

**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 **Samson Corporation Limited and Sterling Nominees Limited** incorporated companies with their registered office at Geyser, 105/100 Parnell Rd, Auckland

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

**NOTICE OF APPEAL BY SAMSON CORPORATION LIMITED AND
STERLING NOMINEES LIMITED**

Dated 16 September 2016

Solicitors for the Appellant

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

TAKE NOTICE THAT Samson Corporation Limited and Sterling Nominees Limited (“Samson”) 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. Samson 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 Samson on the Proposed Plan, specifically the zoning of 1 and 3 Grosvenor Street, Grey Lynn (“Sites”);
 - b. In relation to the above, Council accepted a recommendation of the Auckland Unitary Plan Independent Hearings Panel (“Panel”) which resulted in zoning provisions for the Sites being included in the Proposed Plan;
 - c. Council accepted the recommendation of the Panel to zone the Sites “Residential - Single House” (“SH”) with a “Special Character Overlay - Residential Isthmus A” (“SC”) (“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 Decision did not zone the Sites Mixed Use.

ERRORS OF LAW

2. The Panel erred in the Recommendation with respect to the zoning of the Sites:
 - a. By failing to provide any reasons for preferring the SH and SC overlay for the Sites, contrary to the obligation on the Panel

pursuant to section 144(6) of the LGATPA to provide written reasons for accepting or rejecting submissions;

- b. By failing to undertake an assessment of the costs and benefits of the alternative zonings for the Sites, as required by section 145(1)(d) of the LGATPA and sections 32 AA and section 32 of the RMA;
- c. By failing to take into account relevant considerations:
 - i. the existing buildings on the Sites are not residential dwellings but commercial/industrial buildings;
 - ii. The unimplemented resource consent to establish a commercial / retail / showroom / warehouse building on the Sites.

QUESTIONS OF LAW

- 3. The questions of law to be decided are:
 - a. Was the Panel required to provide reasons in support of its decision on the zoning of the Site, and application of the SC overlay, and if so did the Panel provide sufficient reasons?
 - b. Was the Panel required to undertake an assessment of the costs and benefits of the SH or alternatively Mixed Use zoning of the Sites, and the application of the SC overlay, and if so did the Panel undertake an appropriate assessment?
 - c. Did the Panel err in law by failing to take into account relevant considerations specified in paragraph 2c above?
 - d. Did the Council err in law by accepting the Panel's recommendation with respect to the zoning and overlay provisions applying to the Site without amendment?

GROUND OF APPEAL

- 4. Specific grounds include:
 - a. Samson lodged submissions (Submitter Number 6247) and further submissions (Further Submitter number 3350) on the Proposed Auckland Unitary Plan ("PAUP").
 - b. Samson sought (inter-alia) in Topic 081, a Mixed Use zoning for the Sites.

- c. Samson presented evidence and legal submissions before the Panel in support of the Mixed Use zoning for the Sites, which identified (inter-alia):
 - i. The existence of an unimplemented resource consent to construct a commercial / retail / showroom / warehouse building on the Sites;
 - ii. That the existing buildings are commercial/industrial;
 - iii. That the existing Sites are used for commercial purposes;
 - iv. That the Sites adjoin properties at 297 and 299 Great North Road sites which are zoned Mixed Use, and which are used for industrial and commercial use.
- d. Reasons for the rezoning recommendation with respect to Topic 081 are theoretically provided in the Panel's Reports to Council, in particular:
 - i. Report to Auckland Council Overview of recommendations on the proposed Auckland Unitary Plan 22 July 2016;
 - ii. 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
- e. The Panel recommendations in its Report:
 - i. Contains no reference to the Sites or the zoning requested;
 - ii. Record that "The Panel's report and recommendations do not address individual points of relief sought in submissions", and suggests the Panel has grouped all of the submissions.
 - iii. The grouping of submissions appears limited to identification of Topics and broad geographic areas.
 - iv. None of the identified groups include any consideration of the zoning of the Sites.
- f. The Council determined to accept the zoning recommendation of the Panel with respect to the Sites.

5. *Failure to provide reasons*

- a. Pursuant to section 144(8)(c) of the LGATPA, the Panel report and recommendation is required to include the reasons for accepting or rejecting submissions. These submissions may be addressed by grouping them according to:
 - i. the provisions of the Proposed Plan to which they relate; or
 - ii. the matters to which they relate.
- b. No reasons were provided in the recommendation report for the decision on zoning of the Sites, indeed there is no reference to the submissions of Samson concerning the Sites.
- c. The Council decision adopted the Panels reasons. As a result, the Council decision as subject to the same errors of law as the Panel recommendation.
- d. The Mixed Use zoning for the Sites is a provision and matter that was the subject of submissions, and respect which the Panel was required pursuant to section 144 to provide reasons.

6. *Failure to undertake assessments of costs and benefits*

- a. Pursuant to section 145 (1) (d) of the LGATPA, the Panel was required to include in its recommendations a further evaluation of the Proposed Plan in accordance with section 32 AA of the RMA, which must be undertaken in accordance with section 32 (1) – (4) of the RMA.
- b. The Panel failed to include in the recommendation report any evaluation of the appropriate zoning for the Sites and in particular failed to:
 - i. Address whether Mixed Use zoning for the Sites was the most appropriate way to achieve the relevant objectives of the Proposed Plan by (Section 32(1)(b));
 1. identifying other reasonably practicable options for achieving the objectives;
 2. assessing the efficiency and effectiveness of the provisions in achieving the objectives;
 3. summarising the reasons for deciding on the provisions.

- ii. Identify and assess the benefits and costs of the effects that are anticipated from the implementation of Mixed Use zoning for the Sites;
 - iii. Quantify the benefits and costs.
- c. The Council decision adopted the reasons set out in the Panel report in respect of provision/matters on which the Council accepted the Panel's recommendations, including the decision to reject a Mixed Use zoning for the Sites. The Council decision contains no evaluation in accordance with sections 32 AA and 32 (1) – (4) of the RMA with respect to the decision to reject a Mixed Use zoning for the Sites.

7. Failure to take account of relevant considerations

- a. The Report and Council decision had no regard to relevant considerations namely:
 - i. the Sites are presently used for industrial purposes;
 - ii. the buildings on the Sites are industrial/commercial, not residential dwelling;
 - iii. there is an unimplemented consent to further develop the sites for commercial / retail / showroom / warehouse use.

RELIEF SOUGHT

- 8. 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 delete the SH zone and SC overlay and zone the Sites Mixed Use;
 - c. In the alternative, that this Court makes an order directing the Panel to re-visit its recommendation on the zoning for the Sites, and the overlay;
 - d. Consequential relief; and

e. Costs

Dated 16 September 2016

Jeremy Brabant
Counsel for the Appellant

This Notice of Appeal is filed by Michael Friedlander, solicitor for the Appellant, of Keegan Alexander.

The address for service on the Appellant is Level 24, 151 Queen Street, Auckland.

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 999, Auckland 1140.

And in either case copies to counsel sent by email to jeremy@brabant.co.nz