

6 July 2009

Auckland City Council
Private Bag 92516
Wellesly Street
Auckland 1141

Attention: Megan Tyler and Robert Andrews

AUCKLAND CITY CITY DEVELOPMENT			
Document	2009004596		
07 JUL 2009			
REFERRED	INITIAL	ACT	DATE
1 J. Tapsell			
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Dear Megan and Robert

Notice of Appeal – Auckland City Council Decision on the Proposed Gulf Islands District Plan

Please find attached a copy of the notice of appeal lodged today with the Environment Court in respect of the above matter prepared on behalf of:

- Diane and Kevin O’Grady – 166 Ostend Road, Ostend, Waiheke Island
- Ms Beverly Gollop – 32 Tiri Road, Oneroa, Waiheke Island
- Gavin and Carolyn Smart – 34 Tiri Road, Oneroa, Waiheke Island
- Ms Diane Douglas – 36 Tiri Road, Oneroa, Waiheke Island

In summary, the appeal is filed in respect of the decision of the Auckland City Council not to uphold its notified version of the proposed Hauraki Gulf Islands District Plan to rezone the land owned by the above named to Island Residential.


The aforementioned have agreed to a collective appeal that may be regarded as a singular notice of appeal by the Court, as the concerns of each individual are the same as the collective and would be addressed by the relief sought.

All parties to this notice of appeal welcome the opportunity for mediation between themselves the Auckland City Council and any other suitably affected parties.

You will note that the attachments referred to in the notice are not enclosed as the Council would should have copies of all the listed attachments. However, additional copies can be provided at your request.

Until further notice, all correspondence and documentation may be addressed to me and if I may be of further assistance please do not hesitate to contact me.

Yours faithfully



Paul Sousa
Director

Form 7
Notice of appeal to Environment Court against decision
on proposed policy statement or plan

Clause 14(1) of First Schedule, Resource Management Act 1991

To The Registrar
Environment Court
P O Box 7147
Wellesley Street
Auckland 1141

We,

Gavin and Carolyn Smart
Diane and Kevin O'Grady trustees of the O'Grady Family Trust
Beverly Gollop
Diane Douglas (nee Vieira)

appeal against part of the decision of the Auckland City Council on the following plan:

Proposed Hauraki Gulf Islands District Plan 2006

I made a submission on that plan.

I received notice of the decision on 5 May 2009

(Note: The decision provided **60 working days** commencing from the day of its receipt in which to lodge an appeal with the Environment Court.)

The decision was made by the Auckland City Council

The part of the decision that I am appealing is:

The decision set out in Decision Report 15 Reference DR15 314/274015 entitled

'Report and recommendations on submissions to the Auckland City District Plan: Hauraki Gulf Islands Section – Proposed 2006

Topic: Island residential 1 (traditional residential) and island residential 2 (bush residential) land units and appendix 13 (planting guides)'

In particular, the decision in respect of Section '4.16 Submissions about applying an island residential land unit to sites at Tiri Road, Oneroa and Erua Road and Ostend Road, Ostend outside the metropolitan urban limits (MUL)' as it applies to land owned individually by us at:

32 Tiri Road, Oneroa (being Lot 8 DP 53686 CT 5D/65 but referred to in the decision as Lot 6 Ocean View Road, Oneroa)

34 Tiri Road, Oneroa (Lot 7, DP 53686 CT 5D/64)

36 Tiri Road Oneroa (lot 6 DP 53686 CT 5D/63)

166 Ostend Road, Ostend (Lot 1 DP 199282 CT 127D/844).

AND

All other land on Waiheke Island that was initially rezoned from rural to residential in the notified version of the proposed Hauraki Gulf Islands District Plan.

The proposed Hauraki Gulf Islands District Plan 2006, as notified, provided for the rezoning of portions of rural land at various locations adjacent to existing settlements on Waiheke Island to 'Island Residential 1 (traditional residential)'. As part of the submission process the Auckland Regional Council [ARC] submitted that the subject land was outside the existing Metropolitan Urban Limits [MUL]. In its decision, which we appeal here, the Auckland City Council [the Council] has decided to withdraw the rezoning and retain a Rural 1 zoning in respect of this land thereby dispensing with any expansion of the existing residential village areas on Waiheke Island.

The reason stated in the decision at 14.6.2.3 for withdrawing the Residential zone(s) is as follows:

'While the reasons for extending the island residential 1 land unit are valid it was done without enough recognition of the MUL. The requirement to amend the MUL before finalising the extension of the island residential 1 land unit would create an unacceptable delay in developing the Plan into an eventual operative status.

In looking to the future, if the existing stock of island residential 1 and 2 land is 90% developed, and if through community consultation a new village is supported, there is a high probability that this would need to be outside the MUL, and therefore a change to the ARPS will be required. The panel note that the ARC is due to notify its review of the ARPS this year and this will provide an opportunity for submitters and council to reconsider the extent of the MUL.

On balance, the Panel recommend that the Island residential 1 (traditional residential) land unit boundaries for the identified sites in Oneroa and Ostend be removed and land unit Rural 1 be reapplied.'

The reasons for the appeal are as follows:

The rezoning of the identified land adjoining or adjacent to existing residential settlements for residential purposes provides additional opportunities for people to reside on Waiheke Island on which 90% of existing residentially zoned land is taken up. The rezoning of the subject land optimises the existing land resource and services (road, phone and power) without adversely affecting the coastal character, any environmentally sensitive areas or the amenity of the community. The rezoning of the land to Island Residential 1 is therefore consistent with the purpose and principles of the Resource Management Act 1991.

The preparation of the Hauraki Gulf Islands District Plan [Gulf Plan] is the first undertaken for the islands in approximately 12 years. The Gulf Plan represents a comprehensive review of the existing environments and its resources. Having undertaken this comprehensive review, the Council determined that it was appropriate to marginally increase the settlement areas on the island. The decision of the Council on the Gulf Plan still maintains that the reasons for rezoning the subject land from rural to residential remain valid and that fundamentally the rezoning of the various areas was not upheld because it was outside the MUL and to make the necessary application would result in an unacceptable delay in making the Gulf Plan operative.

Therefore, the rezoning of the subject land for residential purposes was not upheld on the basis of any specific environmental concerns but, simply, on the basis that the areas concerned are outside the present MUL and that this would supposedly delay the plan process. For reasons stated later in this appeal, retaining the Island Residential 1 zones will not result in an unacceptable delay of the plan change process but most importantly the matter of timing/delay is not a valid reason for not upholding the rezoning to Island Residential 1 in terms of a decision of this nature i.e. a Plan Change.

Having undertaken the rigorous assessment associated with the preparation of a comprehensive District Plan change and determining that the expansion of the existing settlements was appropriate, the Council should have, and still can, make the necessary application to the Auckland Regional Council to extend the MUL to encompass the indentified areas. This has been undertaken by other local authorities, in particular Papakura District Council to accommodate their residential expansion at both Takanini and on the Hingaia Peninsula.

In failing to apply to the ARC to extend the MUL as part of this plan change process as well as continuing not to do so, the Council is failing to appropriately carry out its functions under the Resource Management Act 1991 [the Act].

The making of an application to the ARC to extend the MUL need not cause an 'unacceptable delay' in the making of the remainder of the Gulf Plan operative as there is the appeal process for the Gulf Plan to pass through. The Council could agree to uphold extension of the Island Residential 1 Land Unit subject to the necessary application being made to and approved by the ARC with the application being made as soon as practicably possible. This situation would allow the appeal process, which may be lengthy depending on the number of and matters raised by appeals, to continue alongside the MUL extension process. Should all other appeals be heard and disposed of prior to the application for the MUL extension being determined by the ARC, this specific part of the Gulf Plan can be set aside until such time as the matter of the MUL has been resolved and the balance of the Gulf Plan can continue to be made operative. It is relatively common place for local authorities to proceed to apply to the Environment Court to make a plan operative except for a limited number of 'self-contained specific matters', which the rezoning of these specific sites represents.

To rely on the ARC to undertake a review of the MUL on Waiheke Island as part of its city wide review in the face of changing governance and competing demand for expansion that will no doubt arise from a city wide review will take a far greater time than were a specific application to be made now by the Council. In addition, in the event that the ARC or its successor undertakes to extend the MUL a further District Plan change will be required to give effect to any expansion. This change will either coincide with a new greater Auckland Plan, which could be a number of years away, or, if undertaken as a further change to this Gulf Plan, (representing the latest and most up to date provisions for the islands, which could continue to stand alone in the face of a city wide plan being developed) will represent a duplication of costs and time that have already been expended on preparing the Gulf Plan. It is neither fair nor reasonable to require submitters to this process to await some undetermined future event, which may not occur in respect of the gulf islands, nor is it fair and reasonable to require rate payers to fund a second plan change process to achieve the outcomes provided for in the current Gulf Plan review.

We also disagree with references in the decision report, which we note is essentially a reproduction of the Council Planning Officer's report, that to retain the residential zones beyond the confines of the existing MUL is both inconsistent with, and will not give effect to, the Auckland Regional Policy Statement [ARPS]. We reproduce those objectives and policies stated in the decision report and outline the reasons why we consider the proposed expansion of the Island Residential 1 zone is not inconsistent with these:

'Any proposed expansion of urban development on any of the islands needs to take into account the environmental and servicing constraints that apply in these areas: the relative isolation, lack of

transport, infrastructure, employment and social services; the obligation to preserve the unique natural character of the coastal environment; to protect the islands' outstanding natural features, landscapes and areas of significant indigenous vegetation and to conserve the rare and precious habitats for indigenous fauna.'

The Council in proposing the expansion of the Island Residential 1 Land Unit have recognised that the sites can be serviced to the same degree as the other residential land (in fact 2 dwellings already exist on 2 of the sites), the land does not contain any significant features, the land is not part of the coastal environment and the subsequent development of the land will not significantly alter the character of the area. Therefore, the extension of the Island Residential 1 land unit onto our land and that of others identified in the appeal is not contrary to this provision of the ARPS.

"On Waiheke, urban development is limited to the western end of the island in recognition of the significant landscape values and natural environment of eastern Waiheke. Any urban expansion on Waiheke should reflect the pattern of the existing village settlements and the rural buffers between them, and (in addition to the factors above) the desirability of keeping the Gulf-related slopes at the western end of the island free of urban development to protect their landscape values."

In respect of land at Tiri Road; our land is at the western end of Waiheke Island and, in being located on the western edge of Oneroa Settlement and served by a road serving other residential properties directly opposite, reflects the pattern of the existing settlement. The slopes of the site are sufficiently removed from the coast so not to be considered 'gulf-related slopes', which the Section 32 report for the Gulf Plan acknowledges. Therefore, the extension of the Island Residential 1 land unit onto our land is not contrary to this provision of the ARPS, which is specific to Waiheke.

In respect of land at 166 Ostend Road; our land is located on the periphery of the existing settlement of Ostend. The depth of the site to be rezoned as measured from the front boundary mirrors the extent of the other existing residential allotments on the landward side of Ostend Road and so reflects the pattern of the existing settlement. The land is accessed from the main road running through the centre of the Island from which many residential sites are accessed. That portion of our land to be rezoned is relatively low lying and will have very little visual impact on the more elevated slopes to the rear, which are not considered to be 'gulf-related slopes'. Therefore, the extension of the Island Residential 1 land unit onto our land is not contrary to this provision of the ARPS specific to Waiheke Island.

In respect of the MUL, the *strategic policy in clause 2.5.2(3) ARPS* states:

"Urban development is to be contained, within the metropolitan urban limits shown on Map Series 1 and the limits of rural and coastal settlements as defined so that:

- (i) expansion of urban activities outside the metropolitan urban limits as defined and shown in the RPS from time to time is not permitted;*
- (ii) environmental values protected by the metropolitan urban limits and/or the limits of rural or coastal settlements are not adversely affected, and that the integrity of those limits is maintained;*
- (iii) urban intensification at selected locations is provided for and encouraged. Selection of these places will take into account, amongst other things, any significant adverse effects which arise from the interaction with any regionally significant infrastructure and other significant physical resources;*
- (iv) expansion of rural and coastal settlements outside the limits of existing urban zones and settlements (at the time of notification of the RPS or as shown or provided for in the RPS) is not permitted;*
- (v) the identification and provision of areas for future urban growth are managed through an integrated process on a regional basis and are consistent with the Strategic Direction."*

In addition, method 2.6.2(6) provides further clarity stating:

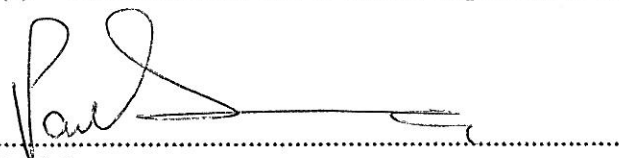
"Provision shall be made in district plans for urban development of metropolitan Auckland to be contained within the metropolitan urban limits shown on Map Series 1, and any other geographical limits shown or provided for in the RPS from time to time."

It is clear from the foregoing that the purpose of the MUL is to prevent unplanned or adhoc urban development beyond the urban environment. However, what the Decision Report fails to recognise is that in undertaking the required Section 32 assessment and concluding the subject sites are suitable for the extension of the Island Residential 1 land unit, the Council has carefully considered the need to extend the MUL and the foregoing policies of the ARPS do not prevent a local authority who, as part of its plan change (which is certainly not an adhoc process), has undertaken the appropriate forward planning assessments, from making an application to the ARC for the MUL to be extended.

We seek the following relief:

For the foregoing reasoning, we seek, with any necessary consequential changes to the proposed plan, actions or undertakings, that the Island Residential 1 (Traditional Residential) zoning originally provided for on 32, 34 and 36 Tiri Road, Oneroa and at 166 Ostend Road, Ostend by the notified version of the proposed Hauraki Gulf Islands District Plan be reinstated and that the Council lodge the necessary application with the ARC to extend the existing MUL as it applies to Waiheke island to encompass the additional land zoned for residential purposes.

- (a) a copy of my submission(s)
- (b) a copy of the relevant part of the decision:
- (c) a copy of the statement of evidence presented at the hearing:
- (d) a list of names and addresses of persons to be served with a copy of this notice.



Paul Sousa
Duly Authorised Agent

6 July 2009

Address for service of appellant:

C/- Paul Sousa
Director
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P O Box 11 651
Ellerslie
Auckland

Telephone/Fax:

(09) 5265070

Email:

paulsousa@xtra.co.nz

LIST OF THOSE PERSONS SERVED NOTICE OF APPEAL

Submission #	Name	Address
3411/1	Megan Lash	34 Wharf Road, Ostend
3412/1, 3259	Kevin & Maeve O'Grady	166 Ostend Road, Ostend
3260	Fay Madison Builders Ltd	77 Onetangi Road, Onetangi
1194/1-3	Pamela Albons	92 Waiheke Road, Waiheke
1193/1-3	Alan McKenna	92 Waiheke Road, Waiheke
1127/1-2, 159/3	O'Grady Family Trust	166 Ostend Road, Onetangi
171/3	Blackwoods Architects	5 Huia Street, Waiheke
48/3	Lee Sticklan	13 Church Bay Road, Waiheke
29/1-2	Gailene Scott	19 Onetangi Road, Onetangi
28/1	Tanya Russell	P O Box 718 Onetangi, Waiheke
27/3	Danny McWeill	16 Giles Road Palm Beach
20/3	James Hodgetts	157 Welma Road, Ostend
13/3	Karen Hodgson	69 Junction Road, Palm Beach
12/3	Michelle Dean	15 Ostend Road, Ostend
1233/2	Phee Phanshell	P O Box 177 Oneroa
3416/1	Robyn and Alan Wilson	P O Box 450 Waiheke
3398	Susan Washington	11 Ostend Road, Ostend
3521	Auckland Regional Council	Attention: Hugh Jarvis, Private Bag 92012, Auckland
3710/1	Joy Yates	35 Tiri Road Oneroa
2739	Gavin and Carolyn Smart	34 Tiri Road, Oneroa
2738	Diane Vieira	16 St Andrews Dr, Tewantin 4565, Queensland, Australia.
839	Beverly Gollop	13 Puriri Road, Oneroa