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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

CIV-2016—404

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IN THE MATTER OF                    the Local Government (Auckland  
Transitional Provisions) Act 2010

AND                                        of the Resource Management Act 1991

AND                                        in the matter of an appeal under s 158 of the  
Local Government (Auckland Transitional  
Provisions) Act 2010

BETWEEN                                THE MINISTER OF DEFENCE a  
requiring authority and submitter on the  
Proposed Auckland Unitary Plan

    Appellant

AND                                        AUCKLAND COUNCIL a unitary  
authority with powers under inter alia the  
Local Government (Auckland Transitional  
Provisions) Act 2010 and the Resource  
Management Act 1991

    Respondent

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NOTICE OF APPEAL UNDER SECTION 158 OF THE LOCAL  
GOVERNMENT (AUCKLAND TRANSITIONAL PROVISIONS) ACT 2010

DATED: 15 September 2016

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Contact Person:  
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**TAKE NOTICE THAT:**

1. The appellant appeals to the High Court against the decision of the respondent in which the respondent determined pursuant to section 148 of the Local Government (Auckland Transitional Provisions) Act 2010 to accept the recommendations of the Auckland Unitary Plan Independent Hearings Panel (the Independent Hearings Panel) in relation to the permitted height limits set for the Redhills and Westgate Precincts as follows:

**I610. Redhills Precinct****I610.6.3. Standards for residential zones****I610.6.3.1. Maximum Height – Terraced Housing and Apartment Building zone**

- (1) The maximum height for buildings in the Terrace Housing and Apartment Buildings zone adjoining Fred Taylor Drive shall be 20.5m and Standard H6.6.5 Building height does not apply.

**I615. Westgate Precinct****I615.6 Standards****I615.6.6. Building height**

- (1) Buildings must not exceed the height and storey limits specified in Table H1.6.6.1.
- (2) Development that does not comply with I615.6.6(1) is a discretionary activity.

**Table H1.6.6.1 Height**

<b>Zone</b>	<b>Maximum height</b>	<b>Maximum number of storeys</b>
Business - Mixed Use Zone	32.5m	8 storeys
Business - General Business Zone	32.5m	8 storeys
Residential - Terrace Housing and Apartment Buildings Zone	32.5m	8 storeys

with the consequential effect that a height limit has purportedly been permitted in these two precincts that may breach Civil Aviation rules and conflicts with height limits applicable under the Defence Purposes

Designation 4311<sup>1</sup> protecting flight paths into and out of Whenuapai Air Base.

2. The appellant alleges the respondent made the following errors of law:
  - 2.1 It failed to take into account the height restrictions called Obstacle Limitation Surfaces imposed by way of the Defence Purposes Designation 4311 protecting the operation of Whenuapai Air Base;
  - 2.2 It failed to take into account the Civil Aviation Rules (parts 139 and Part 77) incorporated into the Defence Purposes Designation 4311 that do not permit building heights to penetrate the Obstacle Limitation Surfaces;
  - 2.3 In the alternative, it wrongly and unreasonably came to a conclusion that it did not need to incorporate the height limits imposed by the Obstacle Limitation Surfaces in the Defence Purposes Designation 4311 into the height limits for the Redhills and Westgate Precincts.
3. The questions of law to be resolved are:
  - 3.1 Is it rational and consistent with the provisions of the Resource Management Act 1991 to adopt a rule threshold which does not take account of a legal limitation on that threshold?
  - 3.2 Is it rational and consistent with the provisions of the Resource Management Act to fail to integrate complex planning provisions so that conflict is created between them?
  - 3.3 Was the respondent obliged to incorporate the different height limits set by way of the Defence Purposes Designation 4311 into the height limits set for areas affected by the Obstacle Limitation Surfaces?
  - 3.4 Given the answers to all or any of the questions posed as 3.1 – 3.3 above, did the respondent err in law?
4. The grounds of the appeal are:

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<sup>1</sup> Designation 4311 Whenuapai Airfield Approach and Departure Path Protection

- 4.1 The Minister of Defence sought the roll over of Defence Purposes Designations relating to the Whenuapai Air Base.
- 4.2 The Minister of Defence also submitted, through the New Zealand Defence Force, on the Proposed Auckland Unitary Plan, that Auckland Council “appropriately integrate designations with surrounding land uses and protect designated sites from reverse sensitivity effects.”
- 4.3 The Independent Hearings Panel considered the height restrictions conditions in Defence Purposes Designation 4311 at hearing, noted the Obstacle Limitation Surfaces were developed in accordance with New Zealand Civil Aviation requirements and delivered its recommendations confirming the Defence Purposes Designation 4311 on 18 May 2016.<sup>2</sup>
- 4.4 The Independent Hearings Panel delivered its recommendations in relation to Westgate and Redhills Precincts on 22 July 2016<sup>3</sup> without reference to Defence Purposes Designation 4311, despite recommending the creation of a new precinct allowing intensified development at Redhills and a new higher permitted height threshold at Westgate.
- 4.5 The respondent accepted the recommendation of the Independent Hearings Panel to confirm the Defence Purposes Designation 4311 in its decisions dated 19 August 2016<sup>4</sup>.
- 4.6 The respondent accepted the recommendations of the Independent Hearings Panel in relation to Redhills and Westgate Precincts (with the exception of an unrelated matter concerning transport) in its decisions dated 19 August 2016.<sup>5</sup>

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<sup>2</sup> Report to Auckland Council Hearing topic 045 Airports and 074 Designations Minister of Defence Designation 4311 Whenuapai Airfield Approach and Departure Path Protection

<sup>3</sup> Report to Auckland Council Hearing topic 081 Rezoning and Precincts Annexure 5 Precincts West

<sup>4</sup> Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan – Attachment E Designations

<sup>5</sup> Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan - Decisions Report - Decision 49 at pages 62-63

- 4.7 There is no discussion of the Defence Purposes Designations (including 4311) in the respondent's decisions.
- 4.8 Against that background, the respondent made the errors of law detailed at paragraph 2 above.
5. The relief sought by the appellant is:
- 5.1 An order that the Proposed Auckland Unitary Plan be amended to read as follows (or words to similar effect) with additions shown underlined and in red font:

#### **I610. Redhills Precinct**

##### **I610.6.3. Standards for residential zones**

##### **I610.6.3.1. Maximum Height – Terraced Housing and Apartment Building zone**

The maximum height for buildings in the Terrace Housing and Apartment Buildings zone adjoining Fred Taylor Drive shall be the lesser of the maximum height permitted by the Obstacle Limitation Surface created by Designation 4311 or 20.5m, and Standard H6.6.5 Building height does not apply.

#### **I615. Westgate Precinct**

##### **I615.6 Standards**

##### **I615.6.6. Building height**

- (1) Buildings must not exceed the lesser of:
- i. the maximum height permitted by the Obstacle Limitation Surface created by Designation 4311; or
  - ii. height and storey limits specified in Table H1.6.6.1.
- (2) Development that complies with I615.6.6(1)(i) but does not comply with I615.6.6(1)(~~ii~~) is a discretionary activity.

Table H1.6.6.1 Height

Zone	Maximum height	Maximum number of storeys
Business - Mixed Use Zone	32.5m	8 storeys
Business - General Business Zone	32.5m	8 storeys
Residential - Terrace Housing and Apartment Buildings Zone	32.5m	8 storeys

DATED this 15th day of September 2016

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R Dixon  
Counsel for the appellant

TO: The Registrar, High Court, Auckland

AND TO: The Respondent

AND TO: The parties understood to have appeared before the Independent Hearings Panel in relation to Westgate or Redhills Precincts, being:

- (a) Hugh Green Limited
- (b) Westgate Partnership
- (c) Westgate Joint Venture
- (d) Mr and Mrs S Nuich Trust
- (e) Peter Bolam
- (f) Orchard Plant Trust

This notice of appeal is filed by Rosemary Dixon, solicitor for the Appellant, of Crown Law.

The address for service of the Appellant is Crown Law, Level 3, Justice Centre, 19 Aitken Street, Wellington 6011. Documents for service on the Appellant may be left at this address for service or may be:

- (a) posted to the solicitor at PO Box 2858, Wellington 6140; or
- (b) left for the solicitor at a document exchange for direction to DX SP20208, Wellington Central; or
- (c) transmitted to the solicitor by facsimile to 04 473 3482; or
- (d) emailed to the solicitor at [rosemary.dixon@crownlaw.govt.nz](mailto:rosemary.dixon@crownlaw.govt.nz)

IN THE MATTER OF                    the Local Government (Auckland  
   Transitional Provisions) Act 2010

AND                                        of the Resource Management Act 1991

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BETWEEN                                THE MINISTER OF DEFENCE a  
   requiring authority and submitter on the  
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AND                                        AUCKLAND COUNCIL a unitary  
   authority with powers under inter alia the  
   Local Government (Auckland Transitional  
   Provisions) Act 2010 and the Resource  
   Management Act 1991

   Respondent

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NOTICE OF APPEAL UNDER SECTION 158 OF THE LOCAL  
GOVERNMENT (AUCKLAND TRANSITIONAL PROVISIONS) ACT 2010  
– STATEMENT OF INITIAL DISCLOSURE

DATED: 16 September 2016

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Contact Person:  
Rosemary Dixon  
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**TAKE NOTICE THAT:**

1. **The appellant has referred to the following documents in its Notice of Appeal:**
  - (a) Notice of the Minister of Defence seeking the roll over of the Defence Purposes Designations relating to Whenuapai Air Base, particularly Schedule 9B: Whenuapai Air Base dated June 2013;
  - (b) Defence Purposes Designation 4311 Whenuapai Airfield Approach and Departure Path Protection;
  - (c) Submission on the Proposed Auckland Unitary Plan by the New Zealand Defence Force dated 28 February 2014;
  - (d) Auckland Unitary Plan Independent Hearings Panel Report to Auckland Council Hearing topic 045 Airports and 074 Designations - Minister of Defence Designation 4311 Whenuapai Airfield Approach and Departure Path Protection dated May 2016;
  - (e) Auckland Unitary Plan Independent Hearings Panel Report to Auckland Council Hearing topics 016, 017 Changes to the Rural Urban Boundary; 080, 081 Rezoning and precincts - Annexure 5 Precincts West dated July 2016;
  - (f) Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan – Attachment E Designations dated 19 August 2016;
  - (g) Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel on submissions and further submissions to the Proposed Auckland Unitary Plan - Decisions Report - Decision 49 at pages 62-63 dated 19 August 2016;
  - (h) Recommendations Version of Proposed Auckland Unitary Plan as it relates to Designation 4311, Redhills Precinct, Westgate Precinct and D23 Airport Approach Surface Overlay dated 22 July 2016;

- (i) Decisions Version of Proposed Auckland Unitary Plan as it relates to Designation 4311, Redhills Precinct, Westgate Precinct and D23 Airport Approach Surface Overlay dated 19 August 2016;
- (j) Civil Aviation Rules including Parts 77 and 139.

**2. Other documents upon which the appellant may rely include:**

- (a) Further Submissions by the New Zealand Defence Force in support of, or in opposition to, submissions on the Proposed Auckland Unitary Plan dated 22 July 2014;
- (b) New Zealand Defence Force Submission on Proposed Plan Variations for Redhills (Fred Taylor Drive) Special Housing Area and Concurrent Qualifying Developments (under HASHA);
- (c) 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) dated July 2016;
- (d) Auckland Unitary Plan Independent Hearings Panel Report to Auckland Council – hearing topic 045 Airports dated July 2016;
- (e) Evidence/submissions presented to Auckland Unitary Plan Independent Hearings Panel including (but not limited to):
  - Karen Baverstock – Airports – Planning – NZDF – 2 April 2015
  - Karen Baverstock – Airports – Planning Rebuttal – NZDF – 20 April 2015
  - Rob Owen – Airports – NZDF – 2 April 2015
  - Legal Submissions on Behalf of Auckland Council in relation to Topic 045 Airport
  - Mark Vinall – Airports – Planning - Auckland Council – 2 April 2015

- Jarette Wickham – Redhills – Planning – Auckland Council – 12 April 2016
- Eryn Shields – Westgate Precinct – Planning – Auckland Council - 26 January 2016
- Eryn Shields – Westgate Precinct – Planning Rebuttal – Auckland Council – 1 March 2016
- Relevant submitter legal submissions and evidence from:
  - Mr and Mrs S Nuich Trust
  - Hugh Green Limited – primarily planning evidence of R Bailie and E Bayly
  - Peter Bolam/Orchid Plant Trust/Plantarama
  - Westgate Partnership
  - New Sun Developers Limited



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R Dixon  
Counsel for the Appellant