

Under the Local Government (Auckland Transitional Provisions) Act 2010

IN THE MATTER Of an appeal on Question of Law under section 158 of
the Act

BETWEEN **Howick Ratepayers and Residents Association
Incorporated**
PO Box 38370, Howick.

First Appellant

Walter Moffat
10 Mellons Bay Road, Howick.

Second Appellant

AND **Hearings Panel**
c/- Auckland Council, Private Bag, 92300, Victoria
Street West, Auckland 1142.

First Respondent

AND **Auckland Council**
Private Bag, 92300, Victoria Street West, Auckland
1142.

Second Respondent

**Notice of Appeal on Question of Law under Section 158 of the Local
Government (Auckland Transitional Provisions) Act 2010.**

Dated: 16 September 2016

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TAKE NOTICE that at _____ on _____ 2016 or as soon as Counsel may be heard Counsel for the Appellants will move the High Court at Auckland on an appeal from the decisions of the Hearings Panel and Auckland Council of 22 July 2016 and 19 September 2016 respectively regarding Hearing Topic 081 (**the Decisions**) on the Proposed Auckland Unitary Plan (**the Proposed Plan**) as follows:

Background

1. The first appellant is an incorporated society under the Incorporated Societies Act 1908.
2. The second appellant is the owner of properties at 10 and 12 Mellons Bay Road, Howick.
3. The appellants made submissions in respect of the Proposed Auckland Unitary Plan (**PAUP**).
4. The submissions were heard by the first respondent pursuant to the process for development of the first combined plan for Auckland Council specified in Part 4 of the Local Government (Auckland Transitional Provisions) Act 2010 (**the Act**).
5. The first respondent was required to make recommendations to the second respondent on the proposed plan, pursuant to section 144 of the Act.
6. The first respondent's recommendations were provided in reports dated 22 July 2016 pursuant to section 144 (7) of the Act. Subsection (8) (a) of section 144 requires the Panel's recommendations on topics covered by the report to identify any recommendations that are beyond the scope of the submissions made in respect of the relevant topic.
7. The first respondent's reports to the second respondent included a recommendation to change the zoning of land at 65 addresses listed in Attachment A to this notice (**the land**) from Single House zone, as

provided in the publicly notified Proposed Auckland Unitary Plan, to Mixed Housing Urban zone.

8. The Appellants have not been able to identify any submission proposing the change of zoning in respect of the land recommended by the first respondent to the second respondent and accepted by the second respondent.

Errors of Law

9. The appellants allege that the Respondents erred as follows in their decisions:
 - (a) The first respondent's recommendation does not comply with the requirement in section 144 (8) (a) of the Act to identify recommendations that are beyond the scope of submissions.
 - (b) The second Respondent is obliged to consider the recommendations of the first Respondent and to notify decisions on them, pursuant to section 148 of the Act. To avoid doubt, subsection (3) of section 148 provides that the second Respondent may accept recommendations of the first Respondent that are beyond the scope of submissions made on the proposed plan.
 - (c) Limited appeal rights are available in respect of the proposed plan as provided in section 155 of the Act. There is a right of appeal:
 - (i) To the Environment Court under section 156 – 157;
 - (ii) To the High Court under section 158.
 - (d) Section 156 (1) and (3) afford limited rights of appeal to the Environment Court in respect of the second respondents decision. Specifically section 156 (3) provides:

“(3) A person may appeal to the Environment Court in respect of a provision or matter relating to the proposed plan if –

(iii) The Council’s acceptance of a recommendation of the Hearings Panel resulted in –

(i) The provision being included in the proposed plan; or

(ii) The matter being excluded from the proposed plan; and

(iv) The Hearings Panel has identified the recommendation as being beyond the scope of submissions made on the proposed plan; and

*(v) The person is, was, or will be unduly prejudiced by the inclusion of the provision or exclusion of the matter.”
(Emphasis added)*

- (e) In the present case the first respondent failed to identify that its recommendation in respect of the zoning of the land was beyond the scope of submissions made on the proposed plan. Had it done so, the appellants would enjoy a right of appeal to the Environment Court in respect of the second respondent’s decision, pursuant to section 156 (3) of the Act.

Questions of law to be resolved

10. The questions of law to be resolved are:

- (a) Did the first respondent fail to comply with the duty on it pursuant to section 144 (8) (a) to identify that the rezoning of the land was beyond the scope of submissions made in respect of the relevant topic.

- (b) Did the second respondent in its Decision repeat the error of law identified in paragraph 10 (a) above by accepting the first respondents recommendation regarding the rezoning without rectifying the first respondents error.

Grounds of Appeal


- 11. Paragraphs 1 – 9 above are repeated.

Relief Sought

- 12. The appellants seek the following relief:
 - (i) An order confirming that the recommendation of the first respondent is beyond the scope of submissions made on the proposed plan; and
 - (ii) An order directing the first respondent to confirm to the second respondent that its recommendation in respect of the land is beyond the scope of submissions on the proposed plan;
 - (iii) Such further or alternative relief as the Court sees fit.
 - (iv) Costs

This notice is filed in reliance on section 158 of the Local Government (Auckland Transitional Provisions) Act 2010, sections 299 and 300 of the Resource Management Act 1991 and Part 20 of the High Court Rules.

Dated: 16 September 2016



J M Savage
Counsel for the Appellants

Appendix A

7	Bleakhouse Road, Howick	38	Mellons Bay Road, Howick
5	Bleakhouse Road, Howick	40	Mellons Bay Road, Howick
3	Bleakhouse Road, Howick	42	Mellons Bay Road, Howick
1	Bleakhouse Road, Howick	44	Mellons Bay Road, Howick
47	Ridge Road, Howick	46A	Mellons Bay Road, Howick
45	Ridge Road, Howick	46	Mellons Bay Road, Howick
43	Ridge Road, Howick	48A	Mellons Bay Road, Howick
41	Ridge Road, Howick	50	Mellons Bay Road, Howick
39	Ridge Road, Howick	52	Mellons Bay Road, Howick
37	Ridge Road, Howick	31	Mellons Bay Road, Howick
35	Ridge Road, Howick	33	Mellons Bay Road, Howick
2A	Mellons Bay Road, Howick	35	Mellons Bay Road, Howick
2	Mellons Bay Road, Howick	37	Mellons Bay Road, Howick
4	Mellons Bay Road, Howick	39	Mellons Bay Road, Howick
6	Mellons Bay Road, Howick	41A	Mellons Bay Road, Howick
8	Mellons Bay Road, Howick	41	Mellons Bay Road, Howick
10	Mellons Bay Road, Howick	43	Mellons Bay Road, Howick
12	Mellons Bay Road, Howick	47	Mellons Bay Road, Howick
14A	Mellons Bay Road, Howick	49	Mellons Bay Road, Howick
14	Mellons Bay Road, Howick	2	Picton Street, Howick
16	Mellons Bay Road, Howick	20	Park Hill Road, Howick
18	Mellons Bay Road, Howick	24	Park Hill Road, Howick
20	Mellons Bay Road, Howick	26	Park Hill Road, Howick
22	Mellons Bay Road, Howick	27	Park Hill Road, Howick
24	Mellons Bay Road, Howick	28	Park Hill Road, Howick
26	Mellons Bay Road, Howick	30	Park Hill Road, Howick
28	Mellons Bay Road, Howick	32A	Park Hill Road, Howick
30	Mellons Bay Road, Howick	32	Park Hill Road, Howick
32	Mellons Bay Road, Howick	3	Glenfern Road, Howick
34	Mellons Bay Road, Howick	5	Glenfern Road, Howick
36	Mellons Bay Road, Howick	7	Glenfern Road, Howick
		9	Glenfern Road, Howick
		11	Glenfern Road, Howick
		13	Glenfern Road, Howick

TO The Auckland Council

AND TO The Hearings Panel

AND TO The Registrar
The High Court
Auckland

This Notice of Appeal is filed by **Rob Voulk**, solicitor for the first appellant whose address for service is at the offices of Murdoch Price Limited, PO Box 217006, Botany Junction, Manukau 2164, Auckland, Telephone: (09) 271 5880 and **Stephen McKenzie**, solicitor for the second appellant whose address for service is at the offices of SPM Law, PO Box 38538, Howick 2145, Telephone: (09) 274 8042.

Documents for service on the appellants may be left at the above addresses for service.