

Brookfields

LAWYERS

8 November 2010

The Registrar
Environment Court
DX CX 10086
AUCKLAND

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ATTENTION: Gemma Fellowes

COPY FOR YOUR
INFORMATION

AN APPEAL BY L AND G DEAN AGAINST THE DECISION ON THE AUCKLAND COUNCIL AS SUCCESSOR TO THE WAITAKERE CITY COUNCIL ON PROPOSED PLAN CHANGE 36 TO THE WAITAKERE CITY DISTRICT PLAN

1. We act for L and G Dean submitters on Proposed Plan Change 36 to the Waitakere City District Plan.
2. Please find enclosed for filing:
 - (a) a Notice of Appeal by L and G Dean against the decisions of the Auckland Council as successor to the Waitakere City Council on Proposed Plan Change 36 to the Waitakere City District Plan; and
 - (b) a cheque for \$511.10 being the filing fee.
3. A copy of the Notice of Appeal has been served on the parties listed on the final page of the Notice of Appeal.

If you have any questions regarding the appeal, please do not hesitate to contact the writer.

Yours faithfully
BROOKFIELDS


Andrew Green
Partner

Direct dial: +64 9 979 2172
email: green@brookfields.co.nz

31303899:620142

Copies to:

1. Auckland Council as successor to the Waitakere City Council
Private Bag 92300
AUCKLAND 1142
2. Auckland Council as successor to the Auckland Regional Council
Private Bag 92300
AUCKLAND 1142
3. Protect Piha Heritage Society Inc.
PO Box 3
Piha
WAITAKERE CITY
4. Adventure Camp Trust Board
c/- Haines Planning
PO Box 90842
AUCKLAND 1142

ATTENTION: S Tait
5. Waitakere Ranges Protection Society Inc.
C/- MPC Planning
PO Box 8960
AUCKLAND 1150

ATTENTION: J Hook

BEFORE THE ENVIRONMENT COURT

IN THE MATTER

of the Resource Management Act 1991
("the Act")

AND

IN THE MATTER

of an appeal pursuant to section 121 of the
Act

BETWEEN

L AND G DEAN

Lodgement: ENV-2010-AKL-000

Appellants

AND

AUCKLAND COUNCIL as successor to
the **WAITAKERE CITY COUNCIL**
pursuant to section 35 of the Local
Government (Tamaki Makaurau
Reorganisation) Act 2009

Respondent

NOTICE OF APPEAL

**BROOKFIELDS
LAWYERS
AMB Green
Telephone No. 09 379 9350
Fax No. 09 379 3224
P O Box 240
DX CP24134
AUCKLAND**

TO: The Registrar
Environment Court
AUCKLAND

1. L and G Dean appeal a decision on the following matter:

Proposed Plan Change 36, Waitakere City District Plan

2. L and G Dean are the appellants.
3. Notice of the decision was received on 14 October 2010.
4. The decision was made by Waitakere City Council ("**Respondent**").
5. The decision the appellants are appealing is:

The Respondent's decision as it relates to limiting future land use activities on the appellants' land.

6. The land affected is situated at 15 Holden's Road, Henderson, (legally described as Lot 1 DP 63568 being 4.6524 hectares in area) and also land situated at 47-51 Parrs Cross Road, (legally described as Lot 14 DP 86225 being 1.8137 hectares in area) both contained in Identifier NA 44A/91, and zoned Foothills Environment and General Natural Area under the Operative Waitakere City District Plan.
7. Reasons for the appeal are as follows:

- (a) The decision is contrary to sound resource management practice and the purpose and principles of the Resource Management Act 1991.
- (b) The decision fails to properly address sustainable planning approaches for land uses in the 'Holden's Triangle' area which includes the appellants' land.
- (c) Plan Change 36 and the Respondent's decision do not alter the status quo in that the appellants land (and

other land contained within the Holden's Triangle area) continues to be outside the Oratia Structure Plan ("OSP") area.

- (d) The decision by the Respondent recognises that there is a need for some non-residential land use opportunities in the subject area but fails to put in place appropriate provisions that reflect the nature of the current site development and context as well as that of the existing surrounding environment. There is an inherent lack of flexibility in the proposed provisions which can be redressed through appropriate discretionary activity provisions.
- (e) The relief sought by the appellant in relation to land use activity provisions is not inconsistent with the overall intent of PC 36.
- (f) The decision by the Respondent unreasonably fetters sustainable land use options for the appellants' land and buildings. It fails to recognise historical and existing uses which operate without conflicting with the existing types of land uses in the surrounding area. Additionally, in the transitional area between rural and urban zonings that the appellants' land occupies there is a need for a more flexible and innovative approach to land uses so as to create a more gradual transition between urban and rural rather than an abrupt demarcation.
- (g) The Plan provisions need to enable adaptive uses of existing buildings and infrastructure. The Plan Change should enable such changes as discretionary activities with defined performance standards to be met. That would be consistent with the Respondent's decision including proposed provisions at **Rule 8A.3.ii** whereby an increase in scale and intensity of existing activities is provided for as a limited discretionary activity. Such provisions with appropriate assessment criteria can

adequately manage the effects of activities and in so doing achieve the policy outcomes promoted by the Plan Change.

- (h) The proposed provisions promoted by the Respondent in its decision are unreasonably limiting and do not enable the supportive viable use of land and buildings that will underpin retention of the natural environment characteristics that the Plan Change purports to promote. For example the limitation that a restaurant as a discretionary activity be constrained to 100m² of floor area is unreasonable given the scrutiny to which a discretionary activity is subject. Those types of limitations inhibit the ability to maintain the economic viability of many properties.

8. The relief sought is:

- (a) That the Foothills Environment land use Rule 8A.4 be amended to provide discretionary activities for:

- "iv) Non-residential activities [including Restaurants but not drive through facilities] and excluding Part A and B processes as listed in the Air Discharge Appendix, for the area bounded by Holden's Road, Forest Hill Road, Pine Avenue and Parrs Cross Road (known as the Holden's Triangle)."

- (b) That proposed rules 8A.4(ii) and (iii) as contained in the Respondent's decision be amended so that they do not apply to the area bounded by Holden's Road, Forest Hill Road, Pine Avenue and Parrs Cross Road (known as the Holden's Triangle),

Or in the alternative

- (c) That a new Rule 8A.4.iv) be included as follows:

"iv) Non-residential activities on Lot 1 DP 63568 and Lot 14 DP 86225 (both contained in Identifier NA 44A/91) [including Restaurants but not drive through facilities] and excluding Part A and B processes as listed in the Air Discharge Appendix."

9. The following documents are attached:

- (a) Copy of the appellants' submission; and
- (b) List of names and addresses of persons to be served with a copy of this notice.

DATED the *22* day of *November* 2010.



A M B Green
Counsel for the Appellants

THIS NOTICE OF APPEAL is filed by **ANDREW MICHAEL BASFORD GREEN**, solicitor for the appellant. The address for service of the appellant is at the offices of Brookfields, Lawyers, 11th Floor, 19 Victoria Street West, Auckland.

Documents for service on the appellant may be left at the address for service or may be:

1. Posted to the solicitor at P O Box 240, Auckland 1140.
2. Left for the solicitor at Document Exchange for direction to DX CP24134.
3. Transmitted to the solicitor by facsimile to 09 379 3224.

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

<p>Auckland Council as successor to the Auckland Regional Council Private Bag 92300 AUCKLAND 1142</p>	<p>Protect Piha Heritage Society Inc. P O Box 3 Piha WAITAKERE CITY</p>
<p>Adventure Camp Trust Board c/- Haines Planning P O Box 90842 AUCKLAND 1142</p> <p>ATTENTION: S Tait</p>	<p>Waitakere Ranges Protection Society Inc. C/- MPC Planning P O Box 8960 AUCKLAND 1150</p> <p>ATTENTION: J Hook</p>