IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY **CIV-2016-404-**

IN THE MATTER	of the Local Government (Auckland Transitional Provisions) Act 2010 ("**LGATPA**") and the Resource Management Act 1991 ("**RMA**")
AND	
IN THE MATTER	of an appeal under section 158(1) of the LGATPA
AND	
IN THE MATTER	of Topic 081 - Rezoning and Precincts (Geographical Areas) of the Proposed Auckland Unitary Plan
BETWEEN	**WEITI DEVELOPMENT LIMITED PARTNERSHIP** Appellant
AND	**AUCKLAND COUNCIL** Respondent

NOTICE OF APPEAL BY WEITI DEVELOPMENT LIMITED PARTNERSHIP

16 SEPTEMBER 2016

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TO: The Registrar of the High Court at Auckland

AND TO: The Respondent

TAKE NOTICE THAT Weiti Development Limited Partnership ("**Appellant**") will appeal to the High Court against part of the decision ("**Decision**") of the Auckland Council ("**Council**"), dated 19 August 2016, to adopt the recommendation ("**Recommendation**") of the Auckland Unitary Plan Independent Hearings Panel ("**Panel**") on the Proposed Auckland Unitary Plan ("**Unitary Plan**") **UPON THE GROUNDS** that the Decision is erroneous in law.

STANDING

1. The Appellant made a submission on the Unitary Plan in relation to the appropriate provisions for the Weiti Precinct, as that precinct is defined in the Unitary Plan.

2. The Council accepted the Recommendation of the Panel, which resulted in:

   (a) a provision being included in the Unitary Plan, namely that the Weiti Precinct provides for a maximum of 550 dwellings rather than the 1200 dwellings in the notified Unitary Plan or the 1750 dwellings as sought in the Appellant's submission; and/or

   (b) a matter being excluded from the Unitary Plan, namely that the Weiti Precinct does not provide for up to 1200 dwellings as provided for in the notified Unitary Plan or 1750 dwellings as sought in the Appellant's submission.

SCOPE OF APPEAL

3. The Appellant appeals against the Decision insofar as it relates to the Weiti Precinct, and all related provisions.

4. As the Council has accepted the Recommendation of the Panel, references to the findings and reasoning of the Panel in the extracts below are to be read as references to the Council.

ERRORS OF LAW

5. In adopting the Panel's Recommendation in relation to the Weiti Precinct, the Council made the following errors of law:

(a) The Appellant was deprived of its right to natural justice due to the filing of "rebuttal" evidence by the Council that raised new matters, going beyond the scope of rebuttal evidence;

(b) The new matters that were raised materially affected the decision, and the Appellant was denied an appropriate opportunity to address those new matters due to the late stage at which they were raised;

(the "**Natural Justice error**").

(c) There is a foundational factual error in the Panel relying on the Council's technical evidence to support its Recommendation of 550 dwellings, when in fact that evidence indicated that there was no technical reason to reduce the number of dwellings from 1200, which the Council had supported both in the notified Unitary Plan and in its primary evidence;

(the "**Foundational Factual error**").

(d) The Panel failed to comply with section 32AA of the RMA by failing to consider the costs and benefits of the changes proposed to be made to the notified limit of 1200 dwellings;

(the "**Notified Position error**").

(e) The Panel applied the wrong legal test in determining the appropriate provisions for the Weiti Precinct. In its Recommendation, the Panel incorrectly:

(i) framed the issue as being "the level of development that could reasonably be accommodated without having adverse effects on the local environment";

(ii) considered that it needed to be satisfied that the Weiti Precinct could be amended to provide for additional

development "without having significant adverse effects on the environment";

(the " **Adverse Effects error**").

(f) The Panel applied the wrong legal test in considering that the "special status" of the Weiti locality justified a precautionary approach be taken to development;

(g) The Panel applied the wrong legal test in adopting a precautionary approach, given that the effects in the Weiti Precinct did not satisfy the requirement of uncertainty;

(h) The Panel applied the wrong legal test in considering that the Appellant had to demonstrate that all potential effects could be managed appropriately;

(the "**Precautionary Approach error**").

6. The above errors of law, individually and collectively, materially affected the Panel's Recommendation on the Unitary Plan in relation to the appropriate provisions for the Weiti Precinct.

GROUNDS OF APPEAL

Natural Justice error

7. The right to natural justice is a fundamental pre-requisite of the quasi-judicial process, and a breach of natural justice is an accepted error of law.[1]

8. The Council supported a limit of 1200 dwellings within the Weiti Precinct in the Unitary Plan as notified on 30 September 2013. That position was based on a number of studies that had been undertaken prior to notification to support an increase in the maximum number of dwellings enabled from that under the Auckland Council District Plan - Operative Rodney Section 2011 ("**Operative Plan**").

9. The Appellant lodged submissions in relation to the Weiti Precinct seeking additional enablement beyond the 1200 dwellings enabled under

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1 *Kawarau Jet Services Holdings Limited v Queenstown Lakes District Council* [2015] NZHC 2343; *Te Whare o te Kaitiaki Ngahere Incorporated v West Coast Regional Council* [2015] NZHC 2769.

the Unitary Plan as notified. A limited number of other parties, primarily local environmental groups, also lodged submissions in relation to the Weiti Precinct ("**Other Weiti Submitters**").

10. Hearings on various aspects of the Unitary Plan were held between October 2014 and April 2016. Concerns in relation to the effects of stormwater discharges from development on the Okura Estuary and the Long Bay - Okura Marine Reserve were raised by the Other Weiti Submitters in relation to land on the opposite side of the Okura Estuary during the hearing for Topic 016 / 017 - Changes to the RUB ("**Topic 016 / 017**"). Evidence for Topic 016 / 017 was submitted in October - December 2015, with the hearing held in January 2016. Other submitters on the Weiti Precinct were involved in Topic 016 / 017, as was the Council.

11. However, the Council continued to support the enablement of 1200 dwellings through the presentation of its primary evidence in relation to the Weiti Precinct for Topic 081 - Rezoning and Precincts (Geographical Areas) ("**Topic 081**"), filed on 26 January 2016. This position was maintained despite the fact that it was aware of those previously identified concerns and the Other Weiti Submitters' position on them.

12. In accordance with its submission, the Appellant sought additional enablement, beyond the notified limit, up to 1750 dwellings. This was reflected in the primary evidence filed by the Appellant on 26 February 2016.

13. On 11 March 2016, the Council filed rebuttal evidence which effectively altered the Council's position such that it could only support 550 dwellings, citing concerns regarding stormwater management within the Weiti Precinct.

14. While purporting to be "rebuttal", through that evidence the Council's experts raised new issues regarding the stormwater contaminant load and associated effects on the Okura Estuary and Long Bay - Okura Marine Reserve that were entirely absent from the Council's own primary evidence. Moreover, there was no new material available between the filing of the Council's primary and rebuttal evidence to justify the introduction of these issues at the rebuttal stage. On those specific stormwater issues, the evidence from the Other Weiti Submitters that the

Council was purporting to "respond" to in rebuttal was submitted in October - December 2015, well in advance of the Council filing primary evidence in support of 1200 dwellings within the Weiti Precinct.

15. There is a basic presumption at common law that rebuttal evidence must be "strictly in reply".[2] This presumption was embodied in the Panel's own directions:[3]

> Rebuttal evidence will only be accepted as evidence before the Hearings Panel if it is strictly in rebuttal to matters already raised in evidence and contains no material relating to new issues not previously raised in evidence.

16. Based on the issues that were set out in the primary evidence that was presented by the parties for the Weiti Precinct, it is clear that the rebuttal evidence brought by the Council was not "strictly in reply". Rather, the Council used rebuttal evidence simply as a means to introduce concerns that it had not previously raised.

17. Due to the Council's privileged position in the process as architect, de facto respondent and ultimate arbiter of the Unitary Plan, there was an obligation on the Council to ensure natural justice for the other participants. Therefore, to the extent that the Council was aware of any issues in relation to the Weiti Precinct, these should have been raised much earlier.

18. At the time that the Council's rebuttal evidence was filed, the hearing was scheduled to be held on 26 April 2016. At a practical level, the admission of new evidence at that stage meant that the Appellant was left with a limited timeframe in which to conduct further testing, undertake additional modelling and subsequently respond to the issues that had been raised. While the Appellant filed supplementary evidence on 11 April 2016, that did not rectify the significant breach of its right to natural justice.

19. Due to the new issues being raised by the Council in its rebuttal evidence, combined with the strict timeframes under which the Panel was operating, the Appellant was deprived of the opportunity to adequately respond to the concerns raised by the Council.

20. Despite the limited time available, the Appellant was eventually able to persuade the Council's technical experts that its concerns were able to be

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2 *Gilbert v Comedy Opera Co* (1880) 16 Ch D 594.

3 Auckland Unitary Plan Hearing Procedures, dated 24 November 2015, at [93].

managed such that they amended their position (for a second time) at the hearing, as discussed further at paragraphs 25 to 26. Their final position was that there was "no reasonable technical justification to oppose development up to 1200 dwellings on stormwater grounds".[4] (For clarity, we note that concerns regarding stormwater were the Council's basis for amending its position from 1200 to 550 dwellings at the rebuttal stage.)

21. However, the Council's acquiescence as a result of the Appellant's further assessment was so late in the process that the Panel remained under the misapprehension that those belatedly-raised new technical matters were still at issue. The Panel's own Recommendation, reliant on this misapprehension, was such that "the need to carry out further investigations" had a significant impact on the approach that the Panel itself took, and ultimately the result regarding the level of development enabled.[5]

22. The error was carried through to the Council's Decision when the Council accepted the Panel's Recommendation.

Foundational Factual error

23. The Panel's Recommendation was based on a foundational factual error, being the conclusion reached regarding the level of development that was supported by the Council's technical expert witnesses.

24. The Panel's Recommendation relies on the stormwater evidence provided on behalf of the Council, and incorrectly states that the Council's evidence supports only 550 dwellings. For example:[6]

> The Panel agrees with the evidence for the Council and the submitters seeking to limit development to the currently approved 550 dwellings.
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> [...]
>
> The Panel accepts the position of the Council presented in evidence that the precinct be retained with some amendments to the provisions to clarify the extent of and number of dwellings, that being 550 dwellings, provided for in the precinct.

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4 Supplementary evidence of Dr Hellberg, Dr Carbines and Mr Vigar on behalf of Auckland Council in relation to the Weiti Precinct, dated 26 April 2016, at [12].

5 Panel's report in relation to Topics 016 / 017, 080 and 081, Annexure 4 Precincts - North, page 152.

6 Panel's report in relation to Topics 016 / 017, 080 and 081, Annexure 4 Precincts - North, page 152.

25. However, the Panel's conclusion is incorrect. While the Council's rebuttal evidence did outline such concerns, by the time the hearing concluded the Council's technical experts had amended their position. As stated in the Council's closing remarks for the Weiti Precinct:[7]

> During the hearing, the Council's stormwater experts reconsidered their position in their rebuttal evidence and informed the Panel that there is no technical stormwater reason to oppose development up to 1,200 dwellings.

26. This was confirmed by the Council's witnesses in a statement of supplementary evidence:[8]

> With respect to the Weiti Precinct, when considering the increase of contaminants from the operative district plan of 550 dwellings to 1200 dwellings, as proposed in the notified PAUP, we are now of the opinion that there is no reasonable technical justification to oppose development up to 1200 dwellings on stormwater grounds. This is on the basis that the additional load of metals is relatively insignificant (in the context of the existing catchment loads) and is not likely to cause significant impacts, beyond any that currently exist.

27. The Panel's Recommendation claimed to rely on the Council's evidence in reaching its conclusion that the appropriate level of development for the Weiti Precinct was 550 dwellings. However, the evidence itself supported 1200 dwellings as communicated through the provision of supplementary evidence and by way of oral submission at the hearing.

28. The Panel also observed, in relation to the Council's evidence, that:[9]

> ... there remain unresolved concerns with respect to the impacts associated with a greater amount of development.

29. However, to the extent the Council witnesses expressed concerns with "greater" development, those related to enablement of more than 1200 dwellings.

30. The Panel's conclusion regarding the appropriate provisions for the Weiti Precinct was therefore materially affected by this error regarding the fundamental foundational fact of the evidential position of the Council's witnesses such that there was an error of law.

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7 Closing remarks on behalf of Auckland Council in relation to specific precincts, Attachment B (Topic 081b - Rezoning and Precincts - Rodney), dated 19 May 2016, page 74.

8 Supplementary evidence of Dr Hellberg, Dr Carbines and Mr Vigar on behalf of Auckland Council in relation to the Weiti Precinct, dated 26 April 2016, at [12].

9 Panel's report in relation to Topics 016 / 017, 080 and 081, Annexure 4 Precincts - North, page 152.

Notified Position error

31. The Panel's Recommendation did not take into account the notified position for the Weiti Precinct, which allowed for the development of up to 1200 dwellings.

32. An evaluation report for the Unitary Plan was prepared by the Council, and notified together with the Unitary Plan itself on 30 September 2013.

33. The Panel is required to include a further evaluation of the proposed plan undertaken in accordance with section 32AA of the RMA.[10] Section 32AA provides that:

> (1) A further evaluation required under this Act—
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> (a) is required only for **any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed** (the changes); and
>
> (b) must be undertaken in accordance with section 32(1) to (4); and
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> (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and
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> (d) must—
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> (i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement), or the decision on the proposal, is publicly notified; or
>
> (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.
>
> (2) ...
>
> [Emphasis added]

34. Given that the notified Unitary Plan provided for the development of up to 1200 dwellings in the Weiti Precinct and the Recommendation was for only 550 dwellings, the Panel was required to provide a further evaluation of the change.

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10 Local Government (Auckland Transitional Provisions) Act 2010, section 145(1)(d).

35. In addition to the obligation to comply with section 32(1) to (4) of the RMA (discussed further at paragraph 42 below) the Panel must also:[11]

> ... identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions.

36. The Recommendation, insofar as it relates to the Weiti Precinct, makes no reference to the notified provisions, nor does it provide an assessment of those provisions against those that the Panel has itself recommended.

37. Rather, the Panel's assessment takes the provisions of the Operative Plan as the starting point for its assessment. This is the incorrect approach to the proper assessment of a plan change proposal. As the Environment Court has previously stated, the review of a proposed plan:[12]

> ... does not take as its starting point the provisions of the operative Plan. A review provides the opportunity to take a new look at the issues and develop objectives, policies and methods to achieve Part 2 of the RMA.

38. As notified, the Unitary Plan provided for the development of up to 1200 dwellings. This was based on assessment and work that had been undertaken in relation to the development capacity of the Weiti Precinct prior to notification, together with the Council's own section 32 evaluation report prepared in respect of the Unitary Plan.

39. The Panel's failure to consider the level of development enabled under the notified Unitary Plan and to assess the changes proposed to that level of development constitutes an error of law, which materially affected the Panel's Recommendation in relation to the appropriate provisions for the Weiti Precinct.

Adverse Effects error

40. At the start of the Panel's Recommendation in relation to the Weiti Precinct, the Panel frames the fundamental issue as follows:[13]

> The key issue at the hearing was the number of dwellings that are provided for in the precinct; that is the level of development that could reasonably be accommodated without having adverse effects on the local environment.

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11 Resource Management Act 1991, section 32(2)(a).
12 *Gordon v Auckland Council* [2012] NZEnvC 7 at [41].
13 Panel's report in relation to Topics 016 / 017, 080 and 081, Annexure 4 Precincts - North, page 151.

41. This statement incorrectly characterises the legal test that the Panel was required to consider when determining the Weiti Precinct provisions.

42. Under section 145 of the LGATPA, in formulating its Recommendation the Panel is required to include a further evaluation of the proposed plan undertaken in accordance with section 32AA of the RMA.[14] Section 32AA requires that such an evaluation is also undertaken in accordance with sections 32(1) to (4) of the RMA.[15]

43. Section 32(1) of the RMA imposes an obligation on the Panel to:

    (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA; and

    (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives.

44. The correct legal test in determining the appropriate number of dwellings therefore should have been whether the provisions of the Weiti Precinct (including the number of dwellings enabled, as well as the various other provisions that operate collectively to manage development within the precinct) were the most appropriate to achieve the objectives of the Unitary Plan (being both the Weiti Precinct objectives as well as the broader Unitary Plan objectives).

45. By focusing its consideration upon the avoidance of adverse effects (as is clear from the test as set out at paragraph 40), the Panel applied a wrong legal test. This error led the Panel to impose a higher threshold than appropriate when considering the level of development that could reasonably be accommodated.

46. If the correct legal test had been followed, the assessment would have been against all relevant objectives and policies within the Unitary Plan,[16] which would include:

    (a) Sufficient development capacity and land supply is provided to accommodate residential, commercial, industrial growth and social facilities to support growth.[17]

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14 Local Government (Auckland Transitional Provisions) Act 2010, section 145(1)(d).
15 Resource Management Act 1991, section 32AA(1)(b).
16 Panel Recommendation on Unitary Plan, B.1.2.

(b) Residential intensification supports a quality compact urban form.[18]

(c) An increase in housing capacity and the range of housing choice which meets the varied needs and lifestyles of Auckland's diverse and growing population.[19]

47. In this case, the Panel's failure to apply the correct legal test materially affected the Recommendation that it made in relation to the most appropriate provisions for the Weiti Precinct.

Precautionary Approach error

48. In its Recommendation, the Panel took the view that the Weiti area:[20]

> ... is a sensitive environment given the coastal location, and with two rivers discharging to it, and there is a need to have particular regard to the physical, coastal, ecological, landscape and other considerations. In this location these matters are of either regional or national significance.

49. On this basis, the Panel stated that:[21]

> ... the combination of these regional and nationally significant values gives this locality a special status that could be sufficient to exclude the area from any greater urbanisation but certainly **sufficient to justify a precautionary approach** to development in the precinct.
>
> [Emphasis added]

50. To the extent that the Panel relied on this notion of "special status" as a basis for adopting a precautionary approach, or indeed for forming the Recommendation in any way, this was an error that materially affected the Panel's Recommendation in relation to the appropriate provisions for the Weiti Precinct.

51. The precautionary approach is contained within Policy 3 of the New Zealand Coastal Policy Statement 2010 ("**NZCPS**"), and states:[22]

> (1) Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are

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17 Panel Recommendation on Unitary Plan, B.2.2.1(2).
18 Panel Recommendation on Unitary Plan, B.2.4.1(1).
19 Panel Recommendation on Unitary Plan, B.2.4.1(4).
20 Panel's report in relation to Topics 016 / 017, 080 and 081, Annexure 4 Precincts - North, page 152.
21 Panel's report in relation to Topics 016 / 017, 080 and 081, Annexure 4 Precincts - North, page 152.
22 New Zealand Coastal Policy Statement 2010, Policy 3.

> **uncertain, unknown, or little understood, but potentially significantly adverse**.
>
> (2) In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that:
>
> (a) avoidable social and economic loss and harm to communities does not occur;
>
> (b) natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and
>
> (c) the natural character, public access, amenity and other values of the coastal environment meet the needs of future generations.
>
> [Emphasis added]

52. In order to justify the adoption of the precautionary approach as set out in the NZCPS, the activity's effects must therefore be both:

(a) uncertain, unknown, or little understood; and

(b) potentially significantly adverse.

53. However, the effects in this case do not satisfy that test. The Panel was presented with detailed technical evidence identifying the potential effects of development by multiple parties in relation to the proposed development of the Weiti Precinct. As discussed above, both the Appellant's and the Council's witnesses were satisfied with those effects such that 1200 dwellings could be accommodated.

54. Any uncertainty regarding effects was as to cumulative effects on the receiving environment, which are not particular to the Weiti Precinct but common to the entire catchment. In fact, the Council's evidence concluded that there was no issue in relation to the cumulative effects of 1200 dwellings at Weiti:[23]

> We suggest that this could be a means of ensuring that the additional load from a proposed level of development of 1200 dwellings in the Weiti precinct does not have a cumulative impact on the subtidal depositional zone of Karepiro Bay, should the Panel recommend the 1200 dwelling scenario for the Weiti development, but feel the need to be mindful of cumulative effects.

55. This does not justify the adoption of the precautionary approach for the Weiti Precinct, especially in light of the inconsistent approach taken

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23 Supplementary evidence of Dr Hellberg, Dr Carbines and Mr Vigar on behalf of Auckland Council in relation to the Weiti Precinct, dated 26 April 2016, at [11].

across the remainder of the catchment within which the Panel recommended the enablement of significant urbanisation. The Panel therefore erred in applying a precautionary approach to the Weiti Precinct.

56. The Panel considered that the precautionary approach required that further investigations be carried out regarding contaminant loads and the cumulative impact from all developments that are planned in the locality, and that development should be limited to that currently approved until such time as satisfactory results are reported. The Recommendation stated that:[24]

> That precautionary approach demands that all potential effects of further development beyond that approved need to be identified and for it to be demonstrated those effects can be managed appropriately.

57. The Courts have indicated that the level of assessment of effects at the plan change stage is not as stringent as in a resource consent application. The Environment Court has recently held that:[25]

> We need only assess the potential for [...] effects at a very high level because this is a plan change as opposed to a resource consent appeal. Its relevance as a topic in the context of this hearing was to provide a platform to support the appellants' "real world argument" and their ultimate submission that, in terms of s 32, their proposal was more appropriate.

58. Relevantly, the Court has also stated:[26]

> Although this plan change process has brought forward useful additional information about the values and particularly the constraints of this land, all of the experts agreed that some residential use would be suitable subject to further investigations depending on the detail of any proposal. We agree with Mr Sapsford and Ms Lewis that this is appropriately assessed through a future resource consent process. We are conscious that this is a case relating to a plan change and not a resource consent.

59. The Supreme Court has also held, in a plan change context, that:[27]

> If, however, an activity could have significant adverse effects but these effects could be eliminated by a simple consent condition, then it would be irrational to require a planning authority to ignore the fact that such a condition could be imposed.

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24 Panel's report in relation to Topics 016 / 017, 080 and 081, Annexure 4 Precincts - North, page 152.

25 *Riverside Oak Estate Limited v Hamilton City Council* [2016] NZEnvC 49 at [53].

26 *Marchant v Taupo District Council* [2012] NZEnvC 55 at [73].

27 *Sustain Our Sounds Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 40 at [145].

60. The Panel's error in relation to the adoption of the precautionary approach is twofold:

(a) The Panel's adoption of the precautionary approach on the basis of the "special status" of the area is not the correct legal test for the purposes of the NZCPS.

(b) The precautionary approach was subsequently incorrectly applied to the Weiti Precinct as direct effects from the Weiti Precinct were not uncertain, and a consistent approach was required to the consideration of cumulative effects from development in the broader catchment as a whole.

61. On the basis of the above errors, the Panel's adoption of the precautionary approach was an error of law, which materially affected the Panel's Recommendation in relation to the appropriate provisions for the Weiti Precinct.

QUESTIONS OF LAW

62. The questions of law to be decided are:

Natural Justice error

(a) Was the Appellant denied its right to natural justice by the Council raising new issues through "rebuttal" evidence that deprived the Appellant of an adequate opportunity to respond?

Foundational Factual error

(b) Did the Panel make an error in relation to a fundamental foundational fact in relying on the Council evidence to support 550 dwellings, when that evidence indicated there was no technical reason to oppose development of 1200 dwellings?

Notified Position error

(c) Did the Panel fail to satisfy section 32AA of the RMA by failing to assess the changes to the notified position of 1200 dwellings?

Adverse Effects error

(d) Did the Panel err in framing the relevant legal test as an assessment of "the level of development that could reasonably

be accommodated without having adverse effects on the local environment"?

(e) Should the relevant legal test have been whether the provisions of the Weiti Precinct were the most appropriate to achieve the objectives of the Unitary Plan?

Precautionary Approach error

(f) Did the Panel apply the wrong legal test in considering the "special status" of the locality to be justification for the adoption of the precautionary approach?

(g) Did the Panel apply the wrong legal test in adopting a precautionary approach, given that the effects in the Weiti Precinct did not satisfy the requirement of uncertainty?

RELIEF SOUGHT

63. The Appellant seeks:

(a) that its appeal be allowed;

(b) that the matter be referred back to the Panel for full reconsideration in light of the findings of this Honourable Court;

(c) that the Panel be directed to provide the Appellant with the opportunity to provide further relevant evidence and submissions in relation to the provisions for the Weiti Precinct; and

(d) costs.

DATED 16 September 2016

B S Carruthers / D J Minhinnick
Solicitor for the Appellant

This document is filed by **Bronwyn Shirley Carruthers**, solicitor for the Appellant, of Russell McVeagh. The address for service on the Appellant is Level 30, Vero Centre, 48 Shortland Street, Auckland 1010.

Documents for service on the Appellant may be left at that address for service or may be:

(a) posted to the solicitor at PO Box 8, Auckland 1140; or

(b) left for the solicitor at a document exchange for direction to DX CX10085.