

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

AND

IN THE MATTER

of Topic 064 - Subdivision (Rural) of the
Proposed Auckland Unitary Plan

BETWEEN

**KUMEU-HUAPAI RESIDENTS &
RATEPAYERS ASSOCIATION
INCORPORATED**

Appellant

AND

AUCKLAND COUNCIL

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT BY KUMEU-HUAPAI
RESIDENTS & RATEPAYERS ASSOCIATION INCORPORATED**

16 SEPTEMBER 2016

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KUMEU-HUAPAI RESIDENTS & RATEPAYERS ASSOCIATION INCORPORATED ("Appellant") appeals against part of the decision of the Auckland Council ("**Council**") in respect of the Proposed Auckland Unitary Plan ("**Unitary Plan**"), insofar as it relates to the rules regarding rural subdivision.

Decision

1. The Appellant has the right to appeal under section 156(1) of the LGATPA because the Council rejected a recommendation ("**Recommendation**") of the Auckland Unitary Plan Independent Hearings Panel ("**Panel**") in relation to a provision or matter that the Appellant addressed in its submission on the Unitary Plan (submission number 6709).
2. The Council rejected the Panel's Recommendation and decided on an alternative solution, which resulted in a provision being included in the Unitary Plan or a matter being excluded from the Unitary Plan.
3. The Appellant received notice of the Panel's Recommendation on the Unitary Plan on 27 July 2016, and notice of the Council's decision on the recommendation ("**Decision**") on 19 August 2016.
4. The Appellant appeals against part of the Decision.
5. The Appellant is not a trade competitor for the purposes of section 308D of the RMA.

Parts of the Decision that the Appellant is appealing

6. The Appellant appeals the part of the Decision that seeks to amend the Panel's Recommendation in relation to rural subdivision, specifically:
 - (a) removal of the ability to create in-situ subdivision rights through the protection of wetlands; and
 - (b) reduction in the maximum number of sites that may be created for in-situ and transferable rural site subdivision as a result of additional indigenous vegetation provision.

General reasons for appeal

7. The reasons for this appeal are that the Decision:
 - (a) will not promote the sustainable management of resources, will not achieve the purpose of the RMA, and is contrary to Part 2 and other provisions of the RMA;
 - (b) will not meet the reasonably foreseeable needs of future generations;
 - (c) does not manage the use of resources in a way that enables people and communities to provide for their social, economic or cultural well-being or their health and safety;
 - (d) is otherwise contrary to the purposes and provisions of the RMA and other relevant planning documents, including other parts of the Unitary Plan;

- (e) does not avoid, remedy or mitigate the adverse effects on the environment; and
- (f) is not the most appropriate way to achieve the objectives of the Unitary Plan in terms of section 32 of the RMA.

Specific reasons for appeal

8. In particular, and without limiting the generality of paragraph 7 above, the Appellant has the following specific points of appeal in relation to the Decision.

In-situ subdivision through wetland protection

9. The provision of in-situ subdivision rights through the protection of wetlands was enabled under the Auckland Council District Plan - Operative Rodney Section 2011 ("**Operative District Plan**"). It was not provided for in the notified Unitary Plan, but was sought in submissions including those of the Appellant.
10. In its Recommendation, the Panel re-introduced the ability to create in-situ subdivision rights through the protection of wetlands. The Panel's conclusion regarding in-situ subdivision rights was as follows:¹

The Panel understands the concerns of the Council and accepts that wetlands are highly sensitive. However for the same reasons that the Panel has recommended indigenous bush subdivisions that meet the Plan's significant ecological area criteria, the same should apply to wetlands.

11. The Panel's Recommendation provided for the creation of in-situ (as well as transferable rural site) subdivision rights through the protection of wetland areas.
12. In its Decision, the Council again removed the ability for in-situ subdivision rights to be created through the protection of wetland areas on the basis that it would enable inappropriate subdivision of the rural area through a proliferation of rural-residential lots across the production focussed rural zones with minimal environmental gains.
13. The Appellant seeks that the provisions put forward by the Panel in its Recommendation be reinstated for the following reasons:
- (a) The Panel's recommended provisions allowed limited in-situ subdivision on rural properties where it could be shown that there would be an environmental gain through the protection of significant wetland areas. However, the Decision removes the incentive for rural property owners to set aside and protect these ecologically significant areas.
 - (b) The Council's Decision is an inefficient outcome, and does not promote the sustainable management of existing resources. Moreover, the Council's rejection of the Panel's Recommendation represents a shift away from using existing resources in a way that enables people and communities to provide for their social, economic or cultural well-being, or in a

¹ Panel's report in relation to Topic 064 - Subdivision (Rural), page 15.

way that will meet the reasonably foreseeable needs of future generations.

- (c) The evidence before the Panel led it to conclude that the provision of some limited in-situ subdivision rights through the protection of wetlands was an environmentally appropriate outcome, and made its Recommendation on that basis. The Council's rejection goes against the weight of evidence put forward on behalf of a number of submitters that supported the extension of in-situ subdivision rights to incorporate wetlands as well as indigenous vegetation.

- 14. The Appellant seeks that the Panel's provisions enabling in-situ subdivision rights through the protection of wetlands are restored.

Maximum number of sites

- 15. The Panel's Recommendation provided landowners with the ability to acquire in-situ and transferable rural site subdivision rights through the enhancement of indigenous vegetation. The Panel's reasons for enabling those subdivision rights are set out in the Recommendation.

- 16. In its Decision, the Council significantly reduced the number of sites that are able to be created by way of the protection and enhancement of indigenous vegetation. The Council's reasons for rejecting the Panel's recommendation regarding transferable rural site subdivision are similar as regarding in-situ subdivision through wetland protection, as set out at paragraph 12 above.

- 17. The Appellant seeks that the provisions put forward by the Panel in its Recommendation be reinstated for the following reasons:

- (a) The Panel recommended a graduated scheme regarding the number of sites that could be acquired through the protection of indigenous vegetation, providing opportunities to acquire rights based on the area protected.
- (b) The effect of the Council's amendment is to prevent the creation of more than three rural residential sites for in-situ subdivision, thereby discouraging the protection of indigenous vegetation and limiting the development rights of rural property owners.
- (c) While there remains the ability to acquire rights for transferable rural site subdivision, this is an impractical and unreasonable solution for many rural property owners. There should be the ability to provide for additional subdivision on the property itself rather than transferring that right elsewhere.

- 18. The Appellant seeks that the Panel's provisions enabling a higher number of in-situ and transferable rural site subdivision rights through the enhancement of indigenous vegetation be restored.

Relief sought

- 19. The Appellant seeks:

- (a) that the rural subdivision provisions insofar as they relate to in-situ and transferable rural site subdivision be amended to restore the provisions as set out in the Panel's Recommendation;
- (b) such consequential or related relief as may be necessary to give effect to its concerns; and
- (c) costs.

Service

20. 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.

Attachments

21. Copies of the following documents are attached to this notice:
- (a) The Appellant's submission.
 - (b) The relevant parts of the Panel's Recommendation.
 - (c) The relevant parts of the Decision.

**KUMEU-HUAPAI RESIDENTS &
RATEPAYERS ASSOCIATION
INCORPORATED** by its solicitors and
authorised agents Russell McVeagh:

Signature:


Allison Arthur-Young / George Willis

Date:

16 September 2016

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TO: The Registrar of the Environment Court at Auckland.
AND TO: Auckland Council

Advice to recipients of copy of notice of appeal

How to become party to proceedings

1. You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.
2. 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.
3. 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.
4. 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

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

ATTACHMENT 1

Appellant's submission

ATTACHMENT 2

Panel's Recommendation report for Topic 064 - Subdivision (Rural)

ATTACHMENT 3

Rural Subdivision provisions - Panel Recommendation Version

ATTACHMENT 4

Relevant parts of the Council's Decision report regarding Rural Subdivision

ATTACHMENT 5

Council's amendments to the Rural Subdivision provisions and associated amendments