

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(3) 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 Unitary Plan (**Proposed Plan**)

AND

IN THE MATTER of Proposed Plan Hearing Topic 081 Rezoning and Precincts (Geographical Areas)

BETWEEN **FENGLI HOU AND WANSHI RUYI TRUST LTD**

Appellants

AND **AUCKLAND COUNCIL**

Respondent

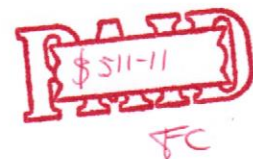
NOTICE OF APPEAL

Dated 16 September 2016



Address for service:

PO Box 55338
Eastridge
Auckland 1146
02102415618
hh5201298@gmail.com

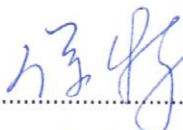


To: The Registrar
 Environment Court
 Auckland

1. Fengli Hou and the Wanshi Ruyi Trust Ltd (**the Trust**) appeals against a decision of the Auckland Council (the **Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).
2. The Trust has the right to appeal the Council's decision under section 156(3) of the LGATPA because the Council accepted a recommendation of the Hearings Panel that is beyond the scope of the submissions made on the Proposed Plan. The Council's decision resulted in a provision being included in the Proposed Plan. The Trust will be unduly prejudiced by the inclusion of the provision.
3. Further details of the Trust's reasons for the appeal are set out below.
4. The Trust is not a trade competitor for the purposes of section 308D of the RMA.
5. The Trust received notice of the decision on 19 August 2016.
6. The decision that the Trust is appealing is Council's decision to accept Hearings Panel recommendation to rezone the property at 490B Don Buck Road (**the property**) as the Special Purpose – School. This was decided as part of topic 081 Rezoning and Precincts (Geographical Areas). The Trust is also appealing the finding of the Hearings Panel that rezoning the property to the Special Purpose – School Zone was within the scope of submissions made.
7. The reasons for the appeal are as follows:
 - (a) The property at 490B Don Buck Road was zoned Future Urban in the Proposed Plan as notified. However, in its recommendations, the Hearings Panel recommended that the property be rezoned to the Special Purpose – School Zone. This rezoning was then accepted by Council in its decisions. The property is a residential property and is not part of the adjacent St Paul's School property.
 - (b) While section 156(3)(b) of the LGATPA requires that, for an appeal right to exist, not only must be recommendation be outside scope, but it must be identified as being outside scope by the Hearings Panel, on the basis that this zoning outcome was not sought by any submitter, this zoning is clearly beyond the scope of submissions made and should have been identified by the Hearings Panel as such. The Trust suspects that it is simply a mapping error.
8. The Trust seeks the following relief:

- (a) That the property be rezoned to the Mixed Housing Urban Zone which is consistent with the zoning that was recommended by the Hearings Panel and accepted by Council for the surrounding properties; and
- (b) Such further, other or consequential relief to these or other provisions as considered appropriate and necessary to address the concerns set out in this notice of appeal; and
- (c) Costs.
- (d) 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.
- (e) The Trust attaches the following documents to this notice:
 - (a) a copy of the relevant decision;
 - (b) a copy of correspondence sent to Council on 6 September 2016 and Council's response to that correspondence;
 - (c) a list of names and addresses of persons served with a copy of this notice (see Page 5).

.....
Signature of appellants



.....
Date 15 sep 2016

Address for service of appellant

PO Box 55338

Eastridge

Auckland 1146

02102415618

hh5201298@gmail.com

Contact person: Kathy Hou

Note to appellant

You may appeal only if—

(a) the Council rejected a recommendation of the Hearings Panel in relation to a provision or a matter you addressed in your submission on the proposed plan and the Council decided on an alternative solution that resulted in a provision being included in the proposed plan or a matter being excluded from the proposed plan; or

(b) you are, were, or will be unduly prejudiced by the inclusion of a provision in or the exclusion of a matter from the proposed plan in relation to which the Council accepted a recommendation of the Hearings Panel that the Hearings Panel had identified as being beyond the scope of the submissions made on the proposed plan.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the RMA.

You must lodge the original notice with the Environment Court, and serve a copy on the Council (by email to unitaryplan@aucklandcouncil.govt.nz), within 20 working days after the Council notifies its decisions in relation to the recommendations of the Hearings Panel under section 148(4)(a) of the LGATPA (i.e. by no later than **16 September 2016**).

You must pay the filing fee required by regulation 15 of the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013 at the time you lodge this notice with the Environment Court.

If your appeal concerns a regional coastal plan provision / the coastal marine area, you must serve a copy of this notice on the Minister of Conservation within 5 working days after this notice is lodged with the Environment Court.

However, 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 to recipients of copy of notice of appeal

How to become party to proceedings

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

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.

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.

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

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

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

Auckland Council

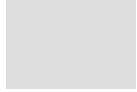
Private Bag 92300

Victoria Street West

Auckland 1142

Unitaryplan@aucklandcouncil.govt.nz

Response to your query on the Proposed Auckland Unitary Plan



Sep 7 (8 days ago)

Unitary Plan

to me

Dear Kathy

Thank you for contacting the Council in relation to a possible error with the zoning of land applied to your property at 490B Don Buck Road, which has been rezoned from Future Urban to Special Purpose – School.

The Council’s ability to make changes to a proposed plan using clause 16(2) of the First Schedule to the Resource Management Act 1991 is limited to situations where an alteration is “of minor effect”, or a change involves the correction of a “minor error”. After closely considering the possible error with the zoning of your property, the Council has determined that it is not able to use clause 16(2) to change the Decisions Version of the Proposed Auckland Unitary Plan.

The Council acknowledges that there is an issue with the zoning applied to your property and accepts that it should be corrected to remove the Special Purpose – School zoning for your property. It appears that this error has resulted from

the introduction of the Redhills Precinct in the area, which also applies to your site, and which has live zoned the surrounding area.

Following further investigation into this matter, it may be that the Council will be able to address this matter as part of a plan change to the Proposed Auckland Unitary Plan. If the Council requires any further information from you in relation to this matter, we will be in touch.

If you are considering lodging an appeal against the Council's decisions, please contact the Environment Court's process assistant (Lachlan Muldowney, a partner at a law firm called Tomkins Wake in Hamilton) for further information. Lachlan has been appointed to provide assistance with the process and procedural aspects of possible appeals. Lachlan's contact numbers are 07 838 6022 / 021 471 490 and his email is lmuldowney@tomwake.co.nz.

Regards,

Celia Davison

Manager Unitary Plan



Sep 7 (8
days ago)

Kathy <hh5201298@gmail.com>

to Unitary

Dear Celia Davison,

Thank you for your prompt reply regarding my home zoning issue-490B Don Buck Road.

First, I am very glad to hear your acknowledgment of the error applied on my land as school.
Second, I am very appreciate your effort for the investigation into this matter and method of possible solution through " a plan change to the Proposed Auckland Unitary Plan"

As a normal household, I am not good at appeal which in my knowledge is a costly and lengthy process.I sincerely wish your team can solve this issue and give me a definite favorite correction before 16 Sept 2016.

So based on this situation, I wish to know when this plan change can be done.

Regards

Kathy Hou

Proposed Auckland Unitary Plan decisions version on 19 Aug 2016

Proposed Auckland Unitary Plan - Decisions version (19 Aug 2016)

Address: 490B DON BUCK ROAD MASSEY

Info Legend Results

Property Summary

This summary lists searched address, legal description, Zone and other limitations that apply to the site.

Address
490B Don Buck Road Massey 0614

Legal Description
LOT 2 DP 62338

Zone
Special Purpose - School Zone

Precinct
Redhills, Precinct

Overlays
Natural Resources: High-Use Aquifer Management Areas Overlay [p]

For other mapped information that may apply to the searched property please use the Data Discovery tool or check the main GIS viewer (Geomaps).

View full Unitary Plan text

NZTM: 1743752, 5922813

Independent Hearings Panel recommendation version

Proposed Auckland Unitary Plan - Recommendation version (22 July 2016)

Address: 490B DON BUCK ROAD MASSEY

Info Legend Results

Property Summary

This summary lists searched address, legal description, Zone and other limitations that apply to the site.

Address
490B Don Buck Road Massey 0614

Legal Description
LOT 2 DP 62338

Zone
Special Purpose - School Zone

Precinct
Redhills, Precinct

Overlays
Natural Resources: High-Use Aquifer Management Areas Overlay [p]

For other mapped information that may apply to the searched property please use the Data Discovery tool or check the main GIS viewer (Geomaps).

View full Unitary Plan text

NZTM: 1702608, 6012722

The Proposed Auckland Unitary Plan

The screenshot displays the Auckland Council Geomaps interface. The browser address bar shows the URL: <https://unitaryplanmaps.aucklandcouncil.govt.nz/uproposed/>. The search bar contains the address: 490B DON BUCK ROAD MASSEY. The map shows a yellow highlighted property area with a cyan border. The left sidebar contains the following information:

- Property Summary**
This summary lists searched address, legal description, Zone and other limitations that apply to the site.
- Address**
490B Don Buck Road Massey 0614
- Legal Description**
LOT 2 DP 62338
- Zone**
Future Urban
- Precinct**
[None listed]
- Overlays**
Infrastructure: Designations - ID 4311, Defence purposes - protection of approach and departure paths (Whenuapai Air Base), Airspace

At the bottom of the sidebar, there is a button labeled "View full Unitary Plan text". The map includes a scale bar (0 to 100m), a north arrow, and the Esri logo. The system tray at the bottom right shows the date and time: 4:58 p.m., 15/09/2016.

Possible error on my land zoning-490B Don Buck Road, Massey



Sep 6 (9 days ago)

Kathy <hh5201298@gmail.com>

to unitaryplan

I am the owner of 490B Don Buck Road, Massey. My family have been there for the last ten years. When I purchased this land ,it

was zoned rural. It was classified as future urban in 2012 and on 18 Aug 2016, it is changed to school zoning suddenly.

I called twice on 3653786 to address my concerns and an officer called Emily told me it might be an error because this is a private land, no consulting process happened and no letter notification.

I went to Waitakere council to check their old waitakere district plan. It shows this land is on foothill rural.

So the school zone on my land makes no sense at all. Since there is an appeal deadline on 16 Sept 2016, I need the quick attention and clarification on this issue ASAP. I like my land to be same as the rest of neighbor lands as residential usage.

Thank you for your attention and I am looking forward for your favorite reply.

Regards

Kathy Hou

Owner of 490B Don Buck Road, Massey