

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 Process, including Topic 005 RPS issue; Topic 011 RPS Rural; Topic 018 RPS General; Topics 056 and 057 Rural Objectives and Policy and Rural Activities and Controls; Topic 064 subdivision.

BETWEEN **CABRA RURAL DEVELOPMENTS LIMITED**
RAHOPARA FARMS LIMITED
SH16 LIMITED
FOREST HABITATS LIMITED
RAUHORI FORESTS LIMITED
MONOWAI PROPERTIES LIMITED
KAREPIRO INVESTMENTS LIMITED

Appellants

AND **AUCKLAND COUNCIL**

Respondent

NOTICE OF APPEAL

Dated: 14 September 2016

To: The Registrar
Environment Court
Auckland

1. Cabra Rural Developments Limited (the Appellants) appeal against part of a decision of the Auckland Council (the **Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).
2. The Appellants have the right to appeal the Council's decision –
 - (a) Under section 156(1) of the LGATPA because the Council rejected a recommendation of the Hearings Panel in relation to a provision or matter the Appellant addressed in their submissions on the proposed plan (submission numbers 4309 and 4323). The Council decided on an alternative solution, which resulted in provisions being included in the proposed plan and matters being excluded from the Proposed Plan.
3. In addition the Council has included provision in the proposed plan that is not within the scope of the submissions, contrary to section 148 (1) (b) (ii).
4. The Appellants provide further details of the reasons for their appeal below.
5. The Appellants are not a trade competitor for the purposes of section 308D of the RMA.
6. The Appellants received notice of the decision on or about 19 August 2016.
7. The parts of the decision that the Appellants appeal is the addition of new provisions and amendment and deletion of Panel recommended provisions concerning rural subdivision, as set out below:

Provision in Council's Decision Version (except where otherwise stated)
RPS B9
Objective B9.4.1(1) New objective introduced by Council
Objective B9.4.1 (4)
Policy B9.4.2(1)
Policy B9.4.2
Policy B9.4.2(3) in Panel Version. Deleted by Council.
B9.5
E39 Subdivision-Rural
Objective E39.2.10(c) New objective introduced by Council
Objectives E39.2.14(a) & (b)
Policy E39.3.11
Policy E39.3.15
Policy E39.3 (16) New policy introduced by Council
Policy E39.3.18
Table E39.4.2
E39.6.3.2(5) New rule introduced by Council

E39.6.4.4
E39.6.4.5
E39.6.4.6
E39.7.2
E39.8.1
E39.8.2
E15.3(4)(a)
Appendix 15
15.3

8. The reasons for the appeal are as follows:

- (a) The Council decision fails to give effect to the principles of sustainable management of resources.
- (b) The provisions in paragraph 7 above have been added, deleted or amended outside of the scope of submissions, contrary to section 148 (1) LGATPA.
- (c) The Council's decision is based on incomplete information. In particular the decision-makers did not consider or have access to:
- i.* Interim Guidance provided by the Independent Hearings Panel for RPS Topic 013;
 - ii.* Updated Interim Guidance text for RPS Topic 011 – Rural Subdivision;
 - iii.* The Appellants submissions on the Unitary Plan;
 - iv.* Submissions and further submissions on the Unitary Plan provided by third parties;
 - v.* The evidence available to the Independent Hearings Panel;
 - vi.* The Independent Hearing Panel report on Hearing Topic 11 Rural Environment July 2016;
 - vii.* The Independent Hearings Panel report on Hearing Topic 064 Subdivision – Rural July 2016
- (d) The Report to Council dated 19 August 2016 prepared by council officers does not:
- i.* Address any of the above matters or provide any adequate explanation or justification for the rejection of the Panel recommendations relating to the rural environment and rural subdivision;
 - ii.* Include a section 32AA evaluation in respect of either Topic 011 Rural Environment, or Topic 064 Subdivision – Rural.
- (e) To the extent that the officer's report purports to give reasons for rejecting Panel's recommendations, those reasons are inadequate and a bare restatement of the opinions of officers, contrary to the Panel's rejection of the evidence given in support of those opinions.
- (f) The officer's report and Council decision contain no assessment of the objectives and policies, or specific explanation of the changes and additions to those objectives and policies

or rules that now appear in the Decisions Version of the PAUP.

- (g) As a consequence of (a) to (f) above, little or no weight can be given to the Council's decision in relation to rural subdivision in terms of section 290A RMA.

Independent Hearings Panel – Interim Guidance

- (h) The updated interim guidance text for RPS Topic 011 – Rural Subdivision dated 10 June 2015 refers to the Panel having heard detailed evidence and legal submission from submitters (including the Auckland Council). In relation to rural subdivision the Panel stated:

“Subdivision in Rural zone should be provided for to a greater extent. It may be discouraged or constrained but should not be effectively prevented. There should be no requirement to use existing rural sites rather than create new ones.

...

Provision for rural subdivision should enable protection, rehabilitation, or enhancement of significant indigenous biodiversity through subdivision in appropriate locations, subject to evidence that it will produce significant environment benefits, and with cost-effective monitoring.

Provision for subdivision for rural lifestyle purposes should be enable subject to constraints on location, scale and density which:

- a. *Avoid areas that would undermine the integrity of the RUB or compromise the expansion of identified towns and villages;*
- b. *Protect areas of identified significant ecological, landscape and natural character values;*
- c. *Avoid elite land;*
- d. *Avoid areas that would constrain the operation of existing mineral extraction activities or areas containing mineral resources identified in the plan for future extraction;*
- e. *Maintain or enhance landscape, rural character and amenity values;*
- f. *Avoid the potential for reverse sensitivity effects that could hinder the continued operation of growth of existing rural activities, or the establishment of new rural activities; and*
- g. *Safeguard the operation, maintenance, upgrading or development of existing or planned infrastructure.*

Independent Hearings Panel reports to Auckland Council

- (i) The Panel report to Auckland Council in respect of Hearing Topic 064 Subdivision – Rural July 2016 confirms the views of the Panel in relation to rural subdivision including in the following terms:
- i. *Subdivision as provided from a Rural zone is to a greater extent than in the Notified Plan as signalled in the Panel's Interim Guidance on Rural Subdivision dated 10 June*

2016.

ii. *Subdivision is more enabled where it is for protection, rehabilitation or enhancement of significant indigenous biodiversity.*

- (j) The Panel's summary explains the methods by which indigenous vegetation; wetland and native re-vegetative planting subdivision is to be provided for. The Panel also recommended amended objectives and policies to reflect the changes made to the subdivision provisions.
- (k) In a cross-reference to its report in respect of Topic 011 the Panel stated that the terms of the Proposed Auckland Unitary Plan as notified subdivision was very restrictive, with many submitters saying it was tantamount to a prohibition. In response to hearing the cases presented on the rural subdivision provisions, the Panel issued interim guidance as referred above and also recommended amended provisions in that the Regional Policy Statement to reflect the guidance.
- (l) Based on a detailed consideration of the extensive evidence the Panel concluded that the recommended provisions would not result in a proliferation of lots and that there would be a greater benefit in terms of increased protection of indigenous vegetation and ecological areas. It concluded that the same should also apply to wetlands.
- (m) The Panel considered in detail the issue of new areas involved in re-vegetative planting (enhancement planting). It expressly disagreed with the Council view that if the enhancement planting rules were applied across the region it would be contrary to the strategic direction of the Auckland Plan. The Panel found that the likely lot yield would have a negligible effect on that strategic direction, while at the same time restoring or creating native bush areas, and providing an enhanced subdivision option.

9. The Appellants seek the following relief:

Provision in Council's Decision Version (except where otherwise stated)	Relief Sought (references to 'reinstate' means to the Panel Recommended Version dated 22 July 2016, original numbering)
RPS B9	
Objective B9.4.1(1) New objective introduced by Council	Delete
Objective B9.4.1 (4)	Reinstate
Policy B9.4.2(1)	Reinstate wording relating to subdivision
Policy B9.4.2	Reinstate
Policy B9.4.2(3) in Panel Version. Deleted by Council.	Reinstate
B9.5	Reinstate
E39 Subdivision-Rural	
Objective E39.2.10(c) New objective introduced by Council	Delete
Objectives E39.2.14(a) & (b)	Reinstate
Policy E39.3.11	Reinstate
Policy E39.3.15	Reinstate
Policy E39.3 (16) New policy introduced by Council	Delete
Policy E39.3.18	Reinstate

Table E39.4.2	Reinstate including original tables
E39.6.3.2(5) New rule introduced by Council	Delete
E39.6.4.4	Reinstate including original tables
E39.6.4.5	Reinstate including original tables
E39.6.4.6	Reinstate including original tables
E39.7.2	Reinstate
E39.8.1	Reinstate
E39.8.2	Reinstate
E15.3(4)(a)	Reinstate
Appendix 15	Reinstate
15.3	Reinstate

Reinstate all Panel provisions relating to rural subdivision.

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 document is attached to this notice:
- (a) a copy of the appellants submissions.



J M Savage
Counsel for the Appellants

14 September 2016

Address for service:

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Wellesley Street
Auckland 1141

Telephone: (09) 379 9780
Facsimile: (09) 377 0361
Email: Michael.savage@parkchambers.co.nz

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.

4309



SUBMISSION ON PROPOSED AUCKLAND UNITARY PLAN 2014

Submitter Details

Submitter /Organisation Name: Cabra Rural Developments Ltd
Agents Name: Brian Putt, Metro Planning Ltd
Address for Service: C/- P O Box 4013, Shortland St, Auckland 1140
Contact phone: 09 3033457
Contact email: brian@metroplanning.co.nz

Scope of Submission

1. This is a submission to: Proposed Auckland Unitary Plan
2. The specific provisions / property address / map this submission relates to are:
 - (a) The submitter company is a rural property owning entity with specific and substantial land holding interests in the rural area of the former Rodney District. The company is an active rural production businesses engaged in a variety of pastoral and forestry activities including rural land management, land retirement and land restoration.
 - (b) The company opposes the provision making general subdivision in rural zones a prohibited activity. Refer Part 3, Chapter H, Section 5 – Subdivision, Rule 5.1 Activity Table 5, Rural Zones.

Submission

3. The company opposes the specific provisions identified above
The reasons for the company's views are as follows:
 - (a) Subdivision is a basic land management technique in rural zones that implements rural productive strategies and initiatives for the economic benefit of the community.
 - (b) In addition subdivision has been recognized in the former rules of the Auckland District Plan (Rodney Section) as a means of addressing environmental degradation and thereby as the best technique to encourage conservation enhancement within a rural development model.
 - (c) This planning balance between conservation / environmental enhancement and rural development has been used for more than two decades as the sustainable management model for rural land management. The former Rodney rural rules implemented this resource management strategy in an

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effective manner wholly consistent with the purpose of the Resource Management Act 1991.

- (d) The activity status of rural subdivision which complies with the objective, policy and rule framework of the plan should necessarily be regarded as a restricted discretionary activity where the discretion is limited to the identified assessment criteria. This is the working practice for subdivision in the operative Auckland District Plan.
- (e) By abandoning this sensible rural development strategy the Unitary Plan fails to meet the purpose of the Act and consequently does not promote sustainable management outcomes for the rural parts of the Auckland region.
- (f) Without a sensible and workable subdivision provision for rural zones, the Unitary Plan will inhibit and stifle all forms of rural productive activity that can not use transferable titles or boundary adjustments / relocations to achieve the proposed rural productive purpose.

4. The company seeks the following decision from Auckland Council:

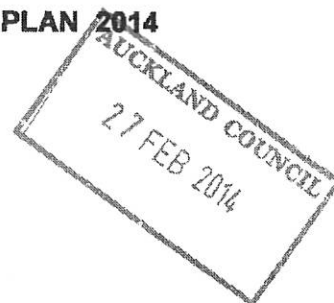
- (a) The reinstatement of the environmental enhancement subdivision rules of the Auckland District Plan (Rodney Section) as a restricted discretionary activity in the rural zones of the Unitary Plan. | 1
- (b) Provide for rural zone subdivision under Activity Table 5 involving transferable titles, boundary adjustments / relocations and subdivision in countryside living zones as restricted discretionary activities. | 2
- (c) Provide for all other subdivision including subdivisions that do not meet the restricted discretionary criteria in the rural zones of the Unitary Plan as discretionary activities. | 3

The company wishes to be heard in support of this submission. If others make a similar submission, the company will consider presenting a joint case with them at a hearing.

Attachments relevant to this submission are: Nil

Signed: 

Date: 27/02/2014

SUBMISSION ON PROPOSED AUCKLAND UNITARY PLAN 2014**Submitter Details**

Submitter /Organisation Name: Rahopara Farms Ltd
SH 16
Dillon Sawmilling Ltd
Forest Habitats Ltd
Rauhori Forests Ltd
Monowai Properties Ltd
Karepiro Investments Ltd

Agents Name: Brian Putt, Metro Planning Ltd

Address for Service: CJ- P O Box 4013, Shortland St, Auckland 1140

Contact phone: 09 3033457

Contact email: brian@metroplanning.co.nz

Scope of Submission

1. This is a submission to: Proposed Auckland Unitary Plan
2. The specific provisions / property address / map this submission relates to are:
 - (a) The submitter companies are rural property owning entities with specific and substantial land holding interests in the rural area of the former Rodney District. The companies are active rural production businesses engaged in a variety of pastoral and forestry activities including rural land management, land retirement and land restoration.
 - (b) The companies oppose the provision making general subdivision in rural zones a prohibited activity. Refer Part 3, Chapter H, Section 5 – Subdivision, Rule 5.1 Activity Table 5, Rural Zones.

Submission

3. The companies oppose the specific provisions identified above

The reasons for the companies' views are as follows:

- (a) Subdivision is a basic land management technique in rural zones that implements rural productive strategies and initiatives for the economic benefit of the community.
- (b) In addition subdivision has been recognized in the former rules of the Auckland District Plan (Rodney Section) as a means of addressing

environmental degradation and thereby as the best technique to encourage conservation enhancement within a rural development model.

- (c) This planning balance between conservation / environmental enhancement and rural development has been used for more than two decades as the sustainable management model for rural land management. The former Rodney rural rules implemented this resource management strategy in an effective manner wholly consistent with the purpose of the Resource Management Act 1991.
- (d) The activity status of rural subdivision which complies with the objective, policy and rule framework of the plan should necessarily be regarded as a restricted discretionary activity where the discretion is limited to the identified assessment criteria. This is the working practice for subdivision in the operative Auckland District Plan.
- (e) By abandoning this sensible rural development strategy the Unitary Plan fails to meet the purpose of the Act and consequently does not promote sustainable management outcomes for the rural parts of the Auckland region.
- (f) Without a sensible and workable subdivision provision for rural zones, the Unitary Plan will inhibit and stifle all forms of rural productive activity that can not use transferable titles or boundary adjustments / relocations to achieve the proposed rural productive purpose.

4. The companies seek the following decision from Auckland Council:

- (a) The reinstatement of the environmental enhancement subdivision rules of the Auckland District Plan (Rodney Section) as a restricted discretionary activity in the rural zones of the Unitary Plan.
- (b) Provide for rural zone subdivision under Activity Table 5 involving transferable titles, boundary adjustments / relocations and subdivision in countryside living zones as restricted discretionary activities.
- (c) Provide for all other subdivision including subdivisions that do not meet the restricted discretionary criteria in the rural zones of the Unitary Plan as discretionary activities.

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The companies wish to be heard in support of this submission. If others make a similar submission, the companies will consider presenting a joint case with them at a hearing.

Attachments relevant to this submission are: Nil

Signed: Brian Lillhaugh

Date: 27/02/2014