

UNDER the Resource Management Act 1991

ENV AKL 2016 000

IN THE MATTER of an appeal against Private Plan Change 372 to the Auckland Council
District Plan: Isthmus Section 1999

BETWEEN **SOUTH EPSOM PLANNING GROUP INCORPORATED**
First Appellant

AND **THREE KINGS UNITED GROUP INCORPORATED**
Second Appellant

AND **AUCKLAND COUNCIL**
Respondent

**NOTICE OF APPEAL BY SOUTH EPSOM PLANNING GROUP INCORPORATED AND THREE KINGS
UNITED GROUP INCORPORATED**

Dated this 11th day of January 2015

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The Registrar
Environment Court
Auckland

- 1 The South Epsom Planning Group (SEPG) and Three Kings United Inc (TKUG) appeal against a decision of the Auckland Council on Private Plan Change 372 (Plan Change 372) to the Auckland Council District Plan: Isthmus Section 1999 (Decision).
- 2 SEPG and TKUG were both submitters on Plan Change 372.
- 3 SEPG and TKUG are not trade competitors for the purposes of s 308D of the Resource Management Act 1991 (RMA).
- 4 SEPG and TKUG received notice of the decision on 9th November 2015.
- 5 The Decision was made by Commissioners on behalf of Auckland Council.
- 6 SEPG and TKUG oppose the Decision and both groups are appealing the whole Decision.
- 7 **General reasons for the appeal are that the Decision:**
 - 7.1 is inconsistent with Part 2 RMA;
 - 7.2 contrary to sound resource management practice;
 - 7.3 does not give effect to relevant provisions of the Auckland Regional Policy Statement;
 - 7.4 is inconsistent with relevant provisions of the District Plan and Proposed Auckland Unitary Plan;
 - 7.5 does not meet relevant statutory tests in s32, s32AA, ss75 and 76, 1st Schedule RMA and *Long Bay* requirements¹ for appropriateness of objectives, policies, and methods;
 - 7.6 provides inadequate cost-benefit and alternatives analysis, triggered by ss5 and 6 and/or s32, s32AA RMA;
 - 7.7 actual and potential adverse effects are not avoided, remedied or mitigated;
 - 7.8 does not achieve outcomes specified in the Three Kings Plan;
 - 7.9 is too intensive and externalises impacts to public domain and open space.
- 8 **Specific reasons for the appeal against the Decision:**
 - 8.1 Final ground level is a key parameter for Plan Change 372. It controls the character and intensity of development of the site. As approved:
 - (a) final ground level enables residential development 15-17 metres below Mt Eden Rd. Development is not integrated with adjacent landform (including Tātua a Riu-kī-uta) and the surrounding built and natural environment. Access is inefficient and does not promote connectivity and a walkable neighbourhood;

¹ *Long Bay-Okura Great Park Society Inc v North Shore CC A078/2008*

- (b) final ground level does not meet the requirements of the relevant planning instruments;
 - (c) final ground level does not rehabilitate historic quarrying activity. Quarry slopes are not restored and do not comply with the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1915 (1915 Act);
 - (d) good urban design outcomes are not achieved.
- 8.2 Alternative ground levels proposed by SEPG / TKUG are more appropriate. Design is integrated with landform and the surrounding natural and built environment. Infrastructure constraints are addressed. Positive outcomes are achieved including social, cultural and economic wellbeing and Part 2 RMA principles. SEPG / TKUG support:
- (a) pre-quarry ground levels; and/or
 - (b) minimum fill contours specified in Environment Court decisions C130 and C214.
- 8.3 Does not protect outstanding natural features and landscapes from inappropriate subdivision, use and development (s6 RMA). It does not avoid, remedy and mitigate damage caused to regionally important volcanic features through quarrying at the site and fails to rehabilitate and enhance the site and its relationship with Te Tatua Riu-ki-uta;
- 8.4 Does not address stewardship, amenity and quality of environment, and is inefficient development (s7 RMA);
- 8.5 Does not give effect to Chapter 6 of the Auckland Regional Policy Statement and relevant strategic considerations in Chapter 2 (activities on land adjacent to Te Tatua Riu-ki-uta should avoid, remedy or mitigate significant adverse effects on outstanding natural features and enhance where practicable; urban design should be integrated with amenity and character values; structure planning to integrate the site with the wider precinct).
- 8.6 Inadequate and unimaginative design and layout, causing adverse impacts to wellbeing. The Master Plan is not linked to plan change provisions and is not binding on future development.
- 8.7 In breach of procedural fairness, Commissioners incorporated into the Decision a "Three Kings Residential Design Guide" after the hearing had concluded and without input from submitters. The "design guide" does not adequately address design and layout issues identified in this appeal;
- 8.8 Failure to integrate processes and outcomes under both the Reserves Act and RMA;
- 8.9 Failure to integrate and address existing consented environment (including consent conditions under Environment Court decisions C130 and C214);
- 8.10 Low probability, high potential risk of contamination of aquifer in event of wastewater overflow;
- 8.11 Rehabilitation of eastern slopes of maunga including haulage road is not provided for by the Decision. Appropriate separation distances of housing from eastern flanks of

maunga has not been achieved. The applicant for Plan Change 372 should not benefit from its own unlawful conduct. The haulage road was unlawfully installed in breach of the 1915 Act. Plan Change 372 converts the haulage road into an access road for the residential development. SEPG and TKUG seek instead that it be rehabilitated back into the maunga landform.

9 SEPG and TKUG seek the following general relief:

9.1 Cancellation of the Decision to approve with modifications Plan Change 372;

10 In the alternative, SEPG and TKUG seeks the following specific relief:

- 10.1 Amend Plan Change 372 to address issues raised in this appeal and evidence of SEPG and TKUG. This includes the concept plan and associated provisions in Appendix B to Planning Maps as indicated in the evidence of Richard Reid² and Diagrams F08-85(a), F08-85(b), F08-85(c).
- 10.2 Redesign to provide for residential amenity without adversely impacting on heritage and landscape values. Avoid adverse visual impacts to and from the *maunga* summit and reserve land, particularly looking East and South.
- 10.3 Final ground level at pre-quarry ground levels; and/or minimum fill contours specified in Environment Court decisions C130 and C214.
- 10.4 Improved public sight-lines through the site to and from Te Tatua a Riukiuta.
- 10.5 Sufficient green space as a buffer that separates the remnant *Maunga* from intensive residential development on its Southern and Eastern flanks. This involves:
 - o retention of the greater part of the Western Playing Field;
 - o Additional open space as recommended by the Three Kings Land Exchange Hearing Commissioners so that the total of reserve land is more in line with the requirements specified by the Operative District Plan;
 - o Maintain and enhance open space in terms of physical area, integrity, quality, configuration and integrity of Te Tatua Riu-ki-uta;
- 10.6 Rehabilitation of the remaining maunga (Te Tatua o Riu-ki-uta) and restoration of slopes on the eastern side of the maunga.
- 10.7 Less intensive residential density resulting in greater amenity outcomes for the wider Three Kings Precinct. Density should reflect Residential 8b (3-4 storey) and not the 8-10 storey development proposed by Plan Change 372.
- 10.8 Relocation of the playing field to the eastern side of the maunga at a more appropriate elevation. This separates housing from maunga and buffers potential impacts of residential development on s6 RMA values.

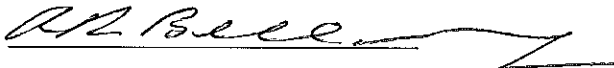
² Mr Reid's evidence will be updated for any hearing of this appeal.

10.9 Plan Change 372 converts the haulage road into an access road for the residential development. SEPG and TKUG seek instead that it be rehabilitated back into the maunga landform.

11 I attach the following documents to this notice:

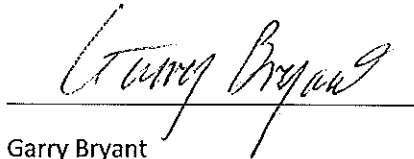
- SEPG and TKUG submissions on Plan Change 372;
- Decision being appealed against;
- List of names and addresses of persons to be served with this Appeal.

Dated this 11th day of January 2016



Emeritus Professor Dick Bellamy

Authorised Representative of South Epsom Planning Group Inc



Garry Bryant

Authorised Representative of Three Kings United Group Inc

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

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) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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 Resource Management Act 1991.

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).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

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