaka 2 Precinct (now referred to as the Karaka North Village Precinct). In particular the amendments proposed by KNVL:
    - i. Introduced a Precinct Plan;

- ii. proposed objectives, policies, rules and assessment criteria;
  - iii. expanded the extent of the Single House and Housing Suburban zone to match with the Precinct Plan, with a corresponding removal of areas of Rural Coastal zone in the introduction of a Rural zone.
- c. KNVL presented evidence and legal submissions before the Panel in support of the relief it sought.
- d. Reasons for the rezoning recommendation with respect to the Karaka North Village Precinct are provided in the Panel's Reports to Council:
- i. "Changes to Rural Urban Boundary, rezoning and precincts; Hearing topics 016, 017 Rural Urban Boundary, 080 Rezoning and precincts (General) and 081 Rezoning and precincts (Geographic areas)";
  - ii. "Hearing topics 016, 017, Changes to the Rural Urban Boundary; 080, 081 Rezoning and precincts, Annexure 3 Precincts South".
- e. The Panel recommendations in its Reports:
- i. adopted the Precinct Plan proposed by KNVL (without any changes);
  - ii. adopted objectives, policies and Rules for the Precinct with minor changes;
  - iii. adopted the Precinct Assessment criteria in substance;
  - iv. adopted the zoning sought by KNVL.
- f. The Panel Annexure 3 Precincts South Report states (inter alia) (emphasis added):
- i. "The Panel **recommends the relief sought by Karaka North Village Limited** to establish a village at Karaka."
  - ii. "Mr Brabant's submissions, as well as the extensive expert evidence presented... set out that the **changes sought** would fundamentally improve the current consented Village and result in a better rural village outcome. For the reasons set out below the **Panel agrees.**"

- iii. “The Panel has **relied on the following evidence...** Mr B McKenzie (landscape architect) and Mr A de Graaf (Urban Design) detail the underlying philosophy and analysis of the design... Mr Grala (Planning) set out that the **zoning and precinct provisions sought were appropriate** from a resource management perspective [and] provided a section 32 AA analysis”.
- iv. [In the context of Reverse sensitivity] “Mr Webb was concerned that two areas are proposed to be rezoned from Rural – Rural Coastal Zone to Residential – Single House Zone would be located abutting a working dairy farm... The **Panel is not persuaded there are reverse sensitivity effects that would halt this proposal.**”
- v. [in the context of Transport] “The Panel finds that the amount of development **enabled by the zoning and precinct provisions** does not generate the need for major roading upgrades or have implications for roading capacity.”
- vi. [in the context of Water Quality] “The Panel does not support Mr Webb’s suggestion that more thorough assessment of modelling of urban containment loads should be undertaken **before additional zoning is approved.**”
- vii. [In the context of Scope] “The ‘decision sought by the Council’ on the original submission was broadly cast in seeking the zoning and precinct to enable the Karaka Village as addressed in the submissions and evidence. The Panel notes that the spatial extent of the zoning and precinct is the same... The Panel exercises its power under section 144 (5) to **make the changes sought by Karaka North Village Limited.**”
- viii. “The Panel agrees with the submitter that the work undertaken by Karaka North Village Limited has been done to the standard required to **recommend the Village expansion and consequential changes to zoning and precinct provisions.** In section 32 and

32 AA terms the Panel is satisfied that the proposed village expansion, **and consequential changes to zoning and precinct provisions, are more appropriate than those in the notified proposed Auckland Unitary Plan.** The provisions recommended by the Panel better give effect to **Part 2 of the Resource Management Act 1991 than the notified provisions.**”

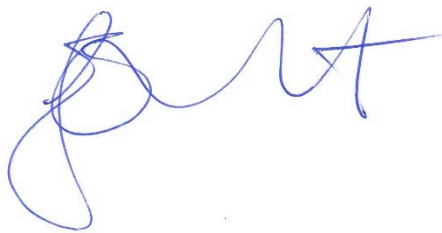
- g. The amended zoning map published by the Panel (“Recommendation Version Planning Map”) to accompany its recommendation failed to amend the notified zoning to that approved by the Panel. The Recommendation Version Planning Map retained a large portion of the KNVL site as Rural Coastal zone.
- h. The Recommendation Version Planning Map was wrong.
- i. Prior to Council making its decisions on the Panel recommendations, KNVL wrote to Council on 5 August 2016 alerting Council to the error in the Recommendation Version Planning Map and requesting that the error be corrected in the Council decision on the Karaka North Village Precinct.
- j. The Council determined to accept the recommendation of the Panel with respect to the Karaka North Village Precinct provisions, and made a decision accordingly.
- k. The Council decision to accept the Recommendation Version Planning Map with respect to the Karaka North Village Precinct is wrong, in as much as the mapped zoning of the land within the Karaka North Village Precinct is not the correct zoning by reference to the decision.

## **RELIEF**

- 7. The Appellant seeks the following relief:
  - a. That this appeal be allowed;
  - b. That this Court makes an order directing the Auckland Council to amend the Auckland Unitary Plan Maps to show the correct zoning of the Karaka North Village Precinct;

- c. In the alternative, that this Court makes an order directing the Panel to re-visit its recommendation and/or Council to re-visit its decision on the Karaka North Village zoning and correct the mapping error;
- d. Consequential relief; and
- e. Costs.

Dated 16 September 2016



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Jeremy Brabant  
Counsel for the Appellant

This Notice of Appeal is filed by Andrew Macdonald, solicitor for the Appellant, of Hornabrook Macdonald.

The address for service on the Appellant is Level 5, 12 O'Connell Street, Auckland 1010.

Documents for service on the Appellant may be left at that address for service or may be:

- a. Posted to the solicitor at PO Box PO Box 91845, Auckland 1142; or
- b. Emailed to the solicitor at [andrew.macdonald@hmlaw.co.nz](mailto:andrew.macdonald@hmlaw.co.nz)

And in either case copies to counsel sent by email to [jeremy@brabant.co.nz](mailto:jeremy@brabant.co.nz)