

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 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 Combined Plan

BETWEEN **K Vernon**

Appellant

AND **Auckland Council**

Respondent

Form 6

Notice of appeal to Environment Court

Section 156, Local Government (Auckland Transitional Provisions) Act 2010

To: The Registrar
Environment Court
Specialist Courts and Tribunals Centre
Level 2, 41 Federal Street, Auckland 1010
PO Box 7147, Wellesley St., Auckland 1141
unitaryplan.ecappeals@justice.govt.nz

1. I, K Vernon, appeal against decisions of Auckland Council (the **Council**) on the Auckland combined (Unitary) plan (the **proposed plan**).
2. I have the right to appeal the Council's decisions -
 - (a) under section 156(1) of the Local Government (Auckland Transitional Provisions) Act 2010 because the Council rejected a recommendation of the Hearings Panel in relation to a provision or matter I addressed in my submissions (*including further submissions, evidence, rebuttal evidence and other submissions to the hearings panel*) on the proposed plan. 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.
3. I provide further details of the reasons for my appeal below.

4. I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
5. I received notice of the decision on 19 August 2016.
7. The decision was made by Auckland Council.
6. The decisions (or parts of decisions) that I am appealing, the reasons for the appeal, and the relief sought are as follows:

Note:

Topic Headings used below are as per Attachment D, Recommendations Rejected, of the Auckland Council Decision Report. These can be cross referenced to Attachment A, the Alternative Solutions, of the same report.

Topic 010 / 029 / 030 / 079 Special Character and pre 1944

7. Council proposes to include "Historic Heritage" type provisions in the Special Character Objectives and Policies, section B5.1 / B5.3 and explanation B5.4 of the Plan, that are similar to those that Council endeavoured to introduce via evidence during the hearings.
8. The Hearings Panel took these changes as an attempt to move Special Character away from RMA s7 (amenity and environment) to RMA s6 (Historic Heritage), and criticised Council for introducing the proposals during the hearings through evidence.
9. The Panel was of the view that the changes proposed were of such significance that Council would have to pursue these via a separate plan change if Council wished to do so.
10. It is therefore inappropriate for Council to now attempt to implement changes of this type through the decisions / alternative solutions process.

Relief Sought - Topic 010 / 029 / 030 / 079 Special Character and pre 1944

11. Retain the Special Character Objectives and Policies as recommended by the Hearings Panel.

**Topic 012 Infrastructure, Energy and Transport and;
Topic 013 Urban Growth**

12. I oppose the inclusion of Objectives and Policies that focus growth within the existing metropolitan area (2010) and along existing transport routes.
13. The inclusion of these Objectives and Policy would lead to a very short term approach based on over intensification in certain areas.
14. It may be that a longer term strategy would seek to shift the demand away from areas of current focus, for instance, into new satellite centres with their own employment and support structures. A strategy of this type would reduce some of the pressure on the central area. The Objectives and Policies should not preclude this option.
15. The Panel has wisely avoided Objectives and Policies that unduly constrain future strategy.

Relief Sought - Topic T12 and T13

16. Retain the provisions as recommended by the Hearings Panel.
17. Do not include the proposed new Appendix 1A (Chapter M) - Metropolitan Area 2010 in the Plan.

Topic 025 Notable Trees

18. I oppose simply reinstating trees to the schedule of notable trees that the Panel has removed.
19. The Panel removed these trees for a reason. In fairness to those affected If Council now wants to reinstate these trees, or add any other trees, to the schedule this should be done through a full assessment using the policies set out in the Unitary Plan (B4.5) that have been accepted by Council.
20. The correct process for that would be a plan change at some future date.
21. The figure of 20% per year adopted by the Panel for the trimming of notable trees provides some additional flexibility to notable tree owners who have onerous and costly conditions imposed on them by the Plan. The 10% figure Council wants to use is unduly restrictive.

Relief Sought - Topic 025 Notable Trees

22. Retain the provisions and schedule as recommended by the Hearings Panel.

Topic 043/044 Transport

23. I oppose any changes that reduce the requirement to provide or limit off street parking particularly for Mixed Use and Town House and Apartment developments.
24. This only leads to overflow parking into adjacent areas.

Relief Sought - Topic 043/044 Transport

25. Retain the parking provisions as recommended by the Hearings Panel.

Topic 050 - 054 City Centre and Business Zones

Mixed Use Zone (H13)

26. I oppose the deletion of the Height in Relation to Boundary standard (control) within the Mixed Use Zone, and between the Mixed Use zone and the General Business Zone (see Table H13.6.2.1).
27. Deletion of this standard would significantly change the bulk and form of development permitted in the Mixed Use zone with potential adverse effects both within and on adjoining zones.
28. Deletion of this standard justifies revisiting the proposed location of the Mixed Use zone particularly when adjoining lower intensity residential areas.
29. My evidence to the Hearings Panel identified a Mixed Use zone location in Manukau Road, Epsom adjoining a single house special character area where the zoning is inappropriate (see the attached copy of evidence for further explanation). The proposed change would only exacerbate the problems.
30. The Council's proposed change to the Mixed Use standards make it appropriate for the Court to look at this zoning issue afresh.
31. Deletion of this standard would also justify revisiting whether the remaining standards are adequate and appropriate.
32. It is worth noting that during the hearing process Council introduced significant changes to the standards through evidence.
33. These included increasing the maximum Height from 16.5 to 18m (9%), removing storey control (4 storey), and removing floor to floor, and floor to ceiling height controls. Also, changes to development control infringement that would trigger discretionary status.
34. The Height in relation to Boundary standards as recommended by the Panel help to mitigate the adverse effects of these changes.
35. Any deletion or relaxing of these controls therefore gives cause to require the additional height allowance to be rescinded or the height variation control provisions to be used to reduce the height allowance in some areas.

Business Zones including Mixed Use

36. I support the introduction of a minimum dwelling size.
37. However, to achieve the stated purpose - "to ensure dwellings are functional and of a sufficient size to provide for the day to day needs of residents..", the minimum area requirement should be supported with a minimum floor to ceiling height.
38. Council's own expert evidence to the Hearings supported the retention of a minimum floor to ceiling height standard of 2.7m for onsite amenity (Graeme McIndoe 6.3.3).
39. Mr McIndoe also pointed to the Auckland City's "Good Solutions Guide for Apartments" (2002 Page 79) which establishes a minimum ceiling height for habitable spaces of 2.7m

40. The standards should also require an adequate above ceiling clear space for services such as power, water supply, waste water, ventilation & heating, gas, and cabling for data, telephone, audio visual, alarms and similar.
41. Where an exposed services design is proposed a notational ceiling height below which only light fittings are permitted should be adopted.
42. I oppose the provision that would allow Council to consider consent applications not complying with the minimum dwelling size standard on a non-notified basis (example Mixed Use zone H13.5.3).
43. The RMA contains a perfectly good test for notification and the Hearings Panel has largely relied on this provision. That approach should continue to apply.

Relief Sought - Topic 050 - 054 City Centre and Business Zones

44. In the Mixed Use Zone retain the Height in Relation to Boundary standard that applies within the Mixed Use Zone and between the Mixed Use zone and the General Business Zone (Table H13.6.2.1) as recommended by the Hearings Panel. Amend the associated wording and diagrams where necessary for consistency.
45. Reduce the maximum height applying in Mixed Use areas that adjoin single house areas to 13m (11 occupied + 2 roof form) under the Height Variation controls.
46. Rezone the following Mixed Use zone properties that adjoin a single house special character area in Epsom:
 - (a) Properties at 514 A and 514 B Manukau Road to Mixed Housing Suburban.
 - (b) Properties at 510 / 512, and 502 to 494 (even numbers) along the eastern side of Manukau Road to Mixed Housing Urban.
 - (c) Properties at 506 / 508 and 504 Manukau Road to Mixed Housing Suburban.
 - (d) Properties at 486/488 & 490/492 Manukau Rd (these are old houses that were subject to pre-1944 demolition control as notified) to Single House Special Character.
47. Adopt the minimum dwelling size area standard but also include a minimum floor to ceiling height standard of 2.7m.
48. Where an exposed services design is proposed provide for a notational ceiling height below which only light fittings are permitted.
49. Require an adequate above ceiling (or notional ceiling) clear space for services such as power, water supply, waste water, ventilation & heating, gas, and cabling for data, telephone, audio visual, alarms and similar – not less than 250mm.
50. Reject the proposed provision that would allow Council to consider resource consent applications not complying with the minimum dwelling size requirement on a non-notified basis.

Topic 058 Open Space Buildings

51. The Panel's view that Open Space should remain "open", as much as possible, as a first principle, and that the size of any buildings as a permitted activity should be strictly limited, is forward thinking. It recognises the irreplaceable value of open space in a built-up environment.

Relief Sought - Topic 058 Open Space

52. Retain the provisions as recommended by the Hearings Panel.

Topic 059 – 063 Residential Zones

53. I support making Integrated Residential Developments in the Single House Zone a Discretionary Activity.
54. However, I do not support the provision that would allow resource consent applications for an Integrated Residential Development to be considered without notification.
55. All discretionary activities should be subject to public notification. The RMA test for notification would lead to this result.
56. I support the inclusion of a front fence standard however the 1.2m / 1.8m combination used is too low for property security. A 1.8m / 2m combination would be more appropriate.
57. If the height has been driven in part by the "passive surveillance of the street" policy that Council proposes to add this should be amended.
58. I oppose the proposed non-notification provision for consent applications that do not comply with fence standards (refer comments made on Notification below).
59. I oppose deleting the ".. across the road from" provision from the Height in Relation to Boundary Adjoining Lower Intensity zones standard of the MHU and THAB zones.
60. This provision is important for maintaining streetscape particularly in view of the additional height allowance introduced during the hearings - THAB 13.5m to 16m, MHU 11m to 12m.
61. I support the introduction of a minimum dwelling size.
62. However, to achieve the stated purpose - "to ensure dwellings are functional and of a sufficient size to provide for the day to day needs of residents..", the minimum area requirement should be supported with a minimum floor to ceiling height.
63. Council's own expert evidence to the Hearings supported the retention of a minimum floor to ceiling height standard of 2.7m for onsite amenity (Graeme McIndoe 6.3.3).

64. Mr McIndoe also pointed to the Auckland City's "Good Solutions Guide for Apartments" (2002 Page 79) which establishes a minimum ceiling height for habitable spaces of 2.7m
65. The standards should also require an adequate above ceiling clear space for services such as power, water supply, waste water, ventilation & heating, gas, and cabling for data, telephone, audio visual, alarms and similar.
66. Where an exposed services design is proposed a notational ceiling height below which only light fittings are permitted should be adopted.

Relief Sought - Topic 059 – 063 Residential Zones

67. Reject the proposed new provisions that would allow Council to consider resource consent applications on a non-notified basis where the applications do not comply with the following standards - Minimum dwelling size, Fences, Alternative Height in Relation to Boundary
68. Accept Council's proposed change that Integrated Residential Developments in the Single House Zone be treated as a Discretionary Activity.
69. However, delete the provisions that would allow Council to consider resource consent applications on a non-notified basis for Integrated Residential Developments in the Single House zone even when classified as a Discretionary Activity.
70. Amend the front fence standard proposed so that it is based on a 1.8m / 2m combination. Amend the "passive surveillance" policy to avoid any conflict.
71. Adopt the minimum dwelling size area standard but also include a minimum floor to ceiling height standard of 2.7m.
72. Where an exposed services design is proposed provide for a notational ceiling height below which only light fittings are permitted.
73. Require an adequate above ceiling (or notional ceiling) clear space for services such as power, water supply, waste water, ventilation & heating, gas, and cabling for data, telephone, audio visual, alarms and similar – not less than 250mm.
74. In the Height in Relation to Boundary Adjoining Lower Intensity zones standard of the MHU and THAB zones retain the "... across the road from" as well as ".. adjoining sites" provisions as recommended by the Hearings Panel.

Topic 065 Definitions

Height

75. I oppose the proposed changes to the recommended version of the definition of Height. These changes primarily affect exclusions to the definition.

76. There was a significant problem with the number, scope, and lack of dimensional control applying to exclusions to Height in the notified version of the Plan that allowed many structures to breach the height envelope controls (Height and Height in Relation to Boundary). These are important controls for the protection of zone amenity particularly in, or adjoining, residential zones.
77. Also, the height exclusions have to be seen in the context of other exclusions applying to the definition of Buildings because the Height and Height in Relation to Boundary controls apply to buildings only.
78. Further throughout the proposed plan there are a number of specific height allowances that provide more scope to compromise the height control envelope.
79. For example wind Turbines under small scale electricity generation (E26 Infrastructure).
80. This section provides for wind turbines as a permitted activity in all residential zones with heights of 12m above ground or 3m above the maximum zone height if roof mounted, with rotor diameters of up to 2.5m.
81. Standards in E26 permit one roof top turbine per dwelling and one free standing turbine per site. So for sites with a dwelling a total of two turbines would be permitted.
82. The definition of small scale electricity generation (Chapter J) is less clear it states that it includes roof mounted wind turbines but there is no specific exclusion for free standing units.
83. There is no requirement to comply with height in relation to boundary controls within the residential zone (but if on a site adjoining a residential zone there is). The only set back required on a boundary is the length of the rotor (1.25m), so the supporting tower could be located close to a neighbour's boundary.
84. There is no control on the cross section dimensions of the support tower so it could be a large diameter pole, or lattice work tower, or slender pole with a lot of ugly stay wires.
85. Also, as well as the rotor there will be a generator pod behind the rotor and some sort of wind direction equipment and control.
86. What does a residential street look like if every house has a 12m pole mounted wind turbine with a 2.5m rotor plus a second roof mounted unit.
87. What does it sound like with turbines operating day and night, and what about the flicker, and what does it do to bird life?
88. I pointed out the folly of allowing wind turbines in residential areas as a permitted activity in my submissions.
89. Other Councils have a different view. Thames Coromandel District Council for instance, a "green" orientated organisation, in its new plan does not allow wind turbines in residential zones even though the density is much less than Auckland. They seem to understand that residential and wind turbines do not mix notwithstanding their commitment to renewable energy.
90. The recommended version of the definition of Height goes somewhat towards addressing the issue of unrestricted exclusions.

91. The exclusions in the list (i) to (vx) which includes wind turbines are subject to a dimension qualifier of 2m in width and not more than 1.5 metres above the height and daylighting standard (Height in Relation to Boundary) for the site.
92. This effectively links the degree of exclusion to the height envelope control applicable to the site which is a significant improvement.
93. However it would be expected that specific height requirements elsewhere in the plan would be consistent with this definition. For example the way wind turbines are treated in residential zones. Some amendments are required to achieve this outcome.

Relief Sought - Topic 065 Definitions

94. Retain the Definition of Height provisions as recommended by the Hearings Panel.
95. Amend the specific height allowances at various places in the plan to ensure treatment of height issues is consistent with the definition of Height as recommended by the Panel. For example, but not limited to, wind turbines in section E26 Infrastructure of the Plan.
96. Classify wind turbines in, or adjoining, residential, mixed use and open space zones as a discretionary activity. Amend the definitions of small / community scale electricity generation accordingly.
97. Emphasis should be placed on maintaining the integrity of the height envelope control in, and adjoining, residential zones.
98. Amend the definition of Building, in particular the “includes / excludes”, to ensure consistency with the definition of Height as recommended by the Panel.

Topic 041 Earthworks and Minerals Kauri Die Back

99. The Panel was not convinced that the District Plan was the correct place to address the Kauri die back issue or of the effectiveness or practicality (particularly in the urban zones) of the proposed provisions. The Panel has excluded these provisions from the recommended version of the Plan. Council however is now proposing to reinstate these or similar provisions.
100. While there may be a desire to do something to alleviate Kauri die back there is little point imposing costly but ineffective controls on people and contractors.
101. It may be of interest to note that with respect to the TCDC proposed District Plan DOC is seeking to introduce similar provisions by appeal but only in the rural, rural lifestyle and conservation zones (not into developed urban areas such as residential zones).
102. Council should rethink this issue.

Relief Sought - 041 Earthworks and Minerals, Kauri Die Back

103. Adopt the Panel’s recommendations.

Notification (general)

104. Where Council's decisions involve changes to standards and / or activities Council has often taken the opportunity to introduce a new non-notification provision.
105. This continues the non-notification by default philosophy adopted by Council's in the notified version of the proposed plan and during the hearings.
106. The Hearings Panel however has rejected this philosophy and placed reliance on the RMA test for notification.
107. The Hearing Panel's position makes sense. The RMA test is balanced and set in statute. There is no justification for a Council to attempt to circumvent or minimise its use.

Relief Sought - Notification

108. Reject any new or revised provisions arising from Council's decisions that would increase the use of non-notification when considering resource consent application.

Section 32AA Evaluation Report

109. I question whether the section 32AA report meets the requirement of the Act.
110. Essentially only two options are considered – the recommended version and Council's alternative. Some issues are not covered at all and the cost benefit evaluation is quite subjective.
111. It looks as if Council has decided what it wants to do and then written the report to suit the desire outcome.

Other Relief Sought

112. Such further or other relief as is necessary or appropriate as a consequence of the primary relief sought above.
113. I attach the following documents to this notice (refer to the hard copy):
 - (a) a copy of my evidence, rebuttal evidence and other submissions provided to the Hearings Panel where relevant to this appeal;
 - (b) a copy of my submissions and further submissions that are relevant to this appeal;
 - (c) a copy of Attachment D to Auckland Council's Decision Report – List of the Panel's recommendations that have been rejected by the Council (this identifies the Topic which can be cross referenced to Attachment A of the Decision Report - the Alternative Solutions);
 - (d) a copy of this notice will be served on Auckland Council.

K Vernon
Signed by typing name above

Date: 15 September 2016

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