

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: **Waste Management NZ Limited**, a duly incorporated company having its registered office at Auckland and carrying on business as a provider of waste disposal services
Appellant

and: **Auckland Council**, being a Unitary Council established under the Local Government (Auckland Council) Act 2009, of Auckland
Respondent

Notice of Appeal

Dated: 16 September 2016

NOTICE OF APPEAL

TAKE NOTICE that Waste Management NZ Limited hereby appeals 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 appellant appeals against the Independent Hearings Panel's (**Panel**) Recommendation and the Auckland Council's (**Council**) decision on Hearing Topic 081 Rezoning and Precincts (Geographical Areas), in particular Topic 81c – North Shore, to rezone the appellant's land at 117 Rosedale Road, Auckland (**Site**) from "Light Industry" to "General Business".
- 2 The decision appealed from is only apparent from the planning maps contained in the Panel's Recommended Maps (Part 3) and the Council's Decisions Versions. The Panel's Recommendation Report (Part 1) and the Council's Decisions Report does not contain any discussion of the zoning of the Site specifically.

Error of law

- 3 The appellant alleges that the Panel and Council erred as a matter of law in that, in the circumstances presented to the Panel and Council, the only true and reasonable conclusion on the evidence available to them, contradicts the determination made to rezone the appellant's Site from "Light Industry" to "General Business".

Question of law to be resolved

- 4 The question of law to be resolved in this appeal is whether, on the evidence available to the Panel and Council, the only true and reasonable conclusion to be arrived at concerning the zoning of the Site, was that it should at least have remained zoned as Light Industry.

Grounds of appeal

- 5 The appellant relies on the following circumstances, which were reflected in the evidence available to the Panel:
 - 5.1 The Site had been used by Waste Management for industrial activities since 1999 and the evidence presented by Waste Management to the Panel had confirmed that that use was to continue;
 - 5.2 Prior to the notification of the Proposed Auckland Unitary Plan (**PAUP**) on 30 September 2013:
 - (a) the Site was located within the boundaries of the operative North Shore District Plan 2002;

- (b) the North Shore District Plan contained a number of business zones for the district. The most permissive for industrial activities was the Business 10 zone, which applied to established industrial areas, restricted residential activities and contemplated a moderate level of air quality amenity;
- (c) the Site together with other surrounding land, was zoned "Business 10";
- (d) a nearby site (11 Holder Place) owned by another waste services provider, EnviroWaste Services Limited, and used for a refuse and recycling transfer station, was zoned "Business 9" (the **EnviroWaste Constellation Drive refuse and recycling transfer station**).

5.3 On 30 September 2013, the Auckland Council notified the PAUP as a new plan to eventually replace the operative district plans of each of the seven amalgamated district councils, including the operative North Shore District Plan.

5.4 Insofar as is relevant, the PAUP:

- (a) zoned the Site, together with adjacent land to the south, east and west (across State Highway 1) of the Site, as "Light Industry";
- (b) zoned the adjacent land to the north of the Site, being the former Rosedale landfill site, as "Public Open Space – Sport and Active Recreation", although as a closed landfill, that land is not open to public, and in the southwest corner contains landfill gas extraction and destruction facilities;
- (c) zoned the nearby EnviroWaste Constellation Drive refuse and recycling transfer station as "Light Industry";
- (d) included certain "permitted activities" within a Light Industry zone. Those permitted activities included the use of land as a refuse transfer station, as a defined industrial activity.

5.5 The proposed zoning of the Site as Light Industry was generally consistent with the previous Business 10 zoning in the North Shore District Plan, insofar as it affected Waste Management's ability to use the Site as a refuse transfer station;

5.6 On 22 July 2016 the Panel:

- (a) released its recommendations to Auckland Council on the PAUP, in the form of its Recommendation Report, Recommended Plan, and new Recommended Planning Maps;
- (b) only provided short generalised reasons for its various recommendations in the Recommendation Report, based in part on the submissions it received;
- (c) did not address the particular circumstances, or evidence relating to the zoning of the Site;
- (d) recommended, in so far as is relevant, that:
 - (i) the Site be rezoned from "Light Industry" to "General Business" (based on the content of the Recommended Planning Maps);
 - (ii) the EnviroWaste Constellation Drive refuse and recycling transfer station site retain Light Industry zoning (again, based on the content of the Recommended Planning Maps);
 - (iii) the General Business zone allow certain permitted activities, which do not include any industrial activities of the type undertaken by Waste Management at the Site.

5.7 In giving its reasons for its recommendations, the Panel included only a general statement concerning the business zoning across the whole of the Auckland, the totality of which read:

While the Panel accepts the thrust of Council's evidence from Messrs Wyatt, Akehurst and Ms Fairgray in respect of the geographic shortage of land zoned Business – Light Industry, it has recognised the existing reality of many of those proposed zones. That is, many of these proposed zones are not currently used for or by light industry, and the clear commercial evidence is that they are most unlikely to revert to light industry even if zoned as such. Accordingly the Panel has rezoned many instances to the underlying zone sought, being either Business – Mixed Use Zone or Business – General Business Zone. This further reduces the amount of land zoned Business – Light Industry Zone in the Plan, making more transparent this issue of shortage raised by Council. However, the Panel does not consider that hiding the reality under what is effectively a false zone would address the shortage. The Panel notes that large areas of land zoned Future Urban Zone will be available as Business – Light Industry Zone if that is deemed appropriate at the time of

structure planning for live zoning. That has been taken into account in zoning Future Urban Zone areas.

The Panel notes that the Interim Guidance on 'spot zoning' was not intended to apply to small neighbourhood centre zones or larger complex sites such as retirement homes or large-format retail outlets. Those activities by their very nature tend to be 'spots' in a pure sense. The Panel has not, therefore, accepted that as a reason for not zoning such activities appropriately.

5.8 On 19 August 2016, Auckland Council resolved to accept the recommendations of the Panel insofar as they related to the rezoning of the Site and surrounding land from Light Industry to General Business (the **Council's Decision**).

5.9 The effect of the Council's Decision is to:

- (a) apply General Business zoning to the Site, while the nearby refuse transfer site owned by EnviroWaste retained its Light Industry zoning;
- (b) impose "non-complying" activity status on Waste Management's transfer station at the Site (as a waste management facility), in the event of any land use application to redevelop or extend the Site;
- (c) severely impact on Waste Management's ability to continue operating the refuse transfer station in the future, particularly as relevant discharge consents come up for renewal.

Relief sought

6 The appellant seeks:

6.1 That the appeal be allowed;

6.2 That the appellant's land at 117 Rosedale Road, Auckland be zoned as Light Industry in the Planning Maps in the Proposed Auckland Unitary Plan;

6.3 Costs.

To: The Registrar of the High Court at Auckland

And to: The respondent and any parties directed to be served

This Notice of Appeal is filed by Bruce Scott, solicitor for the appellant, of the firm Chapman Tripp.

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