

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

CIV No: 2016-

UNDER

**THE LOCAL GOVERNMENT (AUCKLAND
TRANSITIONAL PROVISIONS) ACT 2010**

IN THE MATTER

of an appeal on a Question of Law under section
158 of the Act

BETWEEN

Summerset Group Holdings Limited

Appellant

AND

**The Independent Hearings Panel, C/- Auckland
Council**

First Respondent

AND

Auckland Council

Second Respondent

**Notice of Appeal on Question of Law under Section 158
of the Local Government (Auckland Transitional Provisions) Act 2010**

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7. No submission proposed the change of zoning in respect of the land from Light Industry zone to Mixed Housing Urban zone recommended by the first respondent to the second respondent.
8. The first respondent's recommendation does not comply with the requirement in section 144 (8) (a) of the Act to identify recommendations that are beyond the scope of submissions.
9. The second respondent is obliged to consider the recommendations of the first Respondent and to notify decisions on them, pursuant to section 148 of the Act. To avoid doubt, subsection (3) of section 148 provides that the second Respondent may accept recommendations of the first Respondent that are beyond the scope of submissions made on the proposed plan.
10. Limited appeal rights are available in respect of the proposed plan as provided in section 155 of the Act. There is a right of appeal:
 - (a) To the Environment Court under section 156 - 157;
 - (b) To the High Court under section 158.
11. Section 156 (1) and (3) afford limited rights of appeal to the Environment Court in respect of the second respondents decision. Specifically section 156 (3) provides:
 - “(3) A person may appeal to the Environment Court in respect of a provision or matter relating to the proposed plan if –*
 - (a) The Council's acceptance of a recommendation of the Hearings Panel resulted in –*
 - (i) The provision being included in the proposed plan; or*

(ii) *The matter being excluded from the proposed plan; and*

(b) ***The Hearings Panel has identified the recommendation as being beyond the scope of submissions made on the proposed plan; and***

(c) *The person is, was, or will be unduly prejudiced by the inclusion of the provision or exclusion of the matter."*

(Emphasis added)


12. In the present case the first respondent failed to identify that its recommendation in respect of the zoning of the land as disclosed in the planning maps was beyond the scope of submissions made on the proposed plan. Had it done so, the appellant would enjoy a right of appeal to the Environment Court in respect of the second respondents decision, pursuant to section 156 (3) of the Act.

13. The appellant seeks the following relief:

(a) An order directing the first respondent to identify that its decision in respect of zoning of Harrison Road was out of scope, as required by s144(8) of the Act; and/or

(b) Such further or alternative relief as the Court sees fit;

(c) Costs.



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R E Bartlett QC / S A Grant
Counsel for Appellant

16 September 2016

This document is filed by Bill Sandston of Chapman Tripp, Solicitors. The address for service of the appellant is at 23 Albert Street, Auckland.

Documents for service may be delivered to that address or may be:

- (a) Posted to PO Box 2206, Auckland;
- (b) Transmitted via fax to 09 357 9099; or
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