

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2016-AKL-

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) 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 Topic 059 – 063 Residential Zones

BETWEEN **HOUSING NEW ZEALAND CORPORATION**

Appellant

A N D **AUCKLAND COUNCIL**

Respondent

NOTICE OF APPEAL (RE TOPIC 059 – 063 RESIDENTIAL ZONES)

DATED: 16th September 2016

**ELLIS GOULD
SOLICITORS
AUCKLAND**

REF: Dr Claire Kirman / Alex Devine

**Level 17 Vero Centre
48 Shortland Street, Auckland
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TO: The Registrar
Environment Court
AUCKLAND

1. Housing New Zealand Corporation ("**the Appellant**") appeals against part of a decision of Auckland Council ("**the Council**") on the proposed Auckland Unitary Plan ("**Proposed Plan**").
2. The Appellant has the right to appeal the Council's decision to the Environment Court under section 156(1) of the LGATPA because the Council rejected recommendations of the Hearings Panel in relation to provisions or matters relating to the Proposed Plan:
 - (a) that the Appellant addressed in its submission relating to the residential zone provisions in the Proposed Plan (Submission Number 839, FS 3338); and
 - (b) that resulted in alternative solutions being included in the Proposed Plan.
3. The Appellant provides further details of the reasons for its Appeal below.
4. The Appellant is not a trade competitor for the purposes of section 308D of the RMA. In any event, the Appellant is directly affected by effects of the subject of the Appeal that:
 - (a) adversely affect the environment; and
 - (b) do not relate to trade competition or the effects of trade competition.
5. Notice of the decision that is being appealed, being the decision on Proposed Plan Hearing Topic 059 - 063 Residential Zones ("**the Decision**"), was received by the Appellant on or about 19 August 2016.
6. The Decision was made by the Council.
7. The following provisions and parts of the Decision that are being appealed are the rejection by the Council of the Hearing Panel's recommendations pursuant to Hearing Topic 059 – 063:
 - (a) 'Integrated Residential Development' ("**IRD**") as a restricted discretionary activity in the Single Housing Zone (H3.4.1(A9); H3.8.1(2) and H3.8.2(2));

- (b) Permitted activity threshold for the number of dwellings on a site in the Mixed Housing Suburban (H4.4.1(A3)) and Mixed Housing Urban Zones (H5.4.1(A3)); and
- (c) Front, side and rear fences and walls (H3.6.12; H4.6.14; H5.6.15; and H6.6.16).

8. The reasons for this Appeal are:

Integrated Residential Development' in the Single House zone

- 9. The Appellant lodged original submissions dated 28 February 2014 and further submissions dated 22 July 2014 (collectively "**the Submissions**") which sought, amongst other things, amendments to the residential zone provisions.
- 10. The Hearings Panel's recommendation upheld the Submissions and, amongst other things, provided for IRD as a Restricted Discretionary Activity within the Single House zone:

"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"*

(Refer: Report to Auckland Council on Hearing Topics 059-063 at page 23)

- 11. The Council rejected the Hearings Panel's recommendation in relation to providing for IRD in the Single House zone as a Restricted Discretionary Activity. The Council consider it is more appropriate that such an activity be provided for as a Discretionary Activity – to enable a full assessment of potential adverse effects of such a proposal and because they consider that the assessment of this intensity of development in the Single House zone as a Restricted Discretionary Activity is contrary to the stated purpose and associated objectives and policies of the zone.

12. The Appellant considers that the Hearings Panel's recommendation is the most appropriate in terms of the RMA for the following reasons:
- (a) The provisions recommended by the Hearings Panel enabled an IRD to be processed on a non-notified basis, where compliance with specific controls (building height, height in relation to boundary and yard setbacks) could be achieved.
 - (b) In contrast, the Decision retains the ability for a non-notified Discretionary Activity consent application where compliance with specific controls can be achieved, however, the Decision fails to identify which specific controls apply.
 - (c) In such circumstances it is unclear how the Decision version of these provisions would be applied. In particular it is unclear how the 'non-notification' provision would be applied given that the Council have not identified the specific development controls which must be complied with.
 - (d) The Appellant considers that unless and until the Proposed Plan provisions regarding IRD are amended as sought by the Appellant, they will not:
 - (i) promote the sustainable management of resources;
 - (ii) otherwise be consistent with Part 2 of the RMA;
 - (iii) be appropriate in terms of section 32 of the RMA; or
 - (iv) be consistent with the balance of the provisions of the Proposed Plan.
13. The Appellant seeks the following relief:
- (a) That the Decision subject to this Appeal be disallowed.
 - (b) Inclusion of the Hearings Panel's recommendation pursuant to Hearing Topic 059 - 063 regarding the IRD provisions for the Single House zone, namely that IRD be provided for as a Restricted Discretionary Activity in the Single House zone with specific reference to the specific development controls that would need to be complied with included within the activity table, being: "*Standard H3.6.6 Building height; Standard H3.6.7 Height in relation to boundary; Standard H3.6.8 Yards*".

- (c) Other such orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this Appeal.
- (d) Costs of and incidental to the Appeal.

Permitted activity threshold for number of dwellings on a site in the Mixed Housing Suburban and Mixed Housing Urban zones

- 14. The Appellant lodged the Submissions which sought, amongst other things, amendments to the residential zone provisions.
- 15. The Hearings Panel's recommendation upheld the Submissions and in relation to the Mixed Housing Suburban and Mixed Housing Urban zones, provides for up to four dwellings on a site as a Permitted Activity.

"It was the Council's position and the expert evidence of Mr Roberts (the Council's planner) that the change in the number of dwellings permitted was due to the removal of the density provisions. Mr Roberts was of the view that this was necessary as a closer scrutiny was needed to ensure that the design outcome was appropriate.

The Panel did not agree and considered that a greater level of development needed to be provided for as of right, given the matters as follows:

- i. that the extensive development standards would ensure appropriate amenity levels where the number of dwellings permitted per site was limited;*
- ii. if a development standard was not met, this would trigger a restricted discretionary activity consent requirement, with the potential for notification, and this would ensure an assessment of the effects of the development; and*
- iii. limiting the number of dwellings as proposed would potentially create inefficient land use as land owners 'underdeveloped' their sites in order to avoid a consenting process.*

Also the Panel agrees with a number of submitters, such as Generation Zero, that more development needs to be enabled (see above, section 2 Enabling capacity).

The Panel recommends the following provisions which will, in its opinion, enable greater and appropriate development, while at the same time providing safeguards to ensure quality outcomes. The provisions are set out in the Panel's recommended version of the Plan and are summarised below.

i. Up to four dwellings are permitted as of right on sites in the Residential - Mixed Housing Suburban Zone and the Residential - Mixed Housing Urban Zone that meet all the applicable development standards.

ii. Five or more dwellings require a restricted discretionary activity consent in the Residential - Mixed Housing Suburban Zone and the Residential - Mixed Housing Urban Zone.

..."

(Refer: Report to Auckland Council on Hearing Topics 059-063 at pages 18-19)

16. The Council subsequently rejected the Hearings Panel's recommendation in relation to the provision for up to four dwellings on a site in the Mixed Housing Suburban and Mixed Housing Urban zones as a Permitted Activity. The Decision notes that this amendment was necessary to manage issues associated with "*quality residential outcomes*" (such as amenity and safety of the street; the quality of building appearance; and the interrelationship between a number of amenity attributes such as daylight, sunlight, privacy, functionality and visual amenity). The Decision further noted that there was a high risk that permitting four dwellings without resource consent would result in poor design outcomes, particularly at the street interface.
17. The Decision has amended this threshold to provide for up to two dwellings on a site in the Mixed Housing Suburban and Mixed Housing Urban zones as a Permitted Activity.
18. The Appellant considers that the development controls recommended by the Hearings Panel for application in the Mixed Housing Suburban and Mixed Housing Urban zones already provide for an appropriate framework to manage the types of amenity concerns which the Decision refers to. For example, the following development controls are already set out in the zone provisions, and would need to be complied with by all development (whether for a single dwelling, or for multi-unit dwellings):
 - (a) building height;
 - (b) height in relation to boundary;
 - (c) yard setbacks;
 - (d) building coverage;
 - (e) landscaping;

- (f) outlook space;
 - (g) daylight;
 - (h) outdoor living space; and
 - (i) front, side and rear fences and walls (refer to the discussion below).
19. Unless and until the Proposed Plan provisions regarding the permitted activity threshold for the number of dwellings on a site in the Mixed Housing Suburban and Mixed Housing Urban zones recommended by the Hearings Panel are reinstated, they will not:
- (a) promote the sustainable management of resources;
 - (b) otherwise be consistent with Part 2 of the RMA;
 - (c) be appropriate in terms of section 32 of the RMA; or
 - (d) be consistent with the balance of the provisions of the Proposed Plan.
20. The Appellant seeks the following relief:
- (a) That the Decision subject to this Appeal be disallowed.
 - (b) Inclusion of the Hearings Panel's recommendation pursuant to Hearing Topic 059-063 regarding the permitted activity threshold for the number of dwellings on a site in the Mixed Housing Suburban and Mixed Housing Urban zones.
 - (c) Such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this Appeal.
 - (d) Costs of and incidental to the Appeal.

Front, side and rear fences and walls

21. The Appellant lodged the Submissions which sought, amongst other things, amendments to the residential zone provisions.
22. The Hearings Panel's recommendation upheld the Submissions and in relation to the Single House, Mixed Housing Suburban, Mixed Housing Urban and Terrace House and Apartment Buildings zones, deleted the front fence rule.

"The following development standards, particularly in Residential - Mixed Housing Suburban, Residential - Mixed Housing Urban and Residential -

Terrace Housing and Apartment Buildings Zones, have been deleted; some recommended by the Council and others by the Panel:

...

d. front fence requirements (side and rear retained);”

“As part of the above provisions there are a number of development standards that the Council (in its closing statement) did not support. The Panel agreed but has recommended the deletion of more of the development standards. The reasons for this are those set out in the Council’s evidence, and addressed below. These standards considered by the Panel to be either unnecessary and/or inappropriate in terms of:

i. achieving quality urban design outcomes;

ii. providing for a more outcome led approach as opposed to a more prescriptive rule- based approach; and

iii. imposing costs which have little benefit.

The standards are

...

iv. front fence requirements (side and rear retained);”

(Refer: Report to Auckland Council on Hearing Topics 059-063 at pages 6-7)

23. The Decision rejects the Hearings Panel’s recommendation to delete the ‘front fence rule’ development control (as well as the associated policy direction) in relation to the Single House, Mixed Housing Suburban, Mixed Housing Urban and Terrace Housing and Apartment Buildings zones.
24. The Decision notes that without such a control, there is concern that fences up to 2.5m in height will be permitted which would result in poor design outcomes.
25. The Appellant considers that an amendment is required to the provision to allow for more workable provisions, including flexibility in design outcomes, whilst ensuring that health and safety effects are adequately considered.
26. The Appellant seeks the following amendment to standards H3.6.12, H4.6.14, H5.6.15 and H6.6.16 (or words to similar effect):

(a) Within the front yard, either:

(i) 1.6m in height, or

(ii) 2m in height for no more than 50 per cent of the site frontage and 1.6m for the remainder, or

(iii) 2m in height if that portion of the fence above 1.6m in height is at least 50 per cent visually open.

27. Unless and until the Proposed Plan provisions regarding front, side and rear fences and walls are amended as suggested by the Appellant they will not:
- (a) promote the sustainable management of resources;
 - (b) otherwise be consistent with Part 2 of the RMA;
 - (c) be appropriate in terms of section 32 of the RMA; or
 - (d) be consistent with the balance of the provisions of the Proposed Plan.
28. The Appellant seeks the following relief:
- (a) That the Decision subject to this Appeal be disallowed.
 - (b) That standards H3.6.12, H4.6.14, H5.6.15 and H6.6.16 be amended as follows (or words to similar effect):
 - (a) Within the front yard, either:*
 - (i) 1.6m in height, or*
 - (ii) 2m in height for no more than 50 per cent of the site frontage and 1.6m for the remainder, or*
 - (iii) 2m in height if that portion of the fence above 1.6m in height is at least 50 per cent visually open.*
 - (c) Such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this Appeal.
 - (d) Costs of and incidental to the Appeal.
29. The Appellant **attaches** the following documents to this Notice of Appeal:
- (a) Copies of the Appellant's original submission relating to the relevant Proposed Plan provisions (**Annexure A**).
 - (b) A copy of the Hearing Panel recommendations version of the relevant Proposed Plan provisions (**Annexure B**).
 - (c) A copy of the relevant parts of the Decision (**Annexure C**).
 - (d) A record that Auckland Council has been served with a copy of this Notice in accordance with the decision of the Environment Court granting waivers (Refer: [2016] NZ EnvC 153) in respect of the

requirement to serve a copy of any Notice of Appeal on a submission on the provision or matter to which the appeal relates (**Annexure D**).

DATED at Auckland this 16th day of September 2016

Housing New Zealand Corporation by its solicitors and duly authorised agents Ellis Gould



Dr C E Kirman / A K Devine

ADDRESS FOR SERVICE: The offices of Ellis Gould, Solicitors, Level 17 Vero Centre, 48 Shortland Street, PO Box 1509, Auckland, DX CP22003, Auckland, Telephone: (09) 307-2172, Facsimile: (09) 358-5215.

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A N D **AUCKLAND COUNCIL**

Respondent

NOTICE OF APPEAL (RE TOPIC 059-063 RESIDENTIAL ZONES)

DATED: 16th September 2016

**ELLIS GOULD
SOLICITORS
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REF: Dr Claire Kirman / Alex Devine

**Level 17 Vero Centre
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 - (a) that the Appellant addressed in its submission relating to the residential provisions in the Proposed Plan (submission number 839; FS 3338); and
 - (b) that resulted in alternative solutions being included in the Proposed Plan.
3. The Appellant provides further details of the reasons for its Appeal below.
4. The Appellant is not a trade competitor for the purposes of section 308D of the RMA. In any event, the Appellant is directly affected by effects of the subject of the Appeal that:
 - (a) adversely affect the environment; and
 - (b) do not relate to trade competition or the effects of trade competition.
5. Notice of the decision that is being appealed, being the decision on Proposed Plan Hearing Topic 059-063 Residential Zones ("**the Decision**"), was received by the Appellant on or about 19 August 2016.
6. The Decision was made by the Council.
7. The provisions and parts of the Decision that are being appealed are the rejection by the Council of the Hearings Panel's recommendations pursuant to Hearing Topic 059-063 summarised by Council as the deletion of standards relating to reticulated water supply and waste water network capacity, and moving the matters to assessment criteria.
8. The reasons for this Appeal are:
 - (a) The Appellant lodged original submissions dated 28 February 2014 and further submissions dated 22 July 2014 (collectively, "**the**

Submissions”) which sought, amongst other things, amendments to the provisions addressing the residential provisions.

- (b) The Hearings Panel’s recommendations upheld the Submissions in recommending the deletion of a standard relating to reticulated water supply and wastewater network capacity and moving the matter to assessment criteria which applied across the residential zones.
- (c) The Decision rejected the Hearing Panel’s recommendations by deleting the ‘wastewater capacity’ assessment criteria which applied across the residential zones and inserting new matters of discretion and assessment criteria which seek to address issues of capacity in the existing stormwater, public reticulated water supply and wastewater networks in the Mixed Housing Suburban, Mixed Housing Urban and Terrace Housing and Apartment Buildings zones.
- (d) The Council has argued that the deletion of the ‘wastewater capacity’ assessment criteria was in part because it appeared to be a drafting error. In contrast, the Appellant considers that the amendments to the Proposed Plan amount to a substantive change to the provisions in that:
 - (i) The Council’s Decision Version rejected the Panel’s recommended ‘wastewater capacity’ assessment criteria which applied across the Residential zone provisions.
 - (ii) The Council’s Decision Version has proposed the insertion of new assessment criteria – which now seeks to address issues of capacity in the existing stormwater, public reticulated water supply and wastewater networks.
- (e) Unless and until the Proposed Plan provisions regarding reticulated water supply and wastewater network capacity, specifically H4.8.1(1)(b); H4.8.1(2)(c); H4.8.1(3)(c); H4.8.2(1)(a)(i); H4.8.2(2)(i)(i); H4.8.2(3)(k)(i); H5.8.1(1)(a); H5.8.1(2)(c); H5.8.1(3)(c); H5.8.2(1)(a)(i); H5.8.2(2)(i)(i); H5.8.2(3)(k)(i); H.6.8.1(1)(a); H.6.8.1(2)(c); H.6.8.1(3)(c); H6.8.2(1)(a)(i); H6.8.2(2)(b)(i); and H6.8.2(3)(j)(i), are deleted in their entirety and the Panel’s Recommendation of the ‘wastewater capacity’ assessment criteria, specifically H4.8.1(1)(a);

H4.8.2(1)(a)(i); H5.8.1(1)(a); H5.8.2(1)(a)(i); H6.8.1(1)(a); and H6.8.2(1)(a)(i), are reinstated, the provisions will not:

- (i) promote the sustainable management of resources;
- (ii) otherwise be consistent with Part 2 of the RMA;
- (iii) be appropriate in terms of section 32 of the RMA; or
- (iv) be consistent with the balance of the provisions of the Proposed Plan.

9. The Appellant seeks the following relief:

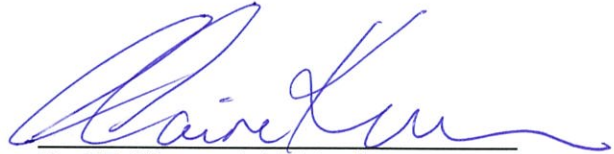
- (a) That the Decision subject to this Appeal be disallowed.
- (b) Inclusion of the Hearings Panel's recommendation of the wastewater capacity assessment criteria.
- (c) Such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this Appeal.
- (d) Costs of and incidental to the Appeal.

10. The Appellant **attaches** the following documents to this Notice of Appeal:

- (a) Copies of the Appellant's original submission relating to the relevant Proposed Plan provisions (**Annexure A**).
- (b) A copy of the Hearing Panel recommendations version of the relevant Proposed Plan provisions (**Annexure B**).
- (c) A copy of the relevant parts of the Decision (**Annexure C**).
- (d) A record that Auckland Council has been served with a copy of this Notice in accordance with the decision of the Environment Court granting waivers (Refer: [2016] NZ EnvC 153) in respect of the requirement to serve a copy of any Notice of Appeal on a submission on the provision or matter to which the appeal relates (**Annexure D**).

DATED at Auckland this 16th day of September 2016

Housing New Zealand Corporation by its
solicitors and duly authorised agents Ellis Gould

A handwritten signature in blue ink, appearing to read 'R. Kirman / A. K. Devine', written over a horizontal line.

Dr CE Kirman / AK Devine

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