

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2017-AKL-000167

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 s156(1) LGATPA

BETWEEN **STRATEGIC PROPERTY ADVOCACY NETWORK**

Appellant

AND

AUCKLAND COUNCIL

Respondent

**NOTICE OF ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED'S WISH TO
BECOME A PARTY TO PROCEEDINGS PURSANT TO SECTION 274 RESOURCE
MANAGEMENT ACT 1991**

21 NOVEMBER 2017

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**NOTICE OF WISH TO BE A PARTY TO PROCEEDINGS UNDER S274 RMA BY THE
ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED**

TO: The Registrar
Environment Court
AUCKLAND

1. The Environmental Defence Society Incorporated (**EDS**) wishes to be party to notice of appeal ENV-2017-AKL-000167 dated 31 October 2017 by Strategic Property Advocacy Network (**Appellant**) to the Environment Court (**Appeal**) against a decision of Auckland Council (**Respondent**) on the Proposed Auckland Unitary Plan (**PAUP**).

Appeal

2. EDS understands the Appeal addresses the default status of certain subdivision in the Waitakere Ranges Heritage Area Overlay (**Waitakere Ranges Overlay**) within the PAUP. By way of background:
 - a. In the PAUP as notified, subdivision to a density beyond that expressly provided for in certain parts of the Waitakere Ranges was allocated an activity status of Prohibited Activity.
 - b. In its recommendations on the PAUP, the Independent Hearings Panel (**Panel**) recommended an activity status for such subdivision of Non-Complying Activity.
 - c. The Panel's recommendation was accepted by the Respondent in its decisions on the PAUP.
 - d. The Waitakere Ranges Protection Society (**WRPS**) appealed that decision to the High Court. EDS joined in support of that appeal under s158(5) LGATPA and s301 RMA¹.

¹ Notice of intention to appear dated 28 September 2017.

- e. The High Court upheld WRPS's appeal in *Bunnings and Others v Auckland Council* [2017] NZHC 2141 (**High Court Decision**).
- f. The High Court Decision:
 - i. Concluded the Panel had applied an incorrect legal test in determining that a Prohibited Activity status should not be applied; and
 - ii. Reinstated Prohibited Activity status for certain subdivision in the Waitakere Ranges Overlay.
- g. The High Court Decision triggered appeal rights to the Environment Court under s156(1) LGATPA, which have been exercised by the Appellant.

Interest

- 3. EDS was a submitter² and a further submitter³ on the PAUP. It specifically addressed protection of the Waitakere Ranges. It entered an appearance before the Panel in which it specifically addressed protection of the Waitakere Ranges.
- 4. EDS was a party to the subsequent High Court appeal of the Respondent's decision on activity status for certain subdivision in the Waitakere Ranges Overlay as discussed above.
- 5. EDS has an interest in the proceedings that is greater than that of the general public:
 - a. EDS is a not-for-profit national environmental advocacy group. It was established in 1971 with the objective of bringing together the disciplines of law, science and planning to advocate for better environmental outcomes in resource management matters. It has been active in assessing the effectiveness of the RMA and statutory

² Submission number 4735.

³ Further submission number 1974.

planning documents in addressing key environmental issues. It has been directly engaged in protection of the Waitakere Ranges for a number of years.

b. WRPS's appeal of the Respondent's decision to revert to Non-Complying Activity status for subdivision was successful. EDS was a s301 party supporting that outcome. The Appeal has been filed in light of the High Court Decision which upheld WRPS's appeal.

6. EDS is not a trade competitor for the purposes of s308C or s308CA RMA.

Position & Reasons

7. EDS is interested in and opposes the Appeal in its entirety

8. The reasons for EDS's position are:

a. The reasons set out in EDS's original and further submissions on the PAUP.

b. The relief sought in the Appeal is inappropriate in terms of s32 RMA, contrary to sustainable management of natural and physical resources and inconsistent with the RMA's purposes and principles.

c. Prohibited Activity status is appropriate for subdivision to a density beyond that expressly provided for in certain parts of the Waitakere Ranges consistent with the reasons supporting use of Prohibited Activity status in *Coromandel Watchdog v Chief Executive of the Ministry of Economic Development* [2007] NZCA 473⁴.

d. Prohibited Activity status is the most appropriate way of giving effect to:

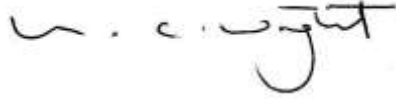
i. The Waitakere Ranges Heritage Area Act 2008;

ii. Part 2 RMA;

⁴ See paragraph [28].

- iii. The relevant PAUP regional policy statement objectives and policies; and
 - iv. The PAUP regional/district plan objectives and policies relating to the Waitakere Ranges Overlay.
9. EDS agrees to participate in mediation or other alternative dispute resolution of the proceedings.

DATED at Auckland this 21st day of November 2017



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Advice to recipients

If you have any questions about this notice, contact the Environment Court in Auckland.