

# 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 35 TO THE WAITAKERE CITY DISTRICT PLAN

1. We act for L and G Dean submitters on Proposed Plan Change 35 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 35 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

31303774:620142

Copies to:

1. Auckland Council as successor to the Waitakere City Council  
Private Bag 92300  
**AUCKLAND 1142**
  
2. Waitakere Ranges Protection Society Inc.  
C/- MPC Planning  
P O Box 8960  
**AUCKLAND 1150**  
  
**ATTENTION: J Hook**
  
3. Auckland Council as successor to the Auckland Regional Council  
Private Bag 92300  
**AUCKLAND 1142**

**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

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**NOTICE OF APPEAL**

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LAWYERS**  
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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 35, 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 proposed subdivision provisions affecting the appellants' land.

6. The land affected is situated at 15 Holden's Road Henderson (described as Lot 1 DP 63568 being 4.6524 hectares in area) and also land situated at 47-51 Parrs Cross Road, (described as Lot 14 DP 86225 being 1.8137 hectares in area) both contained in Identifier NA 44A/91, all 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 subdivision in the 'Holden's Triangle' area which includes the appellants' land.
- (c) Plan Change 35 and the Respondent's decision continue the status quo in that the appellants' land (and

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

- (d) The decision by the Respondent recognises that there is a need for subdivision opportunities in the subject area but fails to put in place appropriate provisions that reflect the nature of the current site context as well as that of the existing surrounding environment, but which still respect the overall intent of PC 35.
- (e) The relief sought by the appellants in relation to subdivision provisions is not inconsistent with the Oratia Structure Plan ("OSP") provisions for subdivision given that those provisions allow as a discretionary activity for subdivision in the Foothills Environment which does not meet the permitted or controlled activity provisions for subdivision in the OSP and is at a higher density.
- (f) The decision by the Respondent would make the equivalent discretionary subdivision activity (compared to the OSP provisions) on the applicants' land a non-complying activity (refer para 111, page 31 of the Respondent's decision). There is no significant difference in resource management issues that would justify a more onerous provision for subdivision on the appellant's land in comparison to the provisions that would apply were the land to be located in the OSP area. Additionally, in the transitional area between rural and urban zonings which the appellants' land occupies, there is a need for a flexible and innovative approach to subdivision so as to create a more gradual transition between urban and rural rather than an abrupt demarcation.
- (g) The Respondent's decision reflects its desire to take into account the subdivision approach for the OSP (refer decision report at page 33 para. 121) and apply it

to this land but in doing so the Respondent has created an additional planning anomaly beyond the resolution of the anomaly that the appellant's land is located outside the OSP area.

- (h) The use of a discretionary activity approach to any subdivision (which goes beyond the proposed 1.6ha average density and 4000m<sup>2</sup> minimum lot size promoted in the Respondent's decision) for the appellants' land (and all of the Holden's Triangle area) in the Respondent's decision is entirely consistent with the approach to subdivision set out for the OSP area under the subdivision rules for the Foothills Environment at **Rule 7.3 (b)**.
  
- (i) The use of a discretionary subdivision provision with a 4000m<sup>2</sup> minimum lot size area and 8000m<sup>2</sup> average lot size and appropriate subdivision assessment considerations that reflect the stated policy outcomes for the Oratia Local Area Plan is not inconsistent with either the OSP provisions nor is it inconsistent with the outcomes promoted through proposed Plan Change 35. Additionally, that lot size range and pattern is not inconsistent with the subdivision patterns in the area.

8. The relief sought:

- (a) That the Foothills Environment subdivision rule 7.2 be amended to include the following provision as a limited discretionary activity;

“d) In respect to any site within the area bounded by Holden's Road, Forest Hill Road, Pine Avenue and Parrs Cross Road (known as the Holden's Triangle), subdivision where:

- i) the average net site area is no less than 1.6ha for each additional site created and the minimum net site area is 4000m<sup>2</sup>;
- ii) there shall be no new road;
- iii) each proposed site shall have practical and legal access to a road; and

- iv) no new driveway shall be steeper than a slope of 1 in 5 for any distance exceeding 10 metres"

(b) That the Foothills Environment subdivision rule 7.3 be amended to include the following provision as a discretionary activity;

"d) In respect to any site within the area bounded by Holden's Road, Forest Hill Road, Pine Avenue and Parrs Cross Road (known as the Holden's Triangle), subdivision where:

- i) the minimum net site area is 4000 m<sup>2</sup>;
- ii) there shall be no new road;
- iii) each proposed site shall have practical and legal access to a road; and
- iv) no new driveway shall be steeper than a slope of 1 in 5 for any distance exceeding 10 metres"

or in the alternative:

(c) For any subdivision which incorporates the existing sites at 15 Holden's Road, Henderson subdivision to a total of 8 lots (including any existing lot and balance lot but excluding any reserve or access lot) and 47-51 Parrs Cross Road (both contained in Identifier NA 44A/91) subdivision to a total of 4 lots (including any existing lot and balance lot but excluding any reserve or access lot).

9. The following documents are attached:

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

DATED the 2<sup>nd</sup> day of November 2010.

  
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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**

Auckland Council as successor to the Auckland Regional Council Private Bag 92300 <b>AUCKLAND 1142</b>	Waitakere Ranges Protection Society Inc. C/- MPC Planning P O Box 8960 <b>AUCKLAND 1150</b>  <b>ATTENTION: J Hook</b>
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