

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

CIV-

UNDER

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

IN THE MATTER

of an appeal under section 158(1) of the LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on the proposed Auckland Unitary Plan (**Proposed Plan**)

AND

IN THE MATTER

of Proposed Plan Hearing Topics 080 Rezoning and Precincts (General) and 081 Rezoning and Precincts (Geographical Areas)

BETWEEN

Villages of New Zealand (Pakuranga) Limited

Appellant

AND

Auckland Council

Respondent

**NOTICE OF APPEAL
16 SEPTEMBER 2016**

ATKINS | HOLM | MAJUREY

Helen Atkins
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TAKE NOTICE that under section 158(1) of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) the Appellant appeals to the High Court from the decision of the Auckland Council (**Council**) in respect of the Proposed Auckland Unitary Plan (the **Proposed Plan**) dated 19 August 2016 (the **Decision**) received by the Appellant on 19 August 2016 **UPON THE GROUNDS** that the decision is erroneous in law as set out below.

INTRODUCTION

1. The Appellant owns and occupies land at Pakuranga Park Village, Fortunes Road, Half Moon Bay, Auckland (**Site**) which is subject to the Proposed Auckland Unitary Plan (**Proposed Plan**).
2. The Appellant made a submission on the Proposed Plan. The Appellant supported the notified version of the Proposed Plan that included a dedicated retirement village zone.
3. The Appellant participated in hearings on the Proposed Plan. At the time of the hearings the Council's position had changed in that it no longer supported a dedicated retirement village zone but rather sought to accommodate retirement village activities within the context of the various residential zones in the Proposed Plan.
4. The Council proposed a Mixed Housing Urban zone (MHU) for the Site.
5. The Appellant supported the Council position but provided evidence to support a change to the proposed zoning to be a mixture of Mixed Housing Urban (**MHU**) and Terraced Housing and Apartment Buildings (**THAB**). The evidence in support of the Appellant's position included a plan showing the delineation of the MHU and THAB. This plan is attached as **Appendix A**.
6. The Independent Hearings Panel (**IHP**) issued its recommendations which included MHU zoning for the entire Site – IHP Report to Auckland Council Topic 059 Residential Zones 2016-07-22). The IHP did not make any specific recommendations or provide any reasons in relation to the Appellant's request for THAB zoning of part of the Site.
7. The Council adopted the recommendations of the IHP with no changes relevant to the Site. The Council did not provide any

specific decisions or reasons in relation to the THAB zoning request.

8. The IHP provided no reasons for accepting or rejecting the submission and supporting evidence of the Appellant.
9. The Council in adopting the IHP recommendations likewise did not provide any reasons for accepting or rejecting the submission and supporting evidence of the Appellant.
10. In the absence of reasons there is no reasonable basis upon which the Council could have found that zoning the Site MHU was appropriate.

ERRORS OF LAW

11. The errors of law alleged by the Appellant are:
 - (a) The Council erred in accepting the recommendation of the IHP without providing any reasons for rejecting the submission to rezone part of the Site THAB;
 - (b) The Council erred in rezoning the entire Site MHU without providing any reasons to support that zoning.

QUESTIONS OF LAW

12. The questions of law to be resolved are:
 - (a) Whether the IHP was required to provide reasons for its decision on the MHU zoning of the Site;
 - (b) Whether it was legally open to the Council to adopt the IHP recommended MHU zoning for the Site in the absence of reasons being provided?

GROUNDS OF APPEAL

13. The grounds of appeal are that:
 - (a) Section 144 of the LGATPA provides the legal framework for the IHP recommendations. Section 144(7)-(9) specifically deals with the way in which the IHP should address its reasoning on submissions, as follows:
 - (7) The Hearings Panel must provide its recommendations to the Council in 1 or more reports.
 - (8) Each report must include—

(a) the Panel's recommendations on the topic or topics covered by the report, and identify any recommendations that are beyond the scope of the submissions made in respect of that topic or those topics; and

(b) the Panel's decisions on the provisions and matters raised in submissions made in respect of the topic or topics covered by the report; and

(c) the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

(i) the provisions of the proposed plan to which they relate; or

(ii) the matters to which they relate.

- (b) The error on the part of the IHP not to provide reasons has been transferred through into the Council's decisions.
- (c) The error in rezoning the whole Site MHU has no reasonable evidential basis.
- (d) The failure to provide reasons does not comply with the statutory direction.
- (e) The error has a significant impact on the Appellants.

RELIEF SOUGHT

14. The relief sought is:

- (a) That the appeal be allowed;
- (b) That the Council be directed to reconsider the submission of the Appellant requesting rezoning of part of the Site to THAB.
- (c) Costs.

DATE: 16 September 2016

Helen Atkins

Legal Counsel for Villages of New Zealand (Pakuranga) Limited

To: The Registrar, High Court, AUCKLAND

And to: The Respondents and interested parties to the decision to which this appeal relates

This notice of appeal is filed by Helen Atkins, solicitor for the Appellant, of the firm Atkins Holm Majurey Ltd

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APPENDIX A

