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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To:

The Registrar of the High Court at Auckland

And to:

The Independent Hearings Panel

And to:

Auckland Council

TAKE NOTICE that at am/pm on 2016 or as soon as Counsel may be heard Counsel for the Appellant will move the High Court at Auckland on appeal as follows:

- 1. The appellant is an incorporated company.
- 2. The appellant made a submission in respect of the Proposed Auckland Unitary Plan (**PAUP**) and appeared before the first respondent in support of its submission.
- 3. The submission was heard by the first respondent pursuant to the process for development of the first combined plan for Auckland Council specified in Part 4 of the Local Government (Auckland Transitional Provisions) Act 2010 (the Act).
- 4. The first respondent was required to make recommendations to the second respondent on the proposed plan, pursuant to section 144 of the Act.
- 5. The first respondent's recommendations were provided in reports pursuant to section 144 (7) of the Act. Subsection (8) of section 144 requires the Panel's recommendations on topics covered by the report to identify any recommendations that are beyond the scope of the submissions made in respect of the relevant topic.
- 6. The first respondent's reports to the second respondent included a recommendation to change the zoning of land at 8 Harrison Road, Ellerslie (the land) from Light Industry zone, as provided in the publicly notified plan, to Mixed Housing Urban zone.

- 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.

R E Bartlett QC / 8 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
- (c) Sent via email to bill.sandston@chapmantripp.com