

**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(1) 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 080 Rezoning and precincts (General) and 081 Rezoning and precincts (Geographic Areas)

BETWEEN **NO. 12 LOMOND LIMITED**

Appellant

AND **AUCKLAND COUNCIL**

Respondent

NOTICE OF APPEAL

Dated 16 September 2016

To: The Registrar
Environment Court
Auckland

1. No. 12 Lomond Limited (**12 Lomond**) appeals against a decision of the Auckland Council (the **Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).
2. 12 Lomond has the right to appeal the Council's decision under section 156(1) of the LGATPA because the Council rejected a recommendation of the Hearings Panel in relation to a provision or matter 12 Lomond addressed in its submission (number 3197) on the Proposed Plan. The Council decided on an alternative solution, which resulted in a provision being included in the Proposed Plan.
3. 12 Lomond provides further details of the reasons for the appeal below.
4. 12 Lomond is not a trade competitor for the purposes of section 308D of the RMA.
5. 12 Lomond is directly affected by an effect of the subject of the appeal that:
 - (a) adversely affects the environment; and
 - (b) does not relate to trade competition or the effects of trade competition.
6. 12 Lomond received notice of the decision on 19 August 2016.
7. The decision that 12 Lomond is appealing is the decision of the Council to reject the recommendation of the Independent Hearings Panel that the Takapuna 2 Precinct not be adopted and instead apply a height variation control to some of the land in the Takapuna 2 Precinct. The relevant hearing topics are 080 Rezoning and precincts (General) and 081 Rezoning and precincts (Geographic areas).
8. The reasons for the appeal are as follows:
 - (a) 12 Lomond's submission supported the inclusion of the Takapuna 2 Precinct in the Proposed Plan.
 - (b) The Council's decision is to reject the Independent Hearings Panel recommendation that the Takapuna 2 Precinct not be adopted, but the decision only provides for a height variation control as an alternative solution applying to some of the land in the Takapuna 2 Precinct.
 - (c) The height variation control is an inadequate alternative solution as it does not address the detailed matters that are provided for in the Takapuna 2 Precinct provisions to enable appropriate intensification of the land in the Takapuna 2 Precinct.
 - (d) The alternative solution will not give effect to the purpose and principles of the Resource Management Act 1991 and, in particular, will not:
 - (i) Provide for efficient use and development of the land in the Takapuna 2 Precinct in comparison to reinstatement of the Takapuna 2 Precinct provisions.
 - (ii) Enable people and communities to provide for their social and economic wellbeing to the extent that reinstatement of the Takapuna 2 Precinct provisions will.

- (e) Reinstatement of the Takapuna 2 Precinct provisions is the most appropriate way to achieve the purpose and principles of the RMA and is the most appropriate way to achieve the overall intensification thrust provided for in the Proposed Plan.
9. 12 Lomond seeks the following relief:
- (a) Reinstatement of all of the Takapuna 2 Precinct provisions from the notified version of the Proposed Plan.
- (b) Such further or other relief, including consequential relief, as may be necessary to address the reasons for this appeal.
10. 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.
11. The following documents are attached to this notice:
- (a) A copy of the relevant decision – **Attachment 1**.
- (b) A list of names and addresses of persons served with a copy of this notice – **Attachment 2**.
- (c) A copy of 12 Lomond's submission on the Proposed Plan – **Attachment 3**.
12. Any person served with a copy of this appeal may obtain a copy of the above documents by requesting them from the appellant.



S J Simons / C D H Malone
Counsel for No 12 Lomond Limited

16 September 2016

Date

Address for service of appellant:

No. 12 Lomond Limited
c/o Berry Simons
Level 1, Old South British Building, 3-13 Shortland Street, Auckland
PO Box 3144, Shortland Street, Auckland 1140

Contact person: S J Simons, Partner / CDH Malone, Senior Associate
Telephone: 09 909 7311 / 09 969 2302
Email: sue@berrysimons.co.nz / craig@berrysimons.co.nz

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.

ATTACHMENT 1

A COPY OF THE RELEVANT DECISION

ATTACHMENT 2

NAMES AND ADDRESSES OF PERSONS SERVED WITH A COPY OF THIS NOTICE

Auckland Council

unitaryplan@aucklandcouncil.govt.nz

ATTACHMENT 3

A COPY OF NO 12 LOMOND'S SUBMISSION



**Decisions of the Auckland Council on
recommendations by the Auckland Unitary
Plan Independent Hearings Panel on
submissions and further submissions to the
Proposed Auckland Unitary Plan**

Decisions Report

19 August 2016

51. Council decisions relating to Panel report entitled “Report to Auckland Council Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the NORTH)”

Panel recommendations accepted:

51.1 The Council has accepted all the recommendations of the Panel contained in the Panel reports for Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 – (recommendations in the NORTH), as they relate to the content of the PAUP, and also the associated recommendations as they appear in the plan and the maps except as listed below at paragraph 51.2.

Panel recommendations rejected:

51.2 The Council has rejected the Panel recommendations in relation to Hearing Topic 080 Rezoning and precincts (General), and 081 Rezoning and precincts (Geographic areas) and 016 and 017 - Rural urban boundary and Annexures 1 – 6, July 2016 (recommendations in the NORTH) as listed below, with accompanying reasons, alternative solutions and section 32AA evaluation (where necessary):

(a) The deletion of the Akoranga precinct and reliance upon the Auckland University of Technology (AUT) designation (Designation 6010)

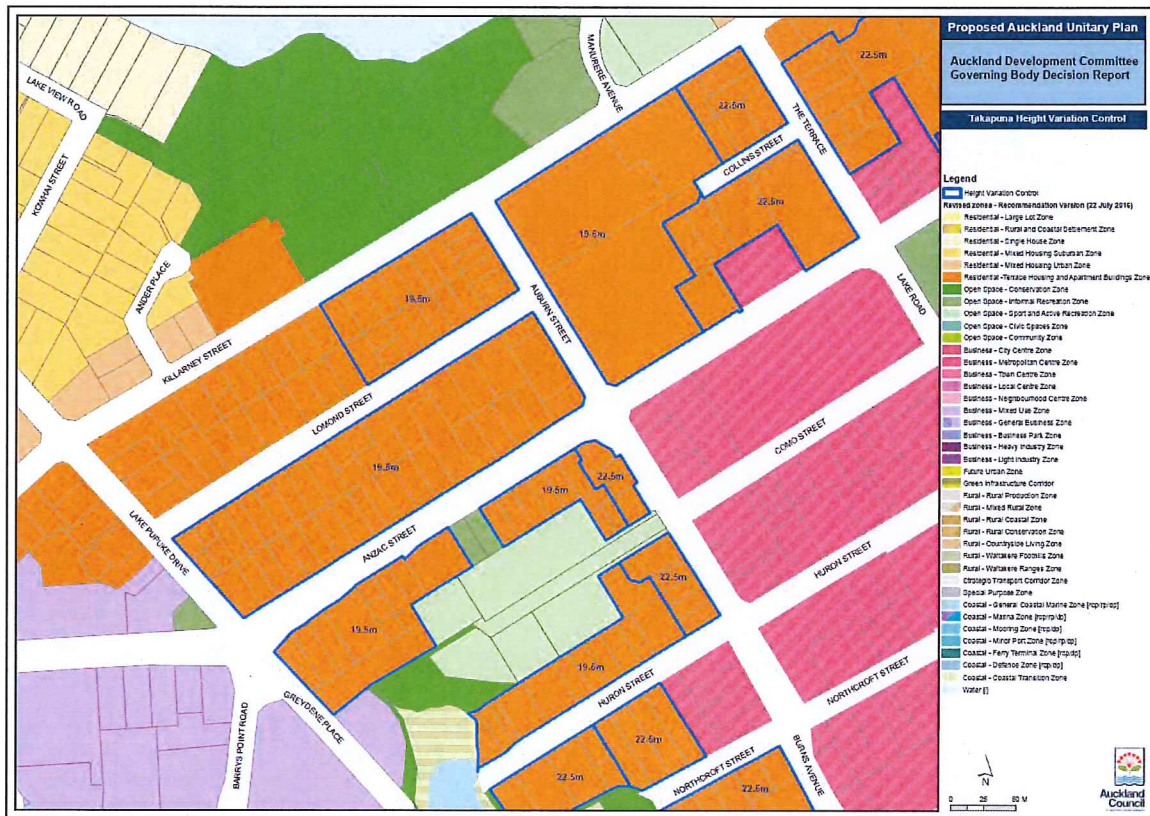
Reasons
(i) The removal of the precinct removes important enabling aspects and controls that were important to the ongoing use of the site.
(ii) The inclusion of the precinct will ensure integrated development of the precinct, particularly in the instance that the land is not needed by Auckland University of Technology.
(iii) The precinct provides for a range of activities within the site, including complementary tertiary activities which are not accessory to tertiary education and, therefore, are not provided for by the designation. It also enables additional building height which is important to support the development within the precinct.
(iv) The provisions proposed to be included in the precinct will enable potential adverse effects on the amenity and function of nearby town centres of Northcote and Takapuna and on the local road network to be

considered through more directive assessment enabled by the inclusion of the precinct.	
Alternative solution	See Attachment A
Section 32AA evaluation	See Attachment B

- (b) **The deletion of the Takapuna 2 precinct and reliance upon the provisions of the underlying zones (Terraced House and Apartment Buildings and Business – Metropolitan)**

Reasons	
(i) Deletion of the precinct means that less intensive development is provided for, contrary to the intent of the Panel's recommendation to provide for intensification around the Takapuna metropolitan centre.	
(ii) It is also contrary to the recommended provisions of the RPS, and is inconsistent with the application of Height Variation Controls across the rest of the Terrace Housing and Apartment Building zone surrounding the Takapuna Metropolitan Centre.	
Alternative solution	See Attachment A

Topic Number	Topic Name	Change requested to planning maps
Topic 016, 017, 080, 081	Rural Urban Boundary, rezoning and precincts (North)	Add a Height Variation Control of 19.5 metres and a Height Variation Control of 22.5 metres to properties which were previously in Takapuna 2 Precinct (Council's closing statement position) – see below.





SUBMISSION ON PROPOSED AUCKLAND UNITARY PLAN

To: Auckland Council ("Council")

Name: Terence Emms

1. INTRODUCTION

1.1 This submission relates to 12 lomond limited and land at 12 lomond street, Takapuna ("the site").

2. SCOPE OF SUBMISSION

2.1 This submission relates to the specific provisions of the proposed Auckland Unitary Plan ("proposed Unitary Plan or PAUP") as identified in this submission.

3. NATURE OF SUBMISSION

3.1 12 lomond supports the zoning of the site as 'Terrace Housing and Apartment Building' with the Takapuna Precinct Plan (Part 3.K.5.48) but opposes the specific provisions of the proposed Unitary Plan identified in this submission (unless otherwise stated).

3.2 12 lomond opposes the wording in the Introduction to the Unitary Plan (G.1.4) which provides that the Council may consider provisions beyond those specifically listed as assessment criteria.

3.3 12 lomond opposes, in their entirety, the requirements for the preparation of Cultural Impact Assessments in Rule G.2.7.4 of the PAUP.

3.4 12 Lomond oppose and seek the removal of the storey control associated with Rule 3.1.3.4.2 (Building Height).

3.5 12 lomond opposes the requirements in the PAUP for the preparation of Design Statements as separate sections within the Assessment of Effects accompanying resource consent applications.

3.6 12 Lomond opposes the requirement to incorporate sustainable development in the prescriptive format set out in Rule H.6.4.2.1 and Rule H.6.4.2.2 and seeks that these be deleted.

3.7 12 lomond opposes the requirement to incorporate affordable housing within a development of 15 or more dwellings. The failed plan change by Queenstown Lakes District Council to establish affordable housing in all developments should illustrate the inability to require this within the New Zealand legislative system in an effective manner.

4. REASONS FOR SUBMISSION

4.1 Except as otherwise set out in this submission, 12 lomond does not support the specific provisions of the proposed Unitary Plan identified in this submission. Those provisions require

amendment, as sought by 12 Lomond below. This is because, without the amendments proposed by 12 Lomond, those provisions:

- (a) will not promote sustainable management of resources, will not achieve the purpose of the Resource Management Act 1991 ("RMA") and are contrary to Part 2 and other provisions of the RMA;
- (b) will not enable the social and economic wellbeing of the community in the Auckland region; and
- (c) do not represent the most appropriate means of exercising the Council's functions, having regard to the efficiency and effectiveness of the provisions relative to other means.

4.2 In particular, and without limiting the generality of the above:

Zoning

- (a) 12 Lomond supports the zoning of the site with its associated Precinct Plan (Takapuna Precinct 2) as it will encourage the development of the site for more intensive purposes in line with the Unitary Plan's overall direction and the RMA's purpose of sustainable management of resources.

Wording at introduction G.1.4

- (b) The wording contained within the third paragraph under the heading 'Assessment Criteria' at I.1.4 Applying for Resource Consent is opposed in its entirety.
- (c) This wording effectively gives Council carte blanche to use any other policy or criteria within the PAUP at their whim.
- (d) It is not appropriate for processing planners to be encouraged to consider policies or criteria outside of the listed assessment criteria. This is because it may result in considerable uncertainty in respect of applications for controlled and restricted discretionary activities, as it provides the Council with scope to argue that a wide range of policies and criteria which would not otherwise be immediately relevant should be considered. This will make it very difficult for applicants to understand exactly which policies and criteria it must satisfy in order to obtain consent, or to understand the conditions that may be imposed.

Cultural Impact Assessments

- (e) The submitter opposes the requirements for the preparation of Cultural Impact Assessments contained within Rule G.2.2.7.4 Cultural Impact Assessments. These requirements are overly onerous requiring that cultural impact assessments be prepared as part of a wide variety of resource consent applications. Many such applications would not normally involve iwi concerns and would be non-notified. Effectively all are being opened up for iwi input. The process requirements for these are burdensome and expensive, particularly given the very significant number of activities and applications to which they relate.

Storey Control

- (f) The storey control significantly restricts the ability of the sites to intensify and therefore is contrary to one of the overarching intents of the PAUP.
- (g) For example, the storey control does not allow a building with retail/commercial at ground floor and residential above to be built to the height limit in the zone.
- (h) Potentially an additional level of development could be attained if there was no storey control.
- (i) There are generally requirements for the building to be considered as a restricted discretionary activity and have urban design input which ensures that the design and appearance of a building can be considered by Council.
- (j) The storey control is **opposed** as it restricts appropriate development of land.

Design Statements

- (k) The Unitary Plan requires applicants to provide a design statement with their resource consent application for specified activities. This requirement is onerous for the following reasons:
 - i. Applicants are already required to provide a complete package of supporting documentation with any AEE. In respect to proposals which relate to built form, applicants more often than not provide a significant amount of material, including contextual analysis, concept design, site plans and elevations. It would be unnecessarily onerous to require design statements as an additional discrete package of information within an AEE.
 - ii. The level of control proposed in the Unitary Plan which the Council is seeking to impose on the design of virtually any new built form is concerning. This is especially so as the design statements encourage compliance with the Auckland Design Manual which has undergone no consultation to date and is intended to change from time to time. The Design Manual is also not a resource management document and is not being developed in accordance with Schedule 1 of the RMA, nor is it proposed to be subject to any Environment Court or other independent oversight. It is therefore inappropriate to rely heavily on such a document in the proposed Unitary Plan.
 - iii. The new Design Statement process is also out of step with recent RMA reforms which seek to simplify and streamline the consenting process. The Design Statement process is not the only method by which quality design can be achieved throughout Auckland and Council should not seek to rely on this at the expense of other methods.

Sustainable Development

- (l) The submitter **opposes** the requirement to incorporate sustainable development in the prescriptive format set out in Rule H.6.4.2.
- (m) The control stipulates the minimum levels from the NZ Green Building Council Green Star Tool or certification under the Living Building Challenge. Both of these are prescriptive in nature and do not enable alternative ideas which may be more

sustainable i.e. a building may be more sustainable than a 6 star rated building however is unable to achieve the standard as it did not receive enough of the points.

- (n) The submitter considers that sustainable development should be incorporated in to most designs however the requirement is considered unworkable in its current format as it will place substantial costs upon the developers of multiple household units.
- (o) The submitter **opposes** the requirement to incorporate sustainable development in the prescriptive format set out in Rule H.6.4.2.2 where new buildings with a GFA of 5000m2 or greater and where 80 per cent or more of the GFA is to be used as an office are proposed.
- (p) The submitter considers that sustainable development is not a matter for local government to decide. If these features are required to be legislated it should be by the NZ Building Code.

Affordable Housing

- (q) The submitter **opposes** the requirement to incorporate affordable housing (as per Rule H.6.6.1) for those housing developments which provide for 15 or more dwellings. It is considered that this provision will make housing more unaffordable as it will result in subdivisions or developments not exceeding the 15 house/lot threshold and thereby drip feeding properties on to the market.
- (r) Affordable housing ratios were attempted to be bought in via Council initiated plan change (Queenstown Lakes Council) which was declined by the Environment Court. The findings of this case are applicable to the PAUP and its requirement to provide for affordable housing.

5. SPECIFIC RELIEF SOUGHT

5.1 12 Iomond therefore seeks the following decision from Auckland Council on the proposed Unitary Plan:

- (a) The Precinct Plan is confirmed for the site with its associated provisions. 11
- (b) Deletion of the third paragraph under the heading 'Assessment Criteria' of 1.1.4 *Applying for Resource Consent* and/or clarification within G.1.4 of the PAUP that the matters for discretion and assessment criteria listed in the PAUP for Controlled and Restricted Discretionary Activities are the sole matter for assessment of these type of consent. 12
- (c) That the requirements for Cultural Impact Assessments be removed from the PAUP. 13
- (d) The storey component is removed from the building height rule for all zones.
- (e) [That the requirements for separate Design Statements be removed from the PAUP and [References to the Auckland Design Manual include confirmation that this is a non-statutory guideline.] 14
- (f) That the [sustainable development] and [affordable housing] provisions are removed from the PAUP. 15

(g) Such further or other consequential relief as may be necessary to fully give effect to the relief sought in this submission.

17

6. OTHER MATTERS


6.1 12 Lomond could not gain an advantage in trade competition through its submission.

6.2 12 Lomond wishes to be heard in support of its submission.

No 12 lomond limited

Date: 26 February 2014

Signature:



Terence Emms - director

Contact person: Terry emms

Address for service: Po Box 33 612 Takapuna

Telephone: 915 9044 / 021 940714

Facsimile: 4895601

Email: terry@classictravel.co.nz