

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2016-404-

UNDER the Local Government (Auckland Transitional Provisions) Act 2010 ("**the Act**")

IN THE MATTER of an appeal pursuant to s158 of the Act

BETWEEN **WAYTEMORE FORESTS LIMITED** having its registered office at 22 Bell Avenue, Otahuhu, Auckland

Appellant

AND **AUCKLAND COUNCIL** a unitary authority established under the Local Government (Auckland Council) Act 2009

Respondent

**NOTICE OF APPEAL AGAINST UNITARY PLAN DECISIONS OF
AUCKLAND COUNCIL**

Date: 16 September 2016

Solicitor for Appellant:

Brian Joyce
Clendons North Shore
PO Box 305349
Auckland 0757

Phone: (09) 377 8419
Fax: (09) 476 3679

Counsel for Appellant:

Martin Williams
PO Box 754
Napier

Phone: (06) 835 0665
Fax: (06) 835 6269

To: The Registrar, High Court, Auckland

And

To: Auckland Council

This document notifies you that –

1. Waytemore Forests Limited (**appellant**) hereby appeals to the High Court at Auckland against a decision made by Auckland Council (**respondent**) dated and received by the appellant on 19 August 2016 **UPON THE GROUNDS** that the decision is wrong in law.

DECISION APPEALED

2. The appellant appeals the decision made by the respondent pursuant to s148 of the Act regarding the zoning of Hunua Production Forest as Public Open Space (Conservation), and in particular whereby only part of Hunua Production Forest was rezoned Rural Production under the decision, but most of the forest retained a Public Open Space (Conservation) zoning as under the Unitary Plan when notified.

STANDING

3. The appellant made submissions on the Unitary Plan in relation to the above matter.
4. The respondent accepted a recommendation of the Auckland Unitary Plan Independent Hearings Panel which considered submissions to the Unitary Plan pursuant to s 128 of the Act (**Hearings Panel**) which resulted in the decision referred to above subject of this appeal.
5. The appellant therefore has standing to appeal to the High Court under s 158 of the Act on questions of law.

ERRORS OF LAW

6. In making the decision to only partially rezone the Hunua Production Forest as Rural Production Zone, the respondent erred in law in the following respects:

- (a) Both the appellant and respondent made submissions to the Unitary Plan requesting that all of Hunua Production Forest (as defined through reference to specific parcels of land, and a Forestry Right registered under the Forestry Rights Registration Act (1993)) be rezoned from Public Open Space (Conservation) to Rural Production.
- (b) No other submitter to the Unitary Plan made either submissions or further submissions regarding the zoning of Hunua Production Forest, including by way of opposition to the requested rezoning.
- (c) No reasons are given in either the Hearing Panel's recommendations, or the respondent's decisions regarding them, as to why only part of the Hunua Production Forest was rezoned.
- (d) It was unreasonable and irrational to only rezone part of the Hunua Production Forest as Rural Production Zone, but not all of it, and without any statement of reasons given for that partial (but not complete) rezoning.
- (e) No evaluation as directed under s32 and s32AA of the Resource Management Act 1991 (**RMA**) was undertaken at any stage, of the regulatory, economic or social costs that would result from a Public Open Space (Conservation) zoning, and that would not arise under a Rural Production zoning.

QUESTIONS OF LAW

7. The appeal raises the following questions of law:
- (a) With the Hearings Panel recommending and the respondent deciding to rezone part but not all of the Hunua Production Forest, were they legally required to give reasons explaining that partial rezoning?
 - (b) Is a decision made pursuant to submissions to rezone an entire forest, but whereby only part of that forest is rezoned, and in the absence of any reasons being given, rational or reasonable?
 - (c) Is such a decision unlawful under the Act in the absence of any section 32 evaluation being undertaken of the regulatory, economic or social costs that would result from that decision?
 - (d) In the circumstances, and as a matter of law, must the forest be rezoned Rural Production Zone in its entirety?

GROUNDS OF APPEAL

8. The grounds of this appeal are as follows:
- (a) The only submissions made to the Unitary Plan on the matter were by the appellant and respondent, each seeking a complete rezoning of Hunua Production Forest from Public Open Space (Conservation) to Rural Production.
 - (b) Auckland Council gave evidence to the Hearings Panel that the Public Open Space (Conservation) was in error.
 - (c) No submissions were made opposing the rezoning.
 - (d) With the Hearings Panel recommending and the respondent in turn deciding to rezone part of the Hunua Production Forest, it was irrational and unreasonable not to rezone all of it.
 - (e) In the alternative, it was irrational and unreasonable to rezone only part but not all of the forest in the absence of reasons explaining why only a partial rezoning was recommended and adopted.
 - (f) Neither the Hearings Panel nor respondent undertook any evaluation of the kind required by section 32(2) of the RMA regarding the regulatory, economic or social costs that result from the Public Open Space (Conservation) zoning as retained over part of the forest, and that would not otherwise arise under a Rural Production zoning. Such additional costs would be significant, with resource consents being required for activities basic to production forestry including earthworks and harvesting.

THE APPELLANT SEEKS

- (a) A direction that Auckland Council rezone the Hunua Production Forest, over the full area of land referenced in the appellant's and respondent's submissions to the Unitary Plan, from Public Open Space (Conservation) to Rural Production Zone.
- (b) Costs.

Dated this 16 day of September 2016.



Brian Joyce
Solicitor for appellant

This notice of appeal is filed by **Brian James Joyce**, solicitor for the appellants, of the firm of Clendons North Shore.

The address for service of the appellant is at the offices of Clendons North Shore, Suite 4, Building F, Apollo Technical Park, 3 Orbit Drive, Mairangi Bay.

Documents for service on the appellants may be:

- (a) Left at the address for service.
- (b) Posted to the solicitor at P O Box 305 349, Auckland 0757.
- (c) Transmitted to the solicitor by fax to (09) 476 3679.
- (d) Emailed to the solicitor at brian.joyce@clendons-ns.co.nz.

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MEMORANDUM OF COUNSEL REGARDING SERVICE OF APPEAL

Date: 16 September 2016

Solicitor for Appellant:

Brian Joyce
Clendons North Shore
PO Box 305349
Auckland 0757

Phone: (09) 377 8419
Fax: (09) 476 3679

Counsel for Appellant:

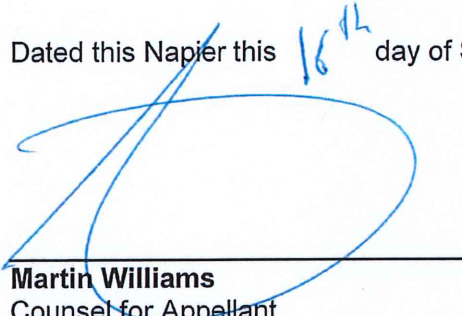
Martin Williams
PO Box 754
Napier

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Fax: (06) 835 6269

MAY IT PLEASE THE COURT:

1. Filed herewith is a notice of appeal pursuant to s 158 of the Local Government (Auckland Transitional Provisions) Act 2010 ("**the Act**").
2. Rule 20.6(1)(c) of High Court Rules requires that this appeal be served on every other party directly affected by it.
3. As identified in paragraph 6 (b) of the notice of appeal, the only submitters to the provisions of the Auckland Unitary Plan regarding the matter raised by the appeal are the appellant and respondent themselves.
4. It is not considered that there are any other adversely affected parties, noting that the appellant's and respondent's submissions seeking rezoning of the forest in question were publicly notified with a universal opportunity for anyone to make a further submission opposing the rezoning of the land in question.
5. No person within Auckland took that opportunity.
6. It is respectfully submitted therefore that service of the appeal on the respondent would meet the requirements of Rule 20.6(1)(c) of the High Court Rules.

Dated this Napier this 16th day of September 2016.



Martin Williams
Counsel for Appellant