

## Summary of appeal rights relating to decisions notified on 19 August 2016

Note 1: The following summary excludes reference to appeal rights concerning both non-Council designations (in respect of which decisions are yet to be made by the requiring authorities concerned), and heritage orders in the Proposed Plan, all of which 'rolled over' without modification / submissions (and accordingly no appeal rights exist in relation to heritage orders).

Note 2: Anyone contemplating filing an appeal with the Environment Court or High Court is encouraged to seek legal advice.

### 1. Environment Court appeal rights relating to decisions, other than decisions on Auckland Council designations

#### (a) **Environment Court appeal right under section 156(1), LGATPA**

*Right of appeal to the Environment Court by submitters where the Council has rejected a Hearings Panel recommendation*

- Under section 156(1) of the LGATPA, a person who made a submission on the Proposed Plan may appeal to the Environment Court in respect of a provision or matter relating to the Proposed Plan:
  - (a) that the person addressed in the submission; and
  - (b) in relation to which the Council rejected a recommendation of the Hearings Panel and decided an alternative solution, which resulted in—
    - (i) a provision being included in the Proposed Plan; or
    - (ii) a matter being excluded from the Proposed Plan.
- Section 156(2) imposes a limitation on any appeals lodged under section 156(1), namely that if the Council's alternative solution included elements of the Hearings Panel's recommendation, the right of appeal is limited to the effect of the differences between the alternative solution and the recommendation.

#### (b) **Environment Court appeal right under section 156(3), LGATPA**

*Right of appeal to the Environment Court by any persons unduly prejudiced by the Council's acceptance of a Hearings Panel recommendation identified by the Panel as beyond the scope of submissions (i.e. as 'out of scope')*

- Under section 156(3) of the LGATPA, a person may appeal to the Environment Court in respect of a provision or matter relating to the Proposed Plan if:
  - (a) 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
  - (b) the Hearings Panel had identified the recommendation as being beyond the scope of the submissions made on the Proposed Plan (i.e. out of scope); and

- (c) the person is, was, or will be unduly prejudiced by the inclusion of the provision or exclusion of the matter.
- An appellant under section 156(3) need not have made a submission on the Proposed Plan, but must be “unduly prejudiced” (as described above).

## 2. Environment Court appeal rights relating to decisions on Auckland Council designations

### (a) *Environment Court appeal right under section 157(1), LGATPA*

*Right of appeal to the Environment Court on Auckland Council designations by owners / occupiers who lodged a submission*

- Under section 157(1) of the LGATPA, a person has a right of appeal to the Environment Court against any aspect of a decision about a designation of the Auckland Council if—
  - (a) the person is an owner or occupier of land to which the designation applies; and
  - (b) the person made a submission on the requirement that referred to that aspect of the decision.

### (b) *Environment Court appeal right under section 157(4), LGATPA*

*Right of appeal to the Environment Court on Auckland Council designations by submitters who are not owners / occupiers*

- Under section 157(4) of the LGATPA, a person has a right of appeal to the Environment Court against any aspect of a decision about a designation of the Auckland Council if—
  - (a) the person is not an owner or occupier of land to which the designation or heritage order applies; and
  - (b) the person made a submission on the requirement that referred to that aspect of the decision; and
  - (c) in that aspect of the decision, the Council rejected the Hearings Panel’s recommendation on the matter.

## 3. High Court appeal rights on questions of law only

### (a) *High Court appeal right under section 158(1), LGATPA*

*Right of appeal to the High Court on question of law on provision / matter in the PAUP in relation to which the Council accepted a Hearings Panel recommendation*

- A person who made a submission on the proposed plan may appeal to the High Court in respect of a question of law concerning a provision or matter relating to the Proposed Plan—
  - (a) that the person addressed in the submission; and
  - (b) in relation to which the Council accepted a recommendation of the Hearings Panel, which resulted in—

- (i) a provision being included in the Proposed Plan; or
- (ii) a matter being excluded from the Proposed Plan.

(b) **High Court appeal right under section 158(3), LGATPA**

*Right of appeal to the High Court on question of law relating to Auckland Council designations by submitters who are not owners / occupiers, where the Council accepted a Hearings Panel recommendation*

- A person may appeal to the High Court against any aspect of a decision about a designation of the Auckland Council, raising a question of law, if—
  - (a) the person is not an owner or occupier of land to which the designation applies; and
  - (b) the person made a submission on the requirement that referred to that aspect of the decision; and
  - (c) in that aspect of the decision, the Council accepted the Hearings Panel's recommendation on the matter.