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(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**) ** Select one.*
AND	
IN THE MATTER	of Proposed Plan Hearing Topic(s) (*075 and Large Lot)*
BETWEEN	**John Robert Lenihan** Appellant
AND	**AUCKLAND COUNCIL** Respondent

NOTICE OF APPEAL

Dated 14th September 2016

To: The Registrar
Environment Court
Auckland

1. I, John Robert Lenihan, appeal against a decision (*or* part of a decision) of the Auckland Council (the **Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).

2. I have the right to appeal the Council's decision –

(b) under section 156(3) of the LGATPA because 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. The Council's decision resulted in a provision being a matter being excluded from the Proposed Plan. I am unduly prejudiced by the exclusion of the matter.

(c) I provide further details of the reasons for my appeal below. See Attachment.

(d) I am not a trade competitor for the purposes of section 308D of the RMA.

(e) N/A

(f) I received notice of the decision on 19 August 2016.

(g) The decision (*or* part of the decision) that I am appealing is:

(a)
- the original Hearings Panel topic number(s) relevant to the decision or part of the decision; and
- the specific provision or matter excluded from, the Proposed Plan by the decision.

(h) The reasons for the appeal are as follows:

(a) See attachment.

(i) I seek the following relief:

That the 3m front, side and rear yards be reinstated in the Large Lot Zoning.

(j) 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.

(k) I attach the following documents to this notice:

(a) A copy of the relevant decision.

(b) Any other documents necessary for an adequate understanding of the appeal;

See attachment.

(c) A list of names and addresses of persons served / to be served with a copy of this notice.
Auckland Council

(d)
a copy of my submission or further submission (with a copy of the submission opposed or supported by my further submission);

(l) N/A

.....

Signature of appellant (*or* person authorised to sign on behalf of appellant)

.....

Date
Wednesday 14th September 2016

Address for service of appellant:

Telephone:

Fax/email: _____

Contact person:

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.

Notice Of Appeal to Environment Court

Yard Rule Error in Council Decisions Plan Version August 19th 2016 Large Lot Zone Titirangi and Laingholm

We are appealing the Large Lot development standard rule for Yards under H1. 6.5.1 Residential – Large Lot Zone under the Decisions Plan August 19th 2016.

As background to the appeal we made a submission to the Unitary Plan - number 851, including an objection to the yard rules in the Large Lot zone, however we were assigned to Topic 075 as the submission was in respect of the Large Lot zone in Titirangi Laingholm and the overlay rules for that area in respect of Yards came under a Waitakere Ranges Heritage Overlay and Precinct rule. This is an important aspect of our appeal as we were prevented from further submissions and providing evidence at other hearings associated with the Large lot zone.

The 2013 Notified Yard rule was as follows
Part3 Chapter K Precinct Rules 7West 7.9 Waitakere Ranges Heritage Area 3 SubPrecinct C Titrangi/Laingholm 3 Development Control 3.2 Yards as follows;

> 1.Front, side and rear yard: 3m.
> 2.Development that does not comply with clause 3.1above is a discretionary activity.

Titirangi & Laingholm in the Proposed plan by the Hearing Panel had an underlying zone as Large Lot. The Large Lot rule was found in the notified version under; Chapter 1 Zone Rules1 Residential Rules 4 Development Control-Large Lot 4.3 Yards, as follows

> Purpose: maintain the spacious character of the zone and ensure dwellings are adequately set back from lakes, streams and the coastal edge to maintain water quality and provide protection from natural hazards.
> Table 2:

Yard	Minimum depth
Front	10m
Side	6m
Rear	6m
Riparian	10m from the edge of permanent and intermittent streams
Lake	30m
Coastal protection yard	25m, or as otherwise specified in appendix 6.7

The Yard rules are now found in Chapter H.1 Residential Large Lot Zone 6. Standards .4 Yards which are 10m front Yards and 6m side and rear Yards. This is beyond the scope of the submissions of the Proposed Plan and was never mentioned in any Hearings as a possibility. No other submissions were made by anyone else on

this Yard rule as it didn't exist. It is important to note that the Operative District Plan had a Yard rule of 3m (front, side & rear) that was effectively carried over into the notified plan as a Precinct rule.

In the process of removing the Precinct rules it appears that unlike other areas such as the Waitakere Foothills, the Large Lot Yard rule has not been modified to make a distinction in sites size .

The Decisions rule for Rural Waitakere Ranges Foothills Zone H20 has a Yard Rule H20.6.3 of:

1. For sites with a net site area of less than 4000sq.m., the minimum depth of the front, side and rear yard is 3m.
2. For For sites with a net site area of greater than 4000sq.m., the minimum depth of the front, side and rear yard is 10m.

The Hearings Panel Unitary Plan released 27th July 2016 appears to have omitted by error **the distinction in site size**s, and this has a harsh significant and adverse effect on ourselves as landowners in the area and on 90% of all property owners in the Titirangi Laingholm area who have sites under 4000sqm. In fact the majority have sites of 1000sqm or less and are generally 15-18m wide. With a 15m wide site, a reduction of a 6m Yard on each side leaves you a permitted development area of exactly 3m! With a 18m wide site, a development area of 6m occurs. Neither are suitable for new dwellings or additions to existing dwellings. Furthermore on a steep site development going from 3m back to 10m back from the front boundary has a similar detrimental effect.

The result of this omission error is that despite dwellings and alterations to dwellings being permitted activities, a resource consent would be required as a restricted discretionary activity, with the probability of notification for thousands of property owners for any simple addition. This would include decks if over the height of 1.5m which in the sloping area of Titirangi and Laingholm is most often the case.

The recommendations of the Hearing Panel led by Judge Kirkpatrick contained under Topic 075 in item 1.2 discuss Simplifying the Plan to remove the number of layers in the plan – which has been done. In item 1.3 Overview however the Panel describe how "the principle is to enable people living in the area and to remove provisions that were unduly **complex, restrictive and with unclear outcomes**."

The result of the new Yard rule is an extremely harsh outcome for an area containing mostly 1000sqm/old quarter acre sites. Areas of Greenhithe are also harshly affected and some small pockets of south Auckland.

If the yard rule is not corrected it will have the exact opposite result and will increase the complexity, be overly restrictive & create unclear outcomes. To illustrate the effect of this error there is attached some typical examples of streets in the Titirangi and Laingholm area (Sheets 1,2 & 3)

There is a simple resolution to our appeal which is to simply change the Large Lot Yard rule to 3m for front, side and rear yards as a permitted activity.

Examples

Sheet 1
This is a section of the uniformly developed 1960's **Rimutaka Rd**. All the houses are approx. 90-100sq.m. and at the end of their 50 year life. The new 10 and 6m Yard rule will adversely affect every single site in this street and limits the ability to renovate or knock down and rebuild (there are examples of rebuild occurring in this street) to a very small footprint of approx. 4m wide x 15m deep. This would preclude a new 6m wide garage. It would preclude decks in the side yard. It would preclude a rear addition the width of the existing dwelling to 4m wide.

The most important impact of this rule would be the requirement for every dwelling to need a Resource Consent and be beholden to their neighbours for permission to extend in any direction except for the 4m wide strip as shown. This 4m wide addition is not a viable option for every renovator.
The 3m wide previous Yards enabled an approx. 10m wide addition to the rear of a dwelling.
Generally there has been a 70% reduction in permitted usable space.
Note the empty site at No. 31 would enable only a 4m wide new house!

Sheet 2
This is a small section of South Titirangi Rd and Grendon Rd. Some sites here are a minimum of 15m wide and therefore are left with a 3m wide permitted building platform. The corner grassy site at 1-3 Warwick/Grendon/South Titirangi Rd is a particular worry as if the front yard of 1om is applied all around, there is no area left to build whatsoever as a permitted activity.
Similarly, No 2 Grendon Rd has no permitted development area also.
No. 5 Grendon Rd has a 2m wide permitted development strip as shown.
Note also this Yard rule affects existing dwellings if you extend on a upper level into the side Yard of 6m.

Sheet 3

Triangular sites such as 45 Park Rd have a very reduced opportunity for any development whatsoever. The area for a permitted extension is completely remote from the existing house itself!

Diana Luong

From:	donotreply@aucklandcouncil.govt.nz
Sent:	Sunday, 12 January 2014 1:42 p.m.
To:	Unitary Plan
Cc:	janegjohnl@gmail.com
Subject:	Proposed Auckland Unitary Plan Submission - John Lenihan
Attachments:	unitary plan objection Jan 2014.pdf

13 JAN 2014

Thank you for your submission to the proposed Auckland Unitary plan.

You should receive an acknowledgement within 10 working days. Please retain this as your copy. If you do not receive this, could you email unitaryplan@aucklandcouncil.govt.nz or phone 09 301 0101.

Auckland Council

Submitter details

Full name: John Lenihan
Organisation:
Postal address: janegjohnl@gmail.com
Email address: janegjohnl@gmail.com
Post code: 0604
Local board: Whau local board
Contact Person: John Lenihan
Date of submission: 12-Jan-2014

Scope of submission

The specific provisions that my submission relates to are:

Provision(s):
Large Lot zone Titirangi Laingholm sub Precinct Objectives, Policies and Rules & SEA map overlay

Property address:

Map:

Other:

Submission

Please indicate whether you support or oppose the specific provisions or wish to have them amended and the reasons for your views.
I oppose the specific provisions identified above

I wish to have the provisions identified above amended:

Yes

The reasons for my views are:
see attached document

I seek the following decision by Council:
Accept the Proposed Plan with amendments as outlined below

If the Proposed Plan is not declined, then amend it as outlined below:
see attached document

I wish to be heard in support of my submission:
Yes

If others make a similar submission, I will consider presenting a joint case with them at a hearing:
No

Telephone:

If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6 (4) of part 1 of Schedule 1 of the Resource Management Act 1991
I could not gain an advantage in trade competition through this submission

7-001

Submission on the Proposed Unitary Plan as it relates to the Titirangi and Laingholm areas.

My Background:

My name is John Lenihan, and I am a resident of Titirangi – 185 Konini Road and have lived in Titirangi since 1995. I have personally been involved in land use consent applications for new houses and house renovations in the area, as well as subdivision consent applications in the area during this time. I spent 10 years as part of a landowner group objecting to Plan Change 70 for the area and spent 1 year in facilitated discussions with Council and Waitakere Ranges Protection Society, resulting in a Consent order being approved by the Environment Court in 2004 which forms the basis of the Operative District Plan Rules for Titirangi/Laingholm.

Professionally for the last 18 years I am a Registered Architect and Director of an Architecture and Property firm based in Auckland City. I have a Bachelors Degree in Arts (economics and sociology) and a Bachelor of Architecture (Honours).
My work has covered Urban Design, Masterplanning, Architecture and Development Consulting for private companies and individuals around NZ on large and small projects, including the preparation of many Resource Consent applications and expert witness evidence for Council Hearings & for the Environment Court. I am considered to have a high level of expertise in the application of the Resource Management Act and working with Territorial Authority District Plans.

I gave feedback on the Unitary Plan as to no. 3586

Summary of Submission ;

My submission relates to the Objectives, Policies, Rules & Assessment criteria relating to the Large Lot zone Precinct of Titirangi Laingholm with the main points as follows;

1. Titirangi and Laingholm has been covered in a blanket fashion with Large Lot zoning, a simplistic 2 part precinct overlay and an SEA overlay (Significant Ecological Area) that covers almost all sites except for the houses themselves. Unlike similar zoned areas like Greenhite, there is no finer grained mix of residential zones across the area and nor is there a finer grained SEA that follows only coastal cliffs, streams & gullies, Gardens, driveways, decks, patios pools and exotic planting have been included in the SEA overlay in Titirangi/Laingholm.
Having an SEA overlay requires any vegetation removal to go from a permitted to Discretionary activity, essentially impacting on every existing site for additions or new dwellings.

3. The Large Lot and Precinct Development Control Rules are not appropriately written for Titirangi/Laingholm to the point of being highly detrimental to every landowner in the area, particularly the rules for height, yards, impervious area and building coverage, ridgeline protection and Vegetation management. These rules make simple renovations

impossible on the majority of sites, let alone making new housing on existing lots impossible or exceptionally difficult. The effect of these rules has been the destruction of property value in this area and actively reduced the residential amenity of the area. Given that 90% of the housing stock in Titirangi/Langholm was built in the 1930's to 70's that stock is now 50-90 years old and in need of replacement over the next decade to be of a modern energy efficient, safe & healthy standard.

4. The subdivision rules for Titirangi Laingholm have simply been carried over from the Waitakere Operative District Plan. The proposed rules and assessment criteria are contradictory and near impossible to fulfill & therefore those rules cannot be correctly or efficiently applied as the RMA requires.

5. The proposed rules and assessment criteria overall are too complex, too uncertain and too subjective. There is not enough permitted, controlled or restricted discretionary activity status for the rules and far too much that is Discretionary and Non Complying. There is inadequate steps from permitted to Non-complying. The outcome from this is to make applications for additions or new buildings extremely expensive, take considerable time, and have resulted in very little improvement to the housing stock of the area. Essentially the proposed rules contradict the essential tenant of the RMA which is to support the social, economic and cultural wellbeing of the community.

Detailed submission on the Unitary Plan

Part 2 Regional and district objectives and policies
1.2 Large Lot zone objectives and policies
Chapter F Precinct Objectives and Policy

7.9 Sub-precinct C: Titirangi Laingholm
The land within the Titirangi Laingholm sub-precinct includes more intensively settled residential areas within the heritage area where natural features dominate, but the built form is situated within a native bush setting. Titirangi is unique in that it is a forested community both within the RUB and the heritage area.

1. The zone precinct description needs to be more thoroughly developed as the assessment criteria requires a response to the description, policy and objectives, which in the past has been insufficient in detail and lead to difficulties with the interpretation of the rules.

For example the following could be added;
The built form has a strong well defined pattern to it – streets run along ridgelines and valleys with smaller (800-2000sqm) narrow and deep lots located along the road edge with houses mostly situated close to the road edge with the rear portion of sites in native vegetation, houses often sit close together at the side boundaries with a typically suburban level of amenity and often with poor sunlight access. Rear lots are larger (2000-

4000sqm) wider lots with larger houses often well off the road with larger garden/outdoor living spaces surrounded by native vegetation.

Part 3 Chapter K 7.9 Sub Precinct C Titirangi/Langholm
Development controls

3.1 Height
Buildings must not exceed 8m in height, with a maximum 10m elevation height. Lack of compliance is a discretionary activity.

This rule has been written for flat sites, Titirangi/Laingholm is mostly sloping and often steep, so many existing houses breach this rule already and vacant sites tend to be the steepest. A higher building on a smaller footprint requires less coverage and has less environmental impact than a house that sprawls to maintain the 8m height limit. A sprawling house has to step down many levels and is very costly to construct which is contradictory to the aims of the Auckland Plan to create affordable efficient housing.

Height needs to be at 12m like that proposed for other residential zones /2
Development that does not comply with should **not** be a discretionary activity (with high chance of limited or full public Notification), there should be a restricted discretionary step before becoming discretionary . For example if there are trees between the subject dwelling and neighbouring dwelling or road, or if the neighbouring house floor level is at a higher level, or if the house is below the road, all mitigates the effect and should be considered as restricted discretionary activities. /3

3.2 Yards
3m minimum front, side and rear yards where non-compliance is a discretionary activity

The majority of existing houses in Titirangi/Laingholm sit right on their front boundary as there are deep street reserves and often steep slopes that prevent or restrict direct covered access to houses. 90% of all sites are typically narrow, long and sloping so building across the site is typical and houses are often only 1m from side boundaries – this is efficient and environmentally sound.

Development that does not comply with clause 4.4.9.9.2.1 should **not** be a discretionary activity (Public Notification), there should be some restricted discretion. For example control flexibility into the front yard right to the boundary if there is 3m of vegetation screening from the road edge, or the house sits below the road, or is concealed by the road reserve. /4
Side and rear yard infringements should be restricted discretion as well where there are no windows overlooking neighbours, no overshadowing, or existing trees that are higher and more visually dominant than the proposal. These all mitigate effects.

4.2.3 Impervious area threshold and building coverage

Table 5

Zone/area	Impervious area threshold	Maximum building coverage
Large Lot	**10%**	**10% of the site area or 400m^2 whichever is the lesser**
Riparian yard	10%	N/A

The operative district plan allows building coverage for 150sqm or 10% whichever is the greater. This excludes decks.

This new rule is a substantial reduction.

For the majority of existing sites in the Titirangi & Laingholm area being 800-1000sqm, this rule only allows for houses with 80-100sqm building footprints including decks! Extensions on these sites would be discretionary under the proposed rule.

Every other part of the city within the MURL is allowed 35% building cover and 25% impermeable on lots 450sqm and larger and many areas do not have reticulated stormwater. Even the smallest 450sqm lot is allowed 150sqm of building coverage and 100sqm of additional impervious.

Rural & Coastal residential zones (outside the MURL) get 20 per cent or 200m², whichever is the lesser.

The rule should allow for 400sqm of building coverage or 10% whichever is the **greater**

The definition of impervious area needs to show decks, and pergolas as excluded from impermeable.

Decks are often the only outdoor living space available, decking is also often used for drive access and carparking, on a 1000sqm site it would be quite easy to go over 10% or 100sqm of decking

Part 3 Chapter H 4. Natural Resources 4.3 Vegetation Management

1.2 Vegetation management in overlays

[rp]

Activity	SEA	
Any vegetation alteration or removal		Discretionary
Vegetation alteration or removal within a SEA for a building platform and access way for one dwelling per site where there is no practicable alternative location outside the		Controlled

area of protected vegetation on the site

There is no explanation as to why vegetation removal in the SEA is Discretionary, there should be a restricted discretionary step & threshold first. There is no assessment criteria given for this activity.

2.7 Vegetation alteration or removal within a SEA for a building platform and access way for a dwelling where there is no practicable alternative location outside the area of protected vegetation on the site

1.The total cleared area is no more than 300m^2.

In the Operative Plan there is another step if clearance is larger than 300sqm, which was to 500sqm and which should be discretionary with assessment criteria in respect of the best platform being well away from the road and additional clearance required for driveway and maneuvering areas.

There is also no consideration for the site size in this rule, a 1000sqm site can clear 300sqm which is 30% of the site, yet on a 4000sqm site this is only 7.5% , 500sqm clearance on a 4000sqm site is still only 12.5%. I have come across many cases where the best platform from a geotechnical stability, ecological, landscape and solar perspective is well off the road by 100m which takes up all the "vegetation" clearance, and the planners ask for the house to be relocated close to the road in a shaded, steep, unstable location purely because of this type of rule.

SEA maps Titirangi/Laingholm

The SEA maps of this area are very simplistic and it appears that where a house and grass is visible in aireal maps these have been excluded, the maps ignores driveways, is unable to distinguish exotic garden planting and lawns, decks, patios etc under trees, no other SEA area has such extensive coverage.
Native vegetation cannot be determined from aerial photos at a 1:500 scale, nor can its quality be given a blanket single assessment as the SEA overlay does.

Chapter J 4. Built Environment 4.3 Ridgeline Protection

In general Titirangi Laingholm is the only area within the MURL which has Ridgeline Protection and it impacts on the majority of sites as the historic development pattern is along ridgelines, also given the restrictions on coverage, slope and vegetation clearance going up with extensions is often the only option.

Ridgeline Protection rules should be removed from this area entirely. /9

1. Development controls 1.1 Building location

1.Buildings and structures must not locate within the overlay except for:
a. decks less than 1m in height
Why are decks restricted to 1m when the area is sloping, could it not be "decks below the highest point of the existing building. /10
b. additions or alterations to buildings that do not increase its height or building coverage.
How does someone add if not to go up or out, this rule makes no sense unless it intends to limit the majority of households from renovating, which is outrageous. /11
2. New buildings and structures and additions and alterations in the Waitakere Ranges Heritage Area that do not comply with clause 1 above are a discretionary activity.
Why is this discretionary, should there not be a step before this controlled or restricted discretion. Given that most sites have trees that are higher than the houses and the 8m height limit an increase in building height is likely to have a less than minor effect /12
3.New buildings and structures and additions and alterations in the Waitakere Ranges Heritage Area that do not comply with clause 1 above and are visible in front of the sea or above the ridgeline or skyline when viewed from a road or public place are a non-complying activity, except for masts and attached antennas which are a discretionary activity.
Again why should this be discretionary, due to the slopes of the land the majority of houses are already visible from public places and again given the restrictive height rules why should building height be an issue, it should be controlled only. /13

Conclusions

In general development under the Unitary Plan in the Titirangi Laingholm area is the most restrictive in Auckland, and consideration must be given that rules are not applied in isolation , for the majority of homeowners all the rules impact on an alteration, addition or new dwelling. Under the Operative Plan these restrictive rules have made most development expensive, time consuming if not impossible. /14

SHEET 1

Scale 1:500 @ A3

SHEET 2

Scale 1:500 @ A3

SHEET 3


Auckland Council GIS Viewer
X: 1747979.5328, Y: 5910643.9023
Current Action: Pan map
Search
Rates summary
Map content
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