

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 156(1) section 156(3) 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 016 and 017 – Rural Urban Boundary, 080 Rezoning and precincts (General) and 081 Rezoning and precincts (Geographic area)

BETWEEN **W.T Colgan, B. Stephens, S. Gavin and M. Weck**

Appellants

AND **AUCKLAND COUNCIL**

Respondent

NOTICE OF APPEAL

Dated 21st September 2016

RECEIVED

27 SEP 2016

**Environment Court
Auckland**

To: The Registrar
Environment Court
Auckland

1. William Thomas Colgan, Barry Stephens, Scott Gavin and Michael Weck appeal against a decision of the Auckland Council (**Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).

Note: Mr Stephens and Mr Pufflett made a dual submission (submission #3444). Mr Pufflett has since sold his property which has been purchased by Mr Weck who is willing to continue with the present arrangement.

2. I have the right to appeal the Council's decision –

- (a) under section 156(1) of the LGATPA because the Council rejected a recommendation of the Hearings Panel in relation to a provision or matter I addressed in my submission on the proposed plan (submission #1806). The Council decided on an alternative solution, which resulted in a provision being included in the proposed plan or a matter being excluded from the Proposed Plan:

- (b) under section 156(3) of the LGATPA because the Council accepted a recommendation of the Hearings Panel that the Hearings Panel had identified as being beyond the scope of the submissions made on the Proposed Plan. The Council's decision resulted in a matter being excluded from the Proposed Plan. We will be unduly prejudiced by the exclusion of the matter.

3. We provide further details of the reasons for our appeal below.

4. We are not trade competitors for the purposes of section 308D of the RMA.

5. We received notice of the decision on 19 August 2016.

6. The decision (*or part of the decision*) that we are appealing is:

- (a) 48.1 – Councils decisions relating to Panel report entitled "Report to Auckland Council Hearing Topic 080 (Rezoning and precincts (general) and 081 Rezoning and precincts (Geographical areas) and 016 and 017 – Rural urban boundary and Annexures 1 – 6, July 2016 - (recommendations in the SOUTH)"

- The Council has accepted all recommendations of the Panel contained in the Panel report for Hearing Topic 080 (Rezoning and precincts (general) and 081 Rezoning and precincts (Geographical areas) and 016 and 017 – Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the SOUTH), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 48.2.
- Hearing topic 016 and 017 Rural Urban Boundary, 080 Rezoning and precincts (General) and 081 Rezoning and precincts (Geographic areas).
- Council's decision not to move the rural urban boundary to include 61, 75, 95 Patumahoe Road and 23 Clive Howe Road as future urban zoning.

7. The reasons for the appeal are as follows:

(a) We are asking for a rezoning because our properties could no longer be acknowledged as rural. They are no longer economically viable as they are now. All four appellants have other incomes. We feel the initial town planners did not acknowledge the many positive attributes that Patumahoe provides. The rapid filling of the Woodhouse Road development is evidence of its popular reputation. We feel that these town planner's decisions have been adhered to without investigation and most of their decisions seem based on residential planning when this applies to development that may be some time away. Developers have experience with these problems.

8. We seek the following relief:

(a) We are asking for Council to move the rural urban boundary to include our properties (61, 75, 95 Patumahoe Road and 23 Clive Howe Road) as future urban zoning. Our rebuttals to many of these decisions have not been acknowledged as yet and all seem to have been dealt to without investigation. Our rebuttals to the hearing have been thoroughly detailed in our appeal application (attached below appendix C).

9. An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.

10. The following documents are attached to this notice:

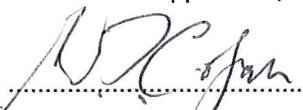
(a) A copy of the relevant decision part of the Council's decision, being Decisions Report, page 60.

(b) A copy of the relevant part of the Hearings Panel recommendation, being Report to Auckland Council – Changes to the Rural Urban Boundary, rezoning and precincts, page 15.

(c) A copy of the letter sent to Council by appellants rebutting Council reasons for decline of the rural urban boundary and zone change.

(d) A copy of the Submission.

.....
Signature of appellants (or person authorised to sign
on behalf of appellants, W. T. Colgan)



.....
Date 21 September 2016

Address for service of appellant: 43 Settlement Road RD3 Pukekohe

Telephone: 09 2389515

Fax/email: WTME@compassnet.co.nz

Contact person: W.T. Colgan

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to unitaryplan.ecappeals@justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unitaryplan@aucklandcouncil.govt.nz) and the appellant.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the RMA.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.

Attachment A: Copy of Council's Decision (page 60)

- 48. Council decisions relating to Panel report entitled "Report to Auckland Council Hearing Topic 080 (Rezoning and precincts (general) and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the SOUTH)"**

Panel recommendations accepted:

- 48.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 080 (Rezoning and precincts (general) and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the SOUTH), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 48.2.

Panel recommendations rejected:

- 48.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 080 (Rezoning and precincts (general) and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the SOUTH) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

Attachment B: Copy of Hearing Panel's recommendation to Council (page 15)

2.5. Reasons for not supporting specific requests to change the Rural Urban Boundary

There were a number of requests for changes to the Rural Urban Boundary that the Panel does not support. The Council also did not support these changes (for a summary of the Council's views see its closing comments on Topic 016/017 of 19 February 2016). The Panel considered these requests and the supporting evidence and concluded they did not meet the recommended criteria in the regional policy statement for changes to this boundary and the Panel's best practice approaches. On this basis the Panel's view concurs with the Council's position.

The Panel's reasons for not supporting three areas, namely Karaka Peninsula, Bombay and the extensions to Kingseat (that were not part of Plan Change 28 to the Auckland Council District Plan – Operative Franklin section) are in Annexure 6 (for Karaka and Bombay) and Annexure 3 (for Kingseat).

Attachment C: Appeal letter by appellants to Council

Manager Unitary Plan
Auckland Council

Submission #1806

Please consider this an appeal

Rebuttal of Unitary Plan decision

- 8.6 The number of submitters should have no influence on the decisions of the hearings.
- 8.7 The fact that our submission is contiguous to an existing residential zone gives our submission reason for expecting a positive result as it agrees with the desire for compact housing. All growth has taken place north of Patumahoe and the south ignored. This is because lack of opportunity, if suitable areas were rezoned I'm confident of a positive result for housing.
- 8.7 The fact that rezoned areas north of Patumahoe are rapidly sold must be sufficient evidence as to justify our submission. Our small area if and when rezoned would provide for desirable sections with agreeable country views over a long range. This is so and should be given more consideration.
- 8.7 This should be given more consideration. Approximately half of the area is a deep, steep gully which is not suitable for any rural commercial use.
- 8.2 There has recently been a large pipeline delivering water from the Pukekohe reservoir to Patumahoe.
- 8.5 This should have no influence on the hearings decisions.
- 8.10 The water situation I have already dealt with, see 8.2. There have been many attempts at providing a Waiuku, Patumahoe, Pukekohe bus service but all have failed for lack of patronage. Patumahoe has an asset that will surely come to fruition well within the 30-year project. This is the close proximity to the railway already operational and within a 15-minute walk to all residents.
- 8.11 The Watercare witnesses are obviously not aware that modern technology has taken care of these situations and can deal with them in a professional and economical manner. Our small rezoning is hardly likely to effect the efficiency of the present pump. It could be several years before development takes place and no doubt this issue will be dealt with then.
- 8.12 Diversion of funds that would effect Patumahoe rate payers in favour of FUZ areas is blatantly unjust.
- 8.13 Our submission is based on the fact that the properties are not 'elite or prime land'. 95 Patumahoe has approximately 1.5 hectares of Patumahoe Clay Loam and is currently in market gardening on lease. This is only viable to the lessee because he farms some 100 acres in close proximity. It is entirely uneconomical on its own, the properties meet all other desirable features council is seeking. The only viable production would be the chicken houses. The owner is also a submitter and is anxious to retire but needs rezoning to retain the value of the property. Currently he has odour complaint problems with neighbours and the school. The third submitter is largely a steep gully with little economic use currently grazed by six animals.

Response 8.14 The proposed rezoning by its situation and contiguous connection with Clive Howe road and the Weck subdivision is in a perfect position for a relatively small subdivision of its own. All of the desired requirements for rezoning have been met and dealt with above. In spite of the town planner's decision this rezoning would enhance the very issue they are concerned with, that is compact housing.

From day one of these submissions the town planners have downgraded Patumahoe without sufficient knowledge or information. The huge gully not being recorded by any of them is a prime example. I am familiar with the Patumahoe rural character as I spent some of my youth there and have friends there. Patumahoe has been called a 'slumber village' but this is not an undesirable thing. Most of the residents work in Pukekohe, Waiuku, parts of Auckland and even south to Hamilton. It is a vibrant community and is obviously going to attract further home buyers. It has spacious sports fields.

- Rugby and netball teams in all grades
- Tennis courts
- Bowling greens
- School bus to Patumahoe Primary and Pukekohe High School
- Volunteer fire brigade (back up to Pukekohe)
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- Historic hotel
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- 4square grocer and dairy and a significant factory business manufacturing containers
- Mechanics workshop
- Its situation places it close to beaches at Glenbrook, Wai Pa and the Waikato river.

Patumahoe will not go away.

Patumahoe is a very nice place to live.

As far as I am aware Patumahoe has no

- Unemployment
- Gangs
- 'Tinny houses'
- Graffiti

I cannot understand why town planner have gone to all ends to deny our submission and not consider the many advantages it would consider. To my mind they are denying the council the opportunity to obtain the perfect area for development. It 'ticks' all the boxes council requires for a successful submission. It also takes care of an uneconomical rural area that is not generating substantial revenue for council. A neat, compact, smallish development would be an asset to the village and generate far more through rates than it is currently collecting. This is a desirable chance and would be a benefit at lower cost to all parties.

8.9 The small portion of land in the south of Patumahoe is no reason for denying our rezoning. In fact, I am surprised the Hearing has not considered the many advantages it would be to the village and the council in the long term. It is also a perfect situation for a southern boundary with the railway running parallel to Hunters Road.

Signed submitters



W. T Colgan (on behalf of all submitters, original with council.)

B. Stephens

S. Gavin

M. Weck

Attachment D: Copy of original submission #1806

#1806

Proposed Auckland Unitary Plan Submission Form
Sections 123 and 125, Local Government (Auckland Transitional Provisions) Act 2010
Clause 6 of First Schedule, Resource Management Act 1991
FORM 2



AUCKLAND COUNCIL
21 FEB 2014
CBD - CIVIC

Correspondence to :
Attn: Unitary Plan Submission Team
Auckland Council
Freepost Authority 237170
Private Bag 92300
Auckland 1142

For office use only
Submission No:
Receipt Date:

Submitter details - Joint Submission

Full Name of Submitter or Agent (if applicable)

Mr/Mrs/Miss/Ms(Full Name) W.T Colgan, B. Stephens, S. Gavin, Mrs D. Pufflett

Organisation Name (if submission is on behalf of Organisation) W.T. Colgan

Address for service of the Submitter
43 Settlement Road R.D.3. Ruketeke

Email: _____
I live in the following Local Board area (if known) _____
Contact Person: (Name and designation if applicable) _____

Scope of submission

This is a submission to: Proposed Auckland Unitary Plan

The specific provisions that my submission relates to are:
Please identify the specific parts of the Proposed Plan

Provision(s) The above submitters own the 4 properties encasing
Or
Property Address the area from Clive Howe Road to Hunter Road corner
Or
Map These properties are currently zoned Rural Production
Or
Other (specify) but we request that they be rezoned Residential

Submission

My submission is: (Please indicate whether you support or oppose the specific provisions or wish to have them amended and the reasons for your views)

- I support the specific provisions identified above
- I oppose the specific provisions identified above
- I wish to have the provisions identified above amended Yes No

The reasons for my views are: These properties are no longer viable as economic businesses owing to their small sizes and their position fits Councils wish to condense housing and utilise present infrastructure where possible.

PLEASE READ ATTACHED PAPERS (continue on a separate sheet if necessary)

1/8

#1806

I seek the following decision from Auckland Council:

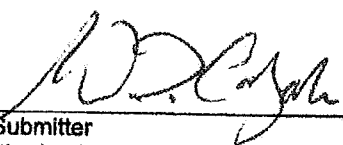
- Accept the Proposed Plan
- Accept the Proposed Plan with amendments as outlined below
- Decline the Proposed Plan
- If the Proposed Plan is not declined, then amend it as outlined below.

I wish to be heard in support of my submission

If others make a similar submission, I will consider presenting a joint case with them at a hearing

Telephone 09 23 895 15

Please note that your contact details and phone number will be publicly available under the Resource Management Act 1991, as any further submission supporting or opposing this submission is required to be forwarded to you as well as the council.


 Signature of Submitter
 (or person authorised to sign on behalf of submitter. A signature is not required if you make your submission by electronic means)

Date 17-2-14

Notes to person making submission:
 If you make your submission by electronic means, the email address from which you send the submission will be treated as an address for service.
 If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6 (4) of Schedule 1 of the Resource Management Act 1991.
 I could could not gain an advantage in trade competition through this submission
 If you could gain an advantage in trade competition through this submission please complete the following:
 I am am not directly affected by an effect of the subject matter of this submission that:
 (a) adversely affects the environment; and
 (b) does not relate to trade competition or the effects of trade competition

1806

43 Settlement Road
R D 3
PUKEKOHE 2678

10 February 2014

Attn: Unitary Plan Submission Team
Auckland Council
Freepost Authority 237170
Private Bag 92300
AUCKLAND 1142

Dear Sirs

RE: Re-Zoning Patumahoe Road from Clive Howe Road to Hunters Road, Patumahoe from Rural Production to Residential

Properties Concerned: (see attachment 1)

61 Patumahoe Road, Lot 1 DP 82415 (Par_ID 5203686)
75 Patumahoe Road, Lot 2 DP 211908 (Par_ID 6567047)
95 Patumahoe Road, A Lot 50 Pt Allot 49, Sub Sec 1 Puni Parish, BLK X Drury SD (Par_ID 5047598)
23 Clive Howe Road, Lot 3 DP211908 (Par_ID 6567048)

Our submission concerns the zoning of Patumahoe Road, between cnr Hunters Road and Clive Howe Road. Currently this area is zoned Rural Production and it is our wish that it be re-zoned Residential. | 1

The properties are in a perfect position for urban/rural development for the proposed 30 years of projected growth in Auckland and the 55,000 new homes in the South. Patumahoe is a developed community; it has pre-schooling and primary schooling and school bus routes for high schooling, community facilities and easily accessible transport routes. These properties have existing infrastructure in place or close by. The properties are in a perfect position for subdivision and it is a perfect opportunity for proposed greenfield housing projects. These properties could be easily subdivided to help address Auckland's short/medium term housing needs.

In support of the above we believe our reasons for having these properties re-zoned are compelling and are as follows:

1. The distance between cnr Hunters Road and Clive Howe Road (beside Patumahoe School) is less than 500 metres.
2. All properties are a short walking distance to the school (less than 500m), the sports field and amenities such as Patumahoe Village shops (less than 1km) and other recreational facilities. These properties allow for compact development within a walkable neighbourhood. (See attachment 2)
3. The properties have a recently constructed concrete foot path along their road frontage too Hunters Road corner.

3/8

(3)

1806


4. Allowing these properties to be subdivided into residential sections fits perfectly with the concept of concentrating settlements close to a town centre Patumahoe Village (under 1km from subject properties) and this would also mean the urban/rural sprawl would be concentrated north of the railway line (**road and railway provide a logical boundary**).
5. Growth around existing subdivision (Clive Howe Road residential subdivision) makes use of existing infrastructure.
6. Underground services are already in place. Town sewerage runs past the gate and town water runs to 71 Patumahoe Road a mere 200m away from Hunters Road cnr (see attachment 3). Developing these properties achieves cost effective use of established utilities and services.
7. The properties are on the main transport corridor between Patumahoe and Pukekohe and also the main Patumahoe/Karaka/Auckland transport corridor which is ideal for commuting.
8. The rural land contained in these properties has no productive use. They are all too small and steep to be of any rural significance.
9. Farming these properties has become uneconomic and unacceptable to neighbouring properties and the school community with spray drift from market gardening operation and the smell from the chicken sheds. Tractors and farm machinery on the main transport corridor of Patumahoe Road to access 95 Patumahoe Road is also becoming unacceptable and unsafe.
10. Subdividing these properties would increase rate payers in the area.

We have been working closely for over two years with our local Whakaupoko Landcare group to allow community access at the bottom of our properties to a natural bush reserve. We believe zoning change will provide new residents with an already formed access to the natural environment which in both short term and long term is an enhancement to the community.

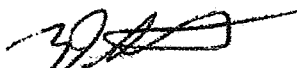
The Patumahoe Village Inc is willing to undertake community consultation on our behalf if this submission is to be considered.

We would welcome a visit by one of your officers to view and discuss our submission further, contact number – Bill Colgan, 09 238 9515.

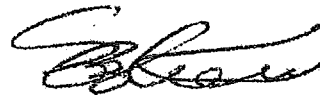
Yours faithfully



W T Colgan



Barry Stephens



Scott Gavin



Mrs D Pufflett

(Rural Residential)

4/8

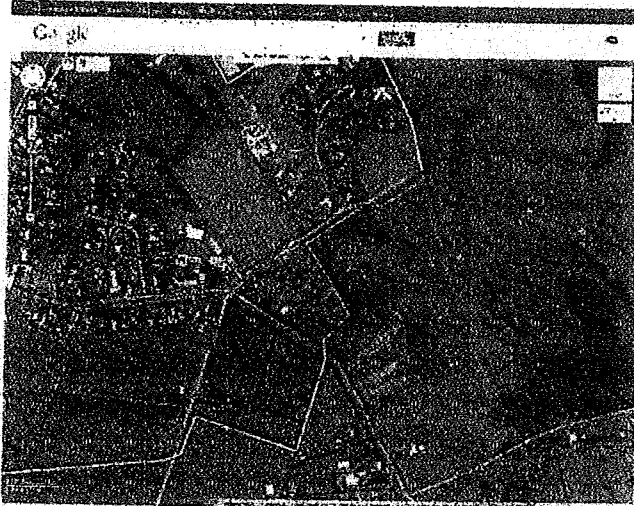
(4)

#1806

4. SPECIFIC CHANGE OF ZONING REQUEST –

Whakaupoko Landcare & Patumahoe Village Inc

In line with comments received during consultation, we support the current request for change of Landuse for the properties identified below.



Benefits to community:

- Owner has opportunity to develop land instead of upgrading chicken farm facilities which will avoid adverse effects of combining existing residential, school and rural use of closely located properties,
- Creates an access from residential village to existing bush reserve that is undergoing a regeneration project with Whakaupoko Landcare,
- Begins the creation of a network of walking/cycling routes that identify and connect ecological sites or corridors within the village.

A: CT number: NA39A/275 Legal Description: Lot 1 DP 82415 Area: 0.8094
Change from RURAL to RESIDENTIAL.

Already within DGS and connects adjoining property noted in 'B' to existing residential area.

B: CT number: NA139D/495 Legal Description: Lot 2 DP211908 Area: 3.1125
Change from RURAL to RESIDENTIAL.

Adjoining DGS on boundary line, and change of landuse will allow compensatory development of residential as existing chicken farm is removed. Consultation has indicated this extra residential area is considered preferable to existing land use.

C: CT number: NZ139D/496 Legal Description: Lot 3 DP211908 Area: 5614
Change from RURAL to RURAL-RESIDENTIAL or appropriate lifestyle blocks.

Project with Whakaupoko Landcare and Auckland Council allows for public access across land to link existing native bush reserves – Clive Howe and Henry's Bush. These reserves currently have no walking track access, and this would be the first such off road access in the village. Land contour makes it unsuitable for alternative primary production use.

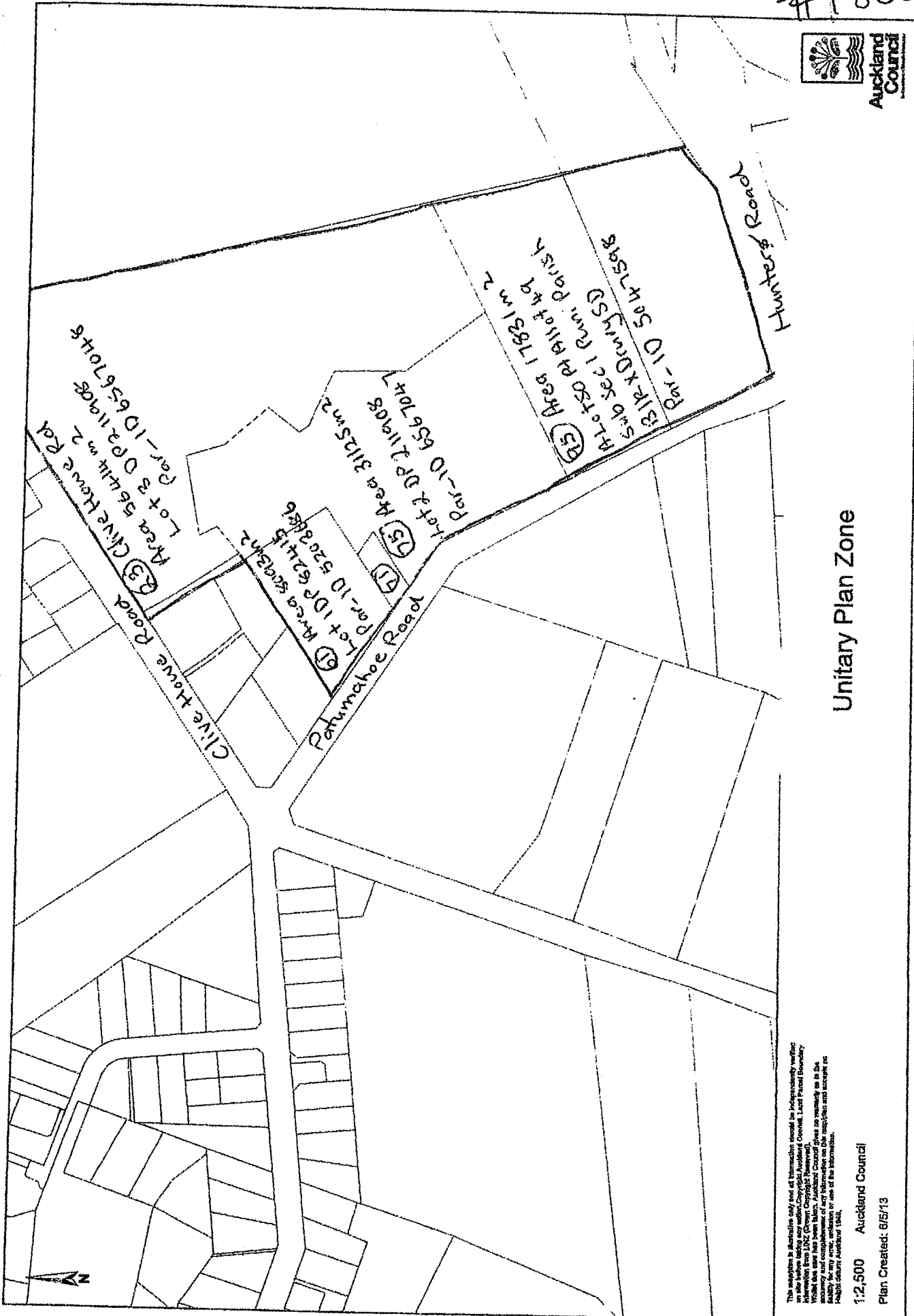
This project is currently coordinated by the Whakaupoko Landcare group, Auckland Council and private landowners and provides the community with immediate and ongoing benefits. Patumahoe Village Inc is in support of such community and council partnerships.

5/8

Attachment 1: Subject pp'tys (currently zoned Rural Production)

(5)

#1806



Unitary Plan Zone

This map is for information only and does not constitute a guarantee of accuracy. Auckland Council does not warrant the accuracy of the information shown on this map. Auckland Council is not responsible for any errors or omissions on this map.

1:2,500 Auckland Council
Plan Created: 8/5/13

8/6

(6)

#1806

Subject ppts in relation to
schools/village etc

Rotunuahoe School

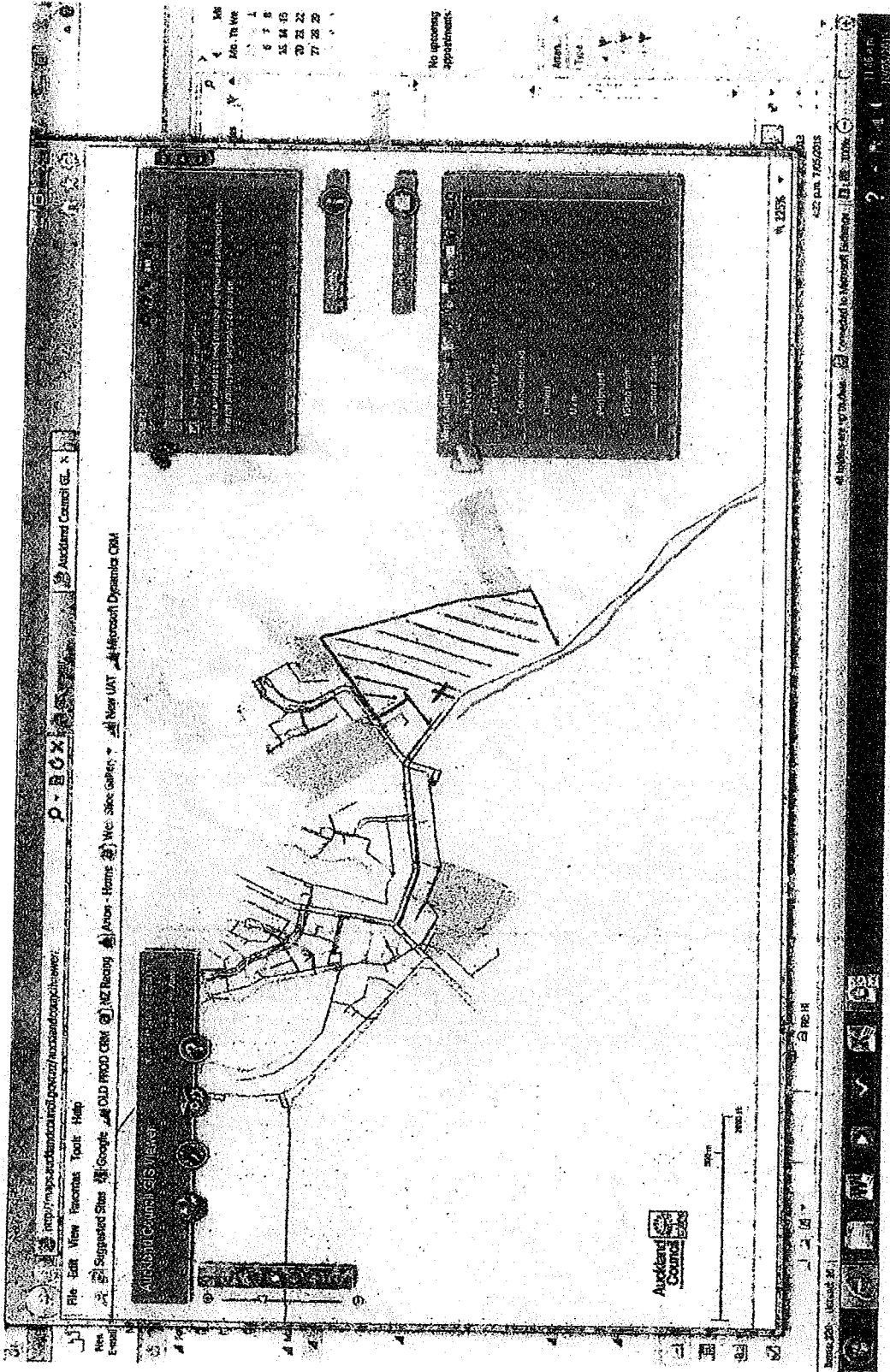


Rotunuahoe
Village

Subject ppts

8/2

Attachment 3: Existing Infrastructure



- ▨ - Subject properties
- sewerage
- x existing water line

8/8



1806

Please consider this an appeal

Rebuttal of Unitary Plan decision



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Signed submitters

W. T Colgan (on behalf of all submitters, original with council.)



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