

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

CIV-

UNDER

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

IN THE MATTER

of an appeal under section 158(1) 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 Topics 080 Rezoning and Precincts (General) and 081 Rezoning and Precincts (Geographical Areas)

BETWEEN

**P L and R M Reidy, A J and P M Kloeten,
and Ruatotara Limited**

Appellant

AND

Auckland Council

Respondent

**NOTICE OF APPEAL
16 SEPTEMBER 2016**

ATKINS | HOLM | MAJUREY

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TAKE NOTICE that under section 158(1) of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) the Appellants appeal to the High Court from the decision of the Auckland Council in respect of the Proposed Auckland Unitary Plan (the **Proposed Plan**) dated 19 August 2016 (the **Decision**) received by the Appellant on 19 August 2016 **UPON THE GROUNDS** that the decision is erroneous in law as set out below.

INTRODUCTION

1. The Appellants own and occupy land in north-eastern Pukekohe (**land**) which is subject to the Proposed Auckland Unitary Plan (**Proposed Plan**).
2. The Appellants made a submission on the Proposed Plan. This submission sought the rezoning of 230 hectares of land in north-eastern Pukekohe from Countryside Living zoning to Future Urban zoning. This submission included a map showing the rezoning extent. This map is attached as **Appendix A**.
3. The Appellants participated in hearings on the Proposed Plan, and their submission seeking rezoning of this 230 hectares was accepted by the Independent Hearings Panel (**IHP**) in the following recommendations:¹

"2.4.7. Retraction and extension at Pukekohe

The Panel recommends the removal of about 170 hectares of land on Pukekohe Hill (southeast Pukekohe) from within the Rural Urban Boundary and its rezoning from Future Urban Zone to Rural - Rural Production Zone. Horticulture New Zealand and the Pukekohe Vegetable Growers' Association sought this area of land be excluded from the Rural Urban Boundary as notified in the notified Plan. The land contains elite and prime soils. The Council supported this change and the Panel agrees.

The Panel recommends about 230 hectares of land between Grace James Drive and Runciman Road in north-east Pukekohe be included within the Rural Urban Boundary and be rezoned from Rural - Countryside Living Zone to Future Urban Zone.

P L and R M Reidy, A J and P M Kloeten and Ruatotara Limited (the Reidys) sought that this land be included in the Rural Urban Boundary and be rezoned from Rural - Countryside Living Zone to Future Urban Zone. Horticulture New Zealand supported the relief sought by the Reidys. The Grace James Road residents did not

¹ Auckland Unitary Plan Independent Hearings Panel, Report to Auckland Council - Changes to the 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), July 2016, at 2.4.7.

support this change. The Council did not support the relief sought by the Reidys on the basis of the lack of need for the development capacity and perceived issues with the future servicing of the land.

Mr Hodgson provided planning evidence for the Reidys as to why the area is suitable for urban development. His reasons included that the area does not contain the same high quality land values as Pukekohe Hill, is currently used for countryside living but not of sufficient lot sizes to enable urbanisation, is well served by roads and has linkages to arterials, has linkages to the Rural - Countryside Living Zone and a school, contains contours and natural features that would be attractive in an urban setting, and avoids the Pukekohe Tuff Ring. Mr Hodgson also provided an assessment of the proposed Rural Urban Boundary extension against the Panel's interim guidance on best practice approaches to changes to the Rural Urban Boundary.

The Panel was persuaded that the area requested to be included within the Rural Urban Boundary satisfies the regional policy statement criteria regarding shifts to the Rural Urban Boundary and meets the Panel's best practice approaches. The Panel recommends its inclusion within the Rural Urban Boundary." (Emphasis added)

4. However, the map produced by the IHP in its recommended version of the Proposed Plan did not reflect this recommendation and instead rezoned only 170 hectares of the land.
5. The Council accepted the recommendations of the IHP, which included accepting both the recommendation to rezone 230 hectares and the maps which only rezoned 170 hectares.
6. The 170 hectares shown on the map was a clear error as it was contradictory to the express recommendations of the IHP to rezone 230 hectares as requested by the Appellants. The expert evidence provided to support the Appellants' case which was accepted by the IHP was on the basis of the 230 hectares of land being rezoned.
7. The Appellants raised the error with the Council prior to the Council making its decision. The Appellants also raised the matter again with the Council after the Council decision seeking that the Council use its powers in Schedule 1 of the Resource Management Act 1991 (**RMA**) to rectify the error but the Council is unwilling to take this step.

ERRORS OF LAW

8. The error of law alleged by the Appellant are:
- (a) The Council erred in accepting two contradictory recommendations without reconciliation.

QUESTIONS OF LAW

9. The questions of law to be resolved are:
- (a) Did the IHP err and make a mistake when it recommended a map which rezoned 170 hectares of land in direct contradiction to its reasons which recommended rezoning 230 hectares of land?
 - (b) Did the Council err in accepting the map recommended by the IHP which rezoned only 170 hectares of land in direct contradiction to IHP reasons, which Council adopted, which recommended rezoning 230 hectares of land?

GROUNDS OF APPEAL

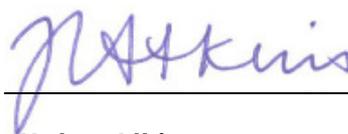
10. The grounds of appeal are that:
- (a) The error is clearly a mistake on the part of the IHP which has been transferred through into the Council's decisions.
 - (b) The Council has a clear basis for accepting the IHP's recommendation to rezone 230 hectares of the land due to the IHP's explanation of why that recommendation was made.
 - (c) The Council had no basis for accepting the map which rezoned 170 hectares of the land, as this directly contradicts a clear recommendation of the IHP.
 - (d) The error is either a minor error or an error that has a minor effect in terms of the test for rectifying errors in Schedule 16 of Schedule 1 of the RMA.
 - (e) The rectification of this error will reflect the true intent of the IHP and the Council.

- (f) The error has a significant impact on the Appellants who are unable to progress with plans for the land while the error remains unrectified.

RELIEF SOUGHT

11. The relief sought is:
- (a) That the appeal be allowed;
 - (b) That the Council be directed to use its powers in clause 16 of Schedule 1 of the RMA to amend the map relating to the land so that it reflects the extent of the land as shown in the Appellants' submission; and
 - (c) Costs.

DATE: 16 September 2016



Helen Atkins

Legal Counsel for P L and R M Reidy, A
J and P M Kloeten, and Ruatotara
Limited

To: The Registrar, High Court, AUCKLAND

And to: The Registrar, High Court, AUCKLAND

And to: The Respondents and interested parties to the decision to which this appeal relates

This notice of appeal is filed by Helen Atkins, solicitor for the Appellant, of the firm Atkins Holm Majurey Ltd

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APPENDIX A

