

under: the Local Government (Auckland Transitional Provisions) Act 2010 (*LGATPA*) and the Resource Management Act 1991

in the matter of: an appeal under section 158 of the LGATPA

between: Ryman Healthcare Limited, a duly incorporated company having its registered office at Christchurch and carrying on business as an operator of retirement villages

and: The Retirement Villages Association of New Zealand Incorporated, a duly incorporated society having its registered office at Wellington

Appellants

and: Auckland Council, a unitary authority established under the Local Government (Auckland Council) Act 2009

Respondent

Notice of Appeal

Dated: 16 September 2016

NOTICE OF APPEAL

TAKE NOTICE that Ryman Healthcare Limited and the Retirement Villages Association of New Zealand Incorporated hereby appeal to the High Court against the decision of Auckland Council on the Proposed Auckland Unitary Plan delivered on 19 August 2016 **UPON THE GROUNDS** that the decision is erroneous in law.

Decision appealed

- 1 The appellants appeal against the Independent Hearings Panel's (*Panel*) recommendations and the Auckland Council's (*Council*) decisions on Hearing Topics 059 – 063 (Residential Zones) of the Proposed Auckland Unitary Plan (*Plan*), in particular the objectives and policies for the Residential – Single House Zone.

Errors of law

- 2 The appellants allege that the Panel and the Council erred in law as they:
 - 2.1 Failed to ensure that the Plan complies with the Council's functions under section 31 of the Resource Management Act 1991 (*RMA*), including the establishment of objectives, policies and methods to achieve integrated management of the region's natural and physical resources, by not including specific objectives and policies that enable integrated residential developments in the Single House Zone.
 - 2.2 Failed to include objectives to meet the purposes of the RMA, policies to implement the objectives, and rules to implement the policies as required by section 32 and section 75 of the RMA, to enable integrated residential developments in the Single House Zone.
 - 2.3 Came to a conclusion without evidence or to a conclusion which, on the evidence, they could not reasonably have come, in not identifying specific objectives and policies to enable integrated residential developments in the Single House Zone.
 - 2.4 Were mistaken or unintentionally failed to reflect the findings the Panel had made on the evidence before it, of the need to enable integrated residential developments in the Single House Zone.
 - 2.5 Reached an irrational and inconsistent conclusion in not including specific objectives and policies that enable integrated residential developments in the Single House Zone, having done so for the Terraced Housing and Apartment Buildings, Mixed Use Urban and Mixed Use Suburban zones.

Grounds of appeal

3 The reasons for the appeal include:

- 3.1 The ability to prepare a district plan is derived from section 74 of the RMA, which provides that the Council must prepare the Plan in accordance with its functions under section 31, the provisions of Part 2, and its obligation to prepare an evaluation report in accordance with section 32.¹
- 3.2 The ability to include rules in a district plan is derived from section 75 of the RMA, which provides that a district plan must state the objectives for the district, the policies to implement the objectives, and the rules to implement the policies.²
- 3.3 The Panel recognised the legal requirements for objectives, policies and rules in the Plan in stating that it is necessary to:³

...[e]nsure that the high-level objectives and policies of the regional policy statement flow through into the objectives and policies of the regional, regional coastal and district plans and then into the rules that govern subdivision, use and development so that the approach is consistent throughout.

3.4 Similarly, the Panel recognised that:⁴

The integrated management of natural and physical resources and of the effects of the use, development and protection of resources requires ... vertical integration, so that higher level provisions of the Unitary Plan (the objectives) are clearly connected to and guide lower level provisions (the policies and methods)...

3.5 The Panel also recognised that section 32 requires that:⁵

...the appropriateness of objectives must be evaluated in terms of achieving that purpose; then other provisions, being the policies, rules and other methods, must be evaluated in terms of achieving the objectives. This vertical relationship of the Unitary Plan with

¹ Section 121 of the LGATPA requires the Proposed Auckland Unitary Plan to be prepared in accordance with the RMA, unless specified.

² Section 121 of the LGATPA requires the Proposed Auckland Unitary Plan to be prepared in accordance with the RMA, unless specified.

³ Independent Hearings Panel, Report to Auckland Council overview of recommendations (22 July 2016), page 5.

⁴ Independent Hearings Panel, Report to Auckland Council overview of recommendations (22 July 2016), page 37.

⁵ Independent Hearings Panel, Report to Auckland Council overview of recommendations (22 July 2016), page 32.

the Resource Management Act 1991 is repeated across all of the aspects of the environment in Auckland. Rather than addressing any aspect on its own, there must also be an assessment of the horizontal relationship of the provisions. In a combined Unitary Plan, this integration must also address the regional, coastal and district functions of the Council.

3.6 When applying those tests in relation to integrated residential developments, the Panel made the following findings:

It is the Panel's position that using the residential provisions that apply to residential developments which are a restricted discretionary activity in the Residential - Mixed Housing Suburban, Residential - Mixed Housing Urban and Residential - Terrace Housing and Apartment Buildings Zones (i.e. those involving five or more dwellings) is appropriate as the criteria are applicable to assessing a retirement village or other forms of integrated residential development.

These provisions, as amended, are focused on the size and scale of buildings and site development, and how that development responds to its surrounds and the planned character of the zone. The Panel considers that in terms of built form and the likely larger site sizes, a retirement village complex and a larger-scale residential development are likely to have similar effects and should therefore be subject to similar assessment matters. Furthermore, this approach fits with the structure of the residential provisions, which do not include separate lists of criteria applying to different activities.

The activity status for integrated residential developments is restricted discretionary in the Residential - Single House Zone, the Residential - Mixed Housing Suburban Zone, the Residential - Mixed Housing Urban Zone and the Residential - Terrace Housing and Apartment Buildings Zone. The provisions are largely the same as those applying to larger scale residential developments, with a focus on the effects on the neighbourhood character, residential amenity and the surrounding residential area from all of the following:

- i. building intensity, scale, location, form and appearance;
- ii. traffic;
- iii. design of parking and access; and
- iv. noise, lighting and hours of operation.

3.7 The Panel recommended that similar restricted discretionary activity rules be included in each of the main residential zones (Single House, Mixed Housing Suburban, Mixed Housing

Urban, and Terrace Housing and Apartment Buildings zones) for integrated residential developments.

3.8 The Panel also recommended that objectives and policies expressly enabling integrated residential developments be included in the Mixed Housing Suburban, Mixed Housing Urban, and Terrace Housing and Apartment Buildings zones, as follows:

(a) H4.3 Policies:

- (1) Enable a variety of housing types including integrated residential development such as retirement villages.
- (8) Enable more efficient use of larger sites by providing for integrated residential development.

(b) H5.3 Policies:

- (1) Enable a variety of housing types at higher densities, including low-rise apartments and integrated residential development such as retirement villages.
- (9) Enable more efficient use of larger sites by providing for integrated residential development.

(c) H6.3 Policies:

- (1) Enable a variety of housing types at high densities including terrace housing and apartments and integrated residential development such as retirement villages.

3.9 The Panel and the Council erroneously did not include similar policies for the Single House Zone.

Questions of law to be resolved

4 The appellants allege these errors of law give rise to the following questions of law:

4.1 Did the Council fail to ensure that the Plan complies with the Council's functions under section 31 of the RMA, including the establishment of objectives, policies and methods to achieve integrated management of the region's natural and physical resources, by not including specific objectives and policies that enable integrated residential developments in the Single House Zone?

4.2 Did the Council fail to include objectives to meet the purpose of the RMA, policies to implement the objectives, and rules to implement the policies as required by section 32 and section

75 of the RMA, to enable integrated residential developments in the Single House Zone?

- 4.3 Did the Council come to a conclusion without evidence or to a conclusion which, on the evidence, they could not reasonably have come, in not identifying specific objectives and policies to enable integrated residential developments in the Single House Zone?
- 4.4 Was the Council mistaken or did it unintentionally fail to reflect the findings the Panel had made on the evidence before it, of the need to enable integrated residential developments in the Single House Zone?
- 4.5 Did the Council reach an irrational and inconsistent conclusion in not including specific objectives and policies that enable integrated residential developments in the Single House Zone, having done so for the Terraced Housing and Apartment Buildings, Mixed Use Urban and Mixed Use Suburban zones?

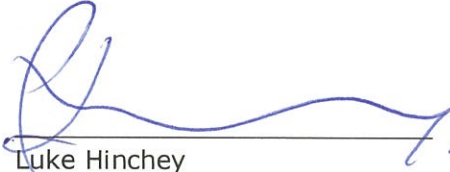
Relief sought

5 The appellants seek:

- 5.1 That the appeal be allowed;
- 5.2 That the following policies are inserted into Chapter H3. Residential – Single House Zone of the Proposed Auckland Unitary Plan:
 - Policy X: Enable a variety of housing types including integrated residential development such as retirement villages.
 - Policy X: Enable more efficient use of larger sites by providing for integrated residential development.
- 5.3 If the relief in (b) is not provided, that the matter be remitted back to the Panel or Council for reconsideration;
- 5.4 Costs.

- 6 The Appellants are lodging related proceedings concerning the Proposed Auckland Unitary Plan in the Environment Court. Specifically, an appeal against the Council's decisions to reject some of the Panel's recommendations on Topics 059-063 (Residential zones).

Date: 16 September 2016



Luke Hinchey
Counsel for the Appellant

To: The Registrar of the High Court at Auckland

And to: The Respondent

This Notice of Appeal is filed by **LUKE PATRICK HINCHEY**, solicitor for the Appellant, of Chapman Tripp.

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Appellants

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Respondent

Notice of application by applicant for directions as to service

Dated: 16 September 2016

APPLICATION FOR DIRECTIONS

To The Registrar of the High Court at Auckland

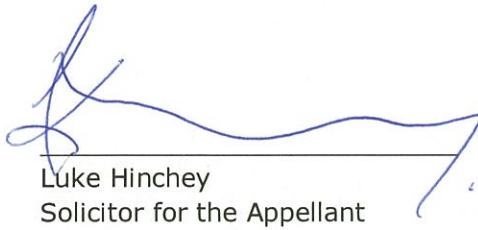
Auckland Council, Respondent

This document notifies you that -

- 1 The applicant, Ryman Healthcare Limited, will on the day of 2016, at 10am, apply to the Court for an order directing who is to be served (and the mode and timeframe of service) with the notice of appeal filed under section 158 of the Local Government (Auckland Transitional Provisions) Act 2010 (*LGATPA*), other than the respondent.
- 2 The ground on which the order is sought are as follows:
 - 2.1 The appeal concerns decisions by the respondent as to the provisions relating to the Residential – Single House Zone objectives and policies in the Proposed Auckland Unitary Plan (*PAUP*). Those provisions were considered as part of Topic 059 – 063 – Residential zones;
 - 2.2 The number of submitters and further submitters on Topics 059 – 063 is unknown, but extends into the thousands;
 - 2.3 the respondent published a notice in the New Zealand Herald on 19 August 2016, which (among other things) briefly outlined the appeal rights under the *LGATPA*. We understand the respondent has also contacted all submitters and further submitters on the *PAUP* to provide that information;
 - 2.4 the respondent’s website contains the Independent Hearings Panel’s recommendations and Council’s decisions on the *PAUP*, and a summary of appeal rights. The respondent is also publishing all notices of appeal served on it on its website; and
 - 2.5 accordingly, all submitters and further submitters will be on notice that Council’s decisions have been released and that appeals may be filed. They will also have access to any appeals that have been lodged.

3 This application is made in reliance on Rules 20.6(1)(c) and 20.7 of the High Court Rules.

Date: 16 September 2016



Luke Hinchey
Solicitor for the Appellant