

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**CA-**

*BETWEEN*

**NORTH EASTERN INVESTMENTS  
LIMITED & HERITAGE LAND LIMITED**

**Appellants**

*AND*

**AUCKLAND CITY COUNCIL**

**First Respondent**

*AND*

**HOUSING NEW ZEALAND  
CORPORATION**

**Second Respondent**

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**NOTICE OF APPEAL  
29 May 2018**

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## NOTICE OF APPEAL

**TO:** The Registrar  
Court of Appeal

**North Eastern Investments Limited** and **Heritage Land Limited**, give notice that they are appealing to the Court of Appeal against the judgment of the High Court dated 2 May 2018 in *North Eastern Investments Limited & Others v. Auckland Council & Others* [2018] NZHC 916 and any ancillary costs decision on the basis that the High Court decision was erroneous in fact and law.

### **Grounds of Appeal**

#### **Ground 1**

1. The High Court did not determine correctly the Appellants argument that it was unfair for the Independent Hearings Panel (IHP) to consider - as Auckland Council's evidence - that part of a pre-circulated statement written by a planner called Ms Conner on the IHP website concerning the Appellants submission on zoning for its land when:
  - (a) Auckland Council decided not to call Ms. Conner.
  - (b) The IHP's Procedural Manual required a witness to attend the hearing.
  - (c) The IHP granted the Appellants the right to cross-examine Ms Conner under the Local Government (Auckland) Transitional Provisions Act and the IHP's Procedures Manual.
  - (d) The IHP invited the Appellants to acknowledge that Ms. Conner would not be cross-examined on the basis that Ms Conner was not called by the Auckland Council. An event the Court called a 'waiver'.

- (e) Without the knowledge of the Appellants the IHP summonsed the statement from Ms Conner at Housing New Zealand's request and the IHP placed it on its website (in a separate digital folder) while excusing her attendance at the hearing.
- (f) Housing New Zealand did not oppose the Appellants submission and there is no evidence the Corporation used the evidence in the statement of Ms. Conner concerning the Appellant's site.
- (g) Hearings must be in public.

## **Ground 2**

2. The last sentence of [47] of the High Court judgment is an erroneous statement of principle. Context is everything. The special features of this case including the right to cross-examine and the interactions between the IHP and the Appellants' representatives and the way the case was run by Auckland Council and the Appellant's means that it was unfair to consider the evidence of Ms Conner.

## **Ground 3**

3. In relation to the MCI issue the High Court incorrectly concluded that the submissions in relation to the non-statutory MCI layer had as their logical and foreseeable consequence the elevation of the MCI method to a statutory method.
4. In relation to [81] the High Court asked itself the wrong question. The issue is not what Auckland Council was required to do as part of its task in the statutory evaluation. The question is whether or not the submissions pointed to the particular solution that was adopted by the IHP. The Appellants do not criticize the IHP attempting to address the environmental issue. The Appellants criticise the fact that the solution was treated as within scope. The consequence of it being within scope

is that there is no general right of appeal in relation to the IHP determination.

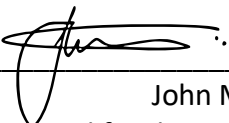
**Judgment Sought**

An order quashing the High Court decision and any ancillary orders including costs.

An order directing a rehearing on the Appellants relief in Topic 81 regarding rezoning and precinct. The parties agree the IHP remains constituted to hear the matter if it is referred back.

Costs.

Dated this 29th day of May 2018

  
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John Maassen  
Counsel for the Appellants

TO: The Registrar  
Court of Appeal  
of New Zealand

AND TO: The First & Second Respondents

This document is filed by Mark Somerville Dobson, Solicitor for the abovenamed Appellant of the firm WADHAM PARTNERS. The address for service of the abovenamed Appellant is 192 Broadway Avenue, Palmerston North.

Documents for service on the abovenamed Appellant may be left at that address for service or may be:

- (a) Posted to the Solicitor at PO Box 345, Palmerston North 4440, or
- (b) Left for the Solicitor at a document exchange for direction to DX PP80003, Palmerston North, or
- (c) Transmitted to the Solicitor by facsimile to (06) 356-1512.