

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2017-AKL

UNDER

the Local Government (Auckland Transitional Provisions) Act 2010
(LGATPA)

AND

IN THE MATTER

the Resource Management Act 1991
(RMA)

of an appeal under s156(3) LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearing Panel on the proposed Auckland Unitary Plan

BETWEEN

STRAITS PROTECTION SOCIETY INC

Appellant

AND

AUCKLAND COUNCIL

Respondent

**NOTICE OF APPEAL BY STRAITS PROTECTION SOCIETY INCORPORATED AGAINST
DECISIONS ON THE PROPOSED AUCKLAND UNITARY PLAN (REGIONAL POLICY
STATEMENT: RURAL URBAN BOUNDARY)**

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Environment Court
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- 1 Straits Protection Society Inc (**Straits**) appeals against part of the decision of the Auckland Council (**Council**) on the Proposed Auckland Unitary Plan (**proposed plan**).
- 2 Straits is entitled to appeal the Council's decision under s156(3) of the LGATPA because:
 - (a) the Auckland Unitary Plan Independent Hearings Panel (**Panel**) made a recommendation that was outside the scope of submissions and should have been identified as such under section 144(8)(a) of the LGATPA, confirmed by the declaration granted by the High Court in *Straits Protection Society Inc v Auckland Council* [2017] NZHC 1351 as follows:

A declaration that the recommendation provided by the Auckland Unitary Plan Independent Hearing Panel to the Auckland Council in relation to the Rural Urban Boundary as it affected the Hauraki Gulf Islands was beyond the scope of submissions made on the Proposed Auckland Unitary Plan and should have been identified as such in terms of section 144(8)(a) of the Local Government (Auckland Transitional Provisions) Act 2010. (**recommendation**)
 - (b) Council adopted the recommendation in the decisions version of the proposed plan. It thereby deleted the Rural Urban Boundary from the Regional Policy Statement (**RPS**) for the Hauraki Gulf Islands, so that there is no Rural Urban Boundary in place for Waiheke Island;
 - (c) Straits was not a submitter on the proposed plan but is or will be unduly prejudiced by the recommendation made beyond scope. The Society is a person with an interest in the proceedings that is greater than the interest that the general public has. Society members include submitters to the proposed plan, and landowners or occupiers at Waiheke that are affected by the decision. The Society was the successful applicant in [2017] NZHC 1351. Straits is entitled to lodge an appeal under s156(3) LGATPA. Straits is also a s274 party to an existing appeal seeking the same or similar relief (*Walden v Auckland Council*, ENV 2016 AKL 000229).

(d) Straits' public interest objects include:

- (a) To represent and promote the interests of members as they relate to the environment - particularly to the protection, maintenance and enhancement of the environment as embodied in the principles of ecological sustainable development; and generally to the implementation of the Resource Management Act 1991; the Human Rights Act 1993; the Local Government Act 2002; the Acts arising from the reorganization of Local Government in New Zealand; the Proposed Auckland Unitary Plan; the Auckland Unitary Plan; and related Council controlled organizations, the rule of Law and the Constitution of New Zealand.
- (f) To take action to promote sustainable development and to ensure the equitable, non-discriminatory, efficient, effective and economical provision of welfare, public services and utilities by local, regional and national service providers, both public and private, for the wellbeing of people and communities, and the environment.

- 3 Straits is not a trade competitor for the purposes of s308D of the Resource Management Act 1991.
- 4 The High Court declaration in [2017] NZHC 1351 was issued on 20 June 2017 and accordingly the timeframe for lodgement of an appeal is 20 working days from that date.
- 5 The parts of the recommendation (and consequential decision by Council) that Straits is appealing is the decision by Council to adopt the out of scope recommendation by the Panel to delete the Rural Urban Boundary from the RPS for the Hauraki Gulf Islands. Straits seeks reinstatement of the Rural Urban Boundary back into the RPS in relation to the Hauraki Gulf Islands. This appeal relates to all aspects of the Council decision that implemented this recommendation including (to the extent relevant) the removal of the Rural Urban Boundary from the relevant RPS maps, removal of objectives, policies and methods that state the purpose and effect of the Rural Urban Boundary at RPS level.

Reasons for the appeal

- 6 The parts of the decision appealed do not accord with the relevant requirements of the LGTAPA and the RMA, and are contrary to Part 2 of the RMA. In particular, the parts of the decision appealed:
 - (a) Do not promote the sustainable management of natural and physical resources;
 - (b) Do not enable social, economic and cultural well being;
 - (c) Do not meet the reasonably foreseeable needs of future generations;

- (d) Do not promote the efficient use and development of natural and physical resources;
- (e) Do not result in the most appropriate plan provisions in terms of section 32 of the RMA;
- (f) Do not give effect to the NZCPS and Hauraki Gulf Marine Park Act; and
- (g) Are contrary to good resource management practice.

- 7 Without limiting the generality of the above, specific reasons for this appeal include:
 - 8 On 22 July 2016, the Panel released recommendations on the proposed plan. Recommendations were released under s144 of the LGATPA.
 - 9 In its *Overview Report*, the Panel referred to the resource management purpose of the Rural Urban Boundary:

“ 7.1 The policy objective

A central issue before the Panel in relation to identifying the most appropriate resource management methods to deal with population growth and its effects was the role of the proposed Rural Urban Boundary. The purpose of the Rural Urban Boundary as identified by the Council in its evaluation report prepared pursuant to section 32 of the Resource Management Act 1991 is stated to be:

The RUB is intended to be a defensible, permanent rural-urban interface and not subject to incremental change.

As set out in the Plan as notified, the Rural Urban Boundary would be provided for in the regional policy statement both in terms of its policy and as a method. This is a similar arrangement to the operative provisions for a metropolitan urban limit. Both methods are intended to set a clear boundary between the part of Auckland that is planned to be urbanised and the part that is intended to remain rural. A significant difference between the Metropolitan Urban Limit and the Rural Urban Boundary is that the former is located at the edge of existing urbanised areas while the latter is proposed to be located some distance away, with the area between it and the existing urban edge zoned as ‘future urban’ to serve as a reservoir of land for growth over the next 30 years. [Overview, pp65, footnotes excluded]

- 10 The Panel recommended that the Rural Urban Boundary should be moved from the RPS to the district plan level. If retained as part of the RPS, then only Council (or a Minister) could change its location. Once located in the district plan, any person could apply to amend the Rural Urban Boundary by plan change:

While the desire of the Council to achieve planning certainty about growth over the next 30 years is understandable, the Panel does not consider that it promotes the purpose of sustainable management to lock in land supply and infrastructure decisions over such a long period when the environment and the needs of people are constantly changing. Resource management planning needs to be responsive to the dynamic processes of urban growth. While providing certainty can promote efficiency by reducing future process requirements, overly or unnecessarily rigid application of rules can be a hurdle or barrier to efficiency by creating additional costs.

The Panel considers that methods aimed at sustainably providing for housing in an efficient manner should be designed to discourage undesirable behaviours, such as land banking, and encourage desirable outcomes, such as creating alternative and competitive development opportunities to meet the needs of people. A Rural Urban Boundary that is permanent for the next 30 years, subject only to the unilateral power of the Council (or a Minister) to move it, would not provide sufficient planning flexibility to adapt to changing circumstances.

For these reasons the Panel recommends that the Rural Urban Boundary should remain as a method in the Unitary Plan but should be moved from the regional policy statement to the district plan. While the policy for its location should remain in the regional policy statement to maintain its strategic direction over a longer term, the location of the boundary itself should be able to be changed by a plan change at the district plan level, which can be the subject of an application by any person. [Overview, pp67, footnotes omitted]

- 11 The Panel confirmed that the Rural Urban Boundary was a useful planning tool to manage growth and infrastructure. It should not be removed entirely but should be relocated as a method in the district plan section of the proposed plan, supported by policy in the RPS:

The Rural Urban Boundary is a useful planning tool to manage growth and infrastructure servicing and should not be removed entirely. However, the Panel does not consider that the weight of evidence supports the Rural Urban Boundary method being located in the regional policy statement. A contestable Rural Urban Boundary with a robust foundation against which to assess proposals to move it best avoids the adverse social, economic and environmental effects that the evidence indicates have been and are being caused by the operative Metropolitan Urban Limit. Locating the Rural Urban Boundary method in the district plan will best promote the purpose of the Resource Management Act 1991 and provide for the social and economic well-being of people and communities in the region. [Overview, pp69, footnotes excluded]

- 12 The Panel's reasoning does not apply to the Hauraki Gulf Islands because the Panel did not have jurisdiction to change the operative Hauraki Gulf Islands district plan.
- 13 The RPS sits at the top of the planning hierarchy of regional and district instruments in the proposed plan. Deletion of the Rural Urban Boundary from the RPS removes a statutory layer from any future proposal to urbanise rural parts of Waiheke.
- 14 If there were no recommended changes to the Rural Urban Boundary for Waiheke, then it would remain part of the RPS for the proposed plan. A future change would be required prior to, or as part of, any plan change process to urbanise rural Waiheke: s75(3)(c) RMA. Only Council (or a Minister) can initiate a change to the RPS and (unlike resource consent processes) there are mandatory consultation requirements and statutory rights of public participation.

- 15 Deletion of the RPS Rural Urban Boundary for Hauraki Gulf Islands removed environmental bottom lines and values protected by the RUB at Waiheke; and did not give effect to environmental bottom lines and values stated in Pt 1 of the Hauraki Gulf Marine Park Act, and the NZCPS.
- 16 Created the anomaly that rural Waiheke now has a lesser layer of planning protection against urbanisation than other rural parts of the Auckland region (despite the matters of national importance that apply to Waiheke and the Gulf Islands, but not the rest of the region, under Pt 1 of the Hauraki Gulf Marine Park Act).

Relief sought

- 17 Straits seeks the following relief:
 - (a) Reinstatement of the Rural Urban Boundary back into the RPS in relation to the Hauraki Gulf Islands. This includes (without limitation) reinstatement of the Rural Urban Boundary into the relevant RPS maps so that it reflects the line included in the notified version of the proposed plan; reinsertion of objectives, policies and methods that state the purpose and effect of the Rural Urban Boundary at RPS level for the Hauraki Gulf Islands;
 - (b) Consequential relief to address matters raised in this appeal.

Service and attachments

- 18 An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons. It is understood these apply to service of the appeal. The following documents are attached to this notice:
 - (a) High Court decision in [2017] NZHC 1351;
 - (b) Minute of the Governing Body dated 10 August 2016 (Section 6.6.1; Recommendation on a report to Auckland Council hearing Topic 013 Urban Growth - July 2016);
 - (c) Report to Auckland Council Hearing Topic 013 Urban Growth July 2016;
 - (d) Report to Auckland Council - Changes to the Rural Urban boundary, rezoning and precincts - Hearing topics 016, 017 Rural Urban Boundary;
 - (e) 19 August 2016 Minute issued by Chairperson of Panel;
 - (f) Section 32 - 2.2 Rural urban boundary location - section 32 evaluation for the Proposed Auckland - Unitary Plan

Dated this 16th day of July 2017



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Persons served with a copy of this notice:

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Auckland Council by its legal advisors

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