

Form 6 Notice of appeal to Environment Court against decision on proposed Auckland
combined plan

[Section 156](#), *Local Government (Auckland Transitional Provisions) Act 2010*

To the Registrar, Environment Court at Auckland

1 I, [*Valerie Liddle*], appeal against part of a decision of Auckland Council (the **Council**) on the Auckland combined plan (the **proposed plan**).

2 I have the right to appeal the Council's decision—

(b) under [section 156\(3\)](#) of the Local Government (Auckland Transitional Provisions) Act 2010 because the Council accepted a recommendation of the Hearings Panel that the Hearings Panel has wrongly identified as being within the scope of the submissions made on the proposed plan. The Council's decision resulted in a provision being included in the proposed plan. I will be unduly prejudiced by the inclusion of the provision.

3 I provide further details of the reasons for my appeal below.

The decision that a Rural – Waitākere Ranges Zone be applied to 83 Karekare Rd is out of scope. No submission requesting this zoning for this property was made and the property was zoned rural conservation in the notified version.

For this reason subsidiary clauses requiring that subdivision within the Rural – Waitākere Ranges Zone must not create development or establish buildings within land areas identified in the Significant Ecological Areas Overlay within the zone, are also of scope. .

Our interests are prejudiced by this as almost the whole of 83 Kare Kare Rd is within an SEA, and therefore subdivision down to the 4 HA lot size given in the PAUP (DV) for the zone will not be able to be achieved.

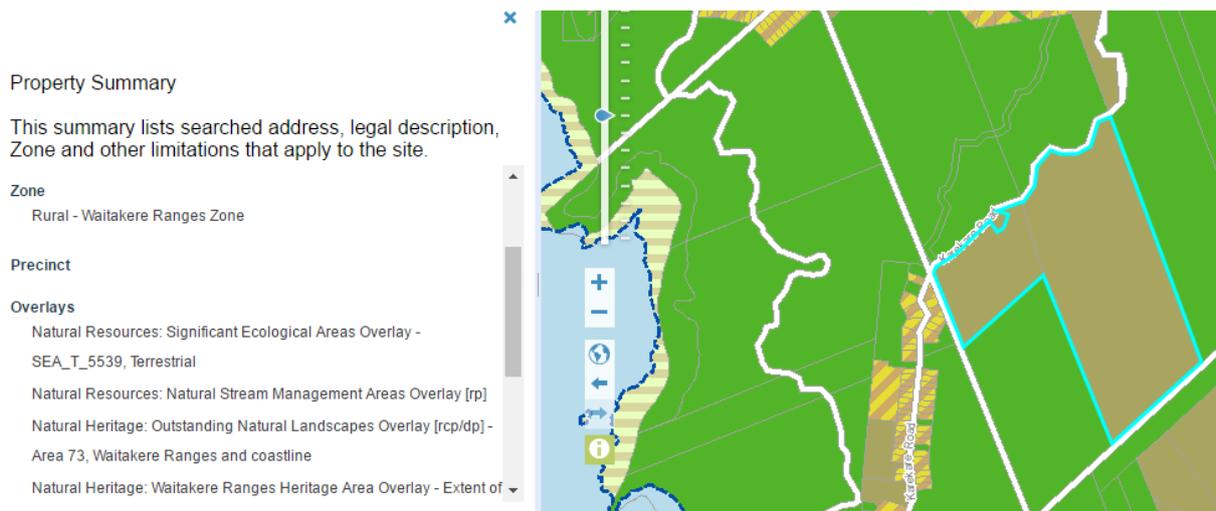
4 I am not a trade competitor for the purposes of [section 308D](#) of the Resource Management Act 1991.

6 I received notice of the decision on 19 August 2016

7 The decision was made by Auckland Council.

8 The part of the decision that I am appealing is as follows:

- The inclusion of 83 Karekare Beach Rd in Rural – Waitākere Ranges Zone, as shown on the PAUP(DV) planning map below.



- I am appealing the clauses that provide the statutory framework that applies to the inclusion of 83 Karekare Rd in the Rural – Waitākere Ranges Zone, at all levels of the plan, including the regional policy statement, the objectives and policies, and particular rules, such as those quoted below.

PAUP(DV) E39.6.5.3. Subdivision in Rural – Waitākere Ranges Zone

- (1) The average site size must be greater than 4 hectares.
- (2) The average site size must be calculated over the net site area of the site as it existed as of 14 October 1995.
- (3) The minimum net site area must be 2 hectares.
- (4) The subdivision must not create any new road.
- (5) Subdivision must not create development or establishment of buildings within land areas identified in the Significant Ecological Areas Overlay.

9 The reasons for the appeal are as follows:

Our interests are prejudiced as almost the whole of 83 Kare Kare Rd is within an SEA, and therefore subdivision down to the 4 HA lot size given in the PAUP (DV) for the zone is not able to be achieved for this large lot. The decision has removed the ability to create new lots that may have had a market value of \$4.5 million to 6 million dollars.

As well as being out of scope with regard to the submission made on the property the decision contravenes section 85(2) of the Resource Management Act 1991 as the provision renders our interest in this land incapable of reasonable use.

In addition, because of the extent of the SEA, the topography of the land, and the presence of a stream, it would not be possible to construct a minor dwelling at 83 Karekare Rd, outside of the SEA, as is allowed under the PAUP (DV).

10 I seek the following relief:

That up to five dwellings per large lot be a permitted activity, for properties that are more than 95% within the SEA-Ts overlay and that have a lot size of over 39 Hectares. One dwelling, the primary dwelling may be up to 200M2 in size(GFA), the others, ancillary dwellings, are to be limited to under 60M2 each. The ancillary dwellings may be sited within the SEA. Road access is not required for these ancillary dwellings.

Alternatively, provisions similar to the above, that cover this site only, would be acceptable. We are willing to covenant the SEA, except for the area proposed for the ancillary dwellings, if the requested relief is available.

I I attach the following documents to this notice:

- (a) a copy of a relevant part of the decision
- (b) any other documents necessary for an adequate understanding of the appeal.
- (c) a list of names and addresses of persons served / to be served with a copy of this notice.

Date: 14/09/2016

Signature: 

(person authorised to sign on behalf of appellant)

Contact details

Address for service of appellant: 5a Faulder Avenue, Westmere

Telephone: 09 3788 624

Fax:

Email: stephen.curham@gmail.com

Contact person: Stephen Curham

Copy of a relevant part of the decision

“PAUP(DV) E39.6.5.3. Subdivision in Rural – Waitākere Ranges Zone

- (1) The average site size must be greater than 4 hectares.
- (2) The average site size must be calculated over the net site area of the site as it existed as of 14 October 1995.
- (3) The minimum net site area must be 2 hectares.
- (4) The subdivision must not create any new road.
- (5) Subdivision must not create development or establishment of buildings within land areas identified in the Significant Ecological Areas Overlay.”

And

“Page 24 IHP Panel report to AC Overview of recommendations 2016-07-22

The scope for the Panel’s recommendations generally lies between the provisions of the Unitary Plan as notified by the Council and the relief sought in submissions on the Unitary Plan. This can include consequential amendments that are necessary or desirable to give effect to such relief. In addition, the Panel has a special power to recommend amendments even where there is no scope for that in submissions. That power must be exercised in accordance with the principles of natural justice and the requirement in the Local Government (Auckland Transitional Provisions) Act 2010 that the Panel establish a procedure for hearing sessions that is appropriate and fair in the circumstances.

The extent to which many submissions sought broad and extensive relief means that the scope for recommending changes to the Unitary Plan is very wide. The particular recommendations that are beyond the scope of submissions are identified in the recommendation reports and summarised in Appendix 3 to this overview report.”

Other documents necessary for an adequate understanding of the appeal

Our response to the statement above.

Relying on wide ranging submissions, that included statements such as that the entire notified version of the plan ought to be changed and simplified, is not sufficient when deeming changes such as establishing zones that are not in the notified version of the PAUP to be “within scope”.

This becomes particularly clear at the level of individual sites. The Independent Hearings Panel’s ability to make in scope recommendations clearly lies between the provisions of the Unitary Plan as notified by the Council and the relief sought in submissions on the Plan.

In the case of 83 Karekare Rd the only submission made did not seek redress in the form of having a new zone applied, instead of the rural conservation zone that was established in the notified version of the plan.

Rather, the redress sought, for the removal of a significant interest in the property, was the ability for an extended family group to build several small ancillary dwellings within the extent of the SEA.

The purpose of this redress was to establish the possibility of a future co-housing type development (an example of such a development is the Earthsong cohousing development at Ranui) that would allow the extended family to exercise an interest in the land, with a minimum impact on the ecology of the land. The proposed redress involved an area of land that is less than .01 % of the total area of the SEA that is established over this site.

It is noted that the IHP did not make any response to this submission in its decisions. It is also noted that the submission was considered by the panel in relation to the SEA provisions of the plan only, and not in relation to the zoning and subdivision provisions which set the number of dwellings per site. This may have contributed to the wrongful decision to deem the change to the notified version, made by the panel and applied to the property, as being in scope.

A further area of consideration that is relevant to this appeal is with regard to those very few issues that the panel did deem to be “out of scope”. Five issues that were deemed out of scope related to region wide issues such as signage and heritage schedules. The other nine issues related to zoning and precincts. The issue we have raised sit very comfortably in the same category as these issues.

Names and addresses of persons to be served with a copy of this notice

Auckland Council, 135 Albert St, Auckland