

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of appeals under clause 14 of the
First Schedule to the Act

BETWEEN

**DAVID AND PATRICIA
McCRARY**

(ENV-2009-AKL-000245)

AND

**JOHN CRAN, GERALDINE
DOWNIE, PAUL DOWNIE,
TREVOR NEWMAN, ELIZABETH
ROBERTSON, JAMES
ROBERTSON, ANNE SCOTT,
EDWARD SCOTT, RICHARD
SOMERVILLE-RYAN, NEIL
WRIGHT & CAROLE WRIGHT**

(ENV-2009-AKL-000356)

Appellants

AND

**AUCKLAND COUNCIL (as
successor to Auckland City
Council)**

Respondent

BEFORE THE ENVIRONMENT COURT

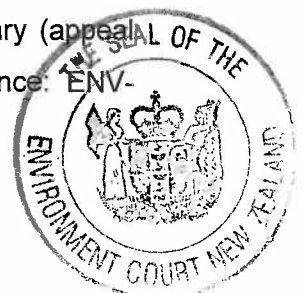
Environment Judge L J Newhook sitting alone under section 279 of the Act

IN CHAMBERS at Auckland.

CONSENT ORDER

Introduction

- [1] The Court has read and considered the notices of appeal and the memorandum of the parties dated 22 August 2011.
- [2] This consent order relates to the appeals by David and Patricia McCrary (appeal reference: ENV-2009-AKL-000245) and Downie & Ors (appeal reference: ENV-



2009-AKL-000356) against the proposed Auckland Council District Plan (Auckland City Hauraki Gulf Islands Section).

[3] This consent order relates to the following topics raised by the McCrary appeal:

- (a) ENV-2009-304-000461: HGI – subdivision – accessways/roads
- (b) ENV-2009-304-000465: HGI – dwellings/residential uses – multiple dwellings
- (c) ENV-2009-304-000482: HGI – development controls – coastal protection yards
- (d) ENV-2009-304-000486: HGI – land use activities – firewood harvesting

[4] This consent order relates to the following topics raised by the Downie appeal:

- (a) ENV-2009-304-000465: HGI – dwellings/residential uses – multiple dwellings
- (b) ENV-2009-304-000470: HGI – heritage general
- (c) ENV-2009-304-000477: HGI – development controls – earthworks
- (d) ENV-2009-304-000479: HGI – development controls – indigenous vegetation clearance

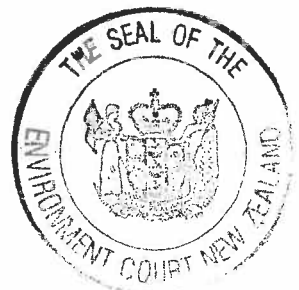
[5] There are no section 274 parties to the McCrary appeal.

[6] Parties to the Downie appeal under section 274 of the Act are:

- (a) Answer Services Holdings Limited; and
- (b) Robert Henry and Lynette Cawson Trust.

[7] The Court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) All relevant parties to the proceedings have executed the memorandum requesting this order;



- (b) All relevant parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

Order

[8] Therefore, the Court orders, by consent, that:

- (a) The Auckland Council District Plan (Auckland City Hauraki Gulf Islands Section) be amended as set out in Schedules 1-3; and
- (b) This order resolves the appeal by David and Patricia McCrary (appeal reference: ENV-2009-AKL-000245) in its entirety.
- (c) One topic remains outstanding in the Downie appeal (appeal reference: ENV-2009-AKL-000356). This is topic ENV-2009-304-000458: HGI – subdivision – land units.
- (d) There is no order for costs in relation to this order.

DATED at Auckland this

31st

day of

August

2011



L J Newhook
Environment Judge



Schedule 1

(additions underlined, deletions strikethrough)

A: Table 10a.6.5 is amended as follows:

10a.6.5 Landform 5 (productive land)

The construction and relocation of buildings, including buildings used for any of the other activities listed in this table	P
Dwelling (one per site)	P
<u>Dwelling (two per site), on Great Barrier Island only, where the following circumstances apply:</u> <ul style="list-style-type: none"> • <u>there is no visitor accommodation (existing or proposed) on the site; and</u> • <u>the site is not required to meet the minimum subdivision site size in Tables 12.1 and 12.2; and</u> • <u>a restrictive covenant is to be registered on the title to avoid subdivision for sites that do not meet the provisions of Tables 12.1 and 12.2.</u> 	<u>RD</u>
Multiple dwellings	D
Visitor accommodation for up to 10 people (excluding Great Barrier Island)	P
<u>Visitor accommodation for up to 10 people, on Great Barrier Island only, where there is no more than one dwelling per site</u>	<u>P</u>
Visitor accommodation for more than 10 people (excluding Great Barrier Island)	D
<u>Visitor accommodation for more than 10 people, on Great Barrier Island only, where there is no more than one dwelling per site</u>	<u>D</u>

B. Part 10a.6.8 is amended by inserting the following assessment criteria:

10a.6.8 Assessment matters

~~For applications for resource consent refer to part 11 – Assessment matters for assessment criteria for discretionary activities.~~

1. Matters of discretion for dwelling (two per site)

When considering an application for resource consent for dwelling (two per site) on Great Barrier Island only, the Council has restricted its discretion to considering the following matters:

- (a) adequacy of a restrictive covenant
- (b) access to dwelling
- (c) location of dwelling

Notification Requirements



Except as provided for by section 95A of the RMA, applications for a restricted discretionary activity resource consent will be considered without public notification or the need to obtain written approval of or serve notice on affected persons.

Explanation

A second dwelling on a site shall be considered as a restricted discretionary activity where a restrictive covenant is registered on the title, prior to the issue of any building consent, to restrict the future subdivision of the second dwelling from the parent site where the minimum site size set out in Tables 12.1 and 12.2 are not achieved.

2. Other listed activities

For other applications for resource consent refer to Part 11 - Assessment matters for:

(a) Matters of discretion and notification requirements applying to the construction and relocation of buildings and to exterior alterations and additions to existing buildings.

(b) Assessment criteria for discretionary activities.

Assessment criteria

- whether the restrictive covenant is adequate to control future subdivision of the site that would result in the second dwelling being located on a separate title
- whether the dwelling and access are located so as to minimise or avoid future opportunities to create a separate lot for the second dwelling where sites do not meet the minimum site sizes specified in Tables 12.1 and 12.2.

C. Table 10a.7.5 is amended as follows:

10a.7.5 Landform 6 (regenerating slopes)

The construction and relocation of buildings, including buildings used for any of the other activities listed in this table	RD
Dwelling (one per site)	P
<u>Dwelling (two per site), on Great Barrier Island only, where the following circumstances apply:</u> <ul style="list-style-type: none"> • <u>there is no visitor accommodation (existing or proposed) on the site; and</u> • <u>the site is not required to meet the minimum subdivision site size in Tables 12.1 and 12.2; and</u> • <u>a restrictive covenant is to be registered on the title to avoid subdivision for sites that do not meet the provisions of Tables 12.1 and 12.2.</u> 	RD



Multiple dwellings	D
Visitor accommodation for up to 10 people (<u>excluding Great Barrier Island</u>)	P
<u>Visitor accommodation for up to 10 people, on Great Barrier Island only, where there is no more than one dwelling per site</u>	<u>P</u>
Visitor accommodation for more than 10 people (<u>excluding Great Barrier Island</u>)	D
<u>Visitor accommodation for more than 10 people, on Great Barrier Island only, where there is no more than one dwelling per site</u>	<u>D</u>

D. Part 10a.7.8 is amended by inserting the following assessment criteria:

10a.7.8 Assessment matters

~~For applications for resource consent refer to part 11 - Assessment matters for assessment criteria for discretionary activities.~~

1. Matters of discretion for dwelling (two per site)

When considering an application for resource consent for dwelling (two per site) on Great Barrier Island only, the Council has restricted its discretion to considering the following matters:

- (a) adequacy of a restrictive covenant
- (b) access to dwelling
- (c) location of dwelling

Notification Requirements

Except as provided for by section 95A of the RMA, applications for a restricted discretionary activity resource consent will be considered without public notification or the need to obtain written approval of or serve notice on affected persons.

Explanation

A second dwelling on a site shall be considered as a restricted discretionary activity where a restrictive covenant is registered on the title, prior to the issue of any building consent, to restrict the future subdivision of the second dwelling from the parent site where the minimum site size set out in Tables 12.1 and 12.2 is not achieved.

2. Other listed activities

For other applications for resource consent refer to Part 11 - Assessment matters for:

- (a) Matters of discretion and notification requirements applying to the construction and relocation of buildings and to exterior alterations and additions to existing buildings.
- (b) Assessment criteria for discretionary activities.



Schedule 2

(additions underlined, deletions strikethrough)

Part 10c.5.9 is amended by inserting the following:

10c.5.9 Creation of access and/or a building site for a dwelling

For Great Barrier Island only, the creation of a building site for a dwelling and/or access to the building site is a restricted discretionary activity in landforms 3, 5, 6 and 7 and in the residential amenity area in the Settlement Areas where it does not meet one or more of the following permitted standards:

- vegetation clearance controls set out in clause 10c.5.1
- earthworks controls set out in clause 10c.5.6
- vehicle access – gradient set out in clause 13.6.1
- ecologically significant sites set out in clause 7.11

This rule applies to the entire length of an access including where it crosses any legal road.

Matters of discretion

The Council has restricted its discretion to considering the following matters:

- Need for access
- Location and design of access
- Geotechnical and stability
- Soil erosion and sedimentation
- Long-term visual effects from public places
- Effects on ecologically significant sites
- Vegetation removal

Assessment criteria

1. The applicant's need to obtain a practicable building site, access and parking area
2. Whether the location and design of the proposed access to the site gives rise to traffic or pedestrian safety considerations.
3. Whether the location and design of the access and building site has taken into account any geotechnical or land stability issues.



4. Whether the application mitigates any potential adverse effects from soil erosion and sedimentation.
5. Whether there will be any long-term visual effects when viewed from any public place (e.g. roads or reserves).
6. Whether the access and building site will have adverse effects on the features of any site of ecological significance or sensitive area.
7. The quantity and quality of any vegetation to be removed.
8. Whether there is any proposed mitigation including planting and the use of recessive colours/finishes.
9. Whether the applicant has considered other viable options for the of the building site and the route for access.

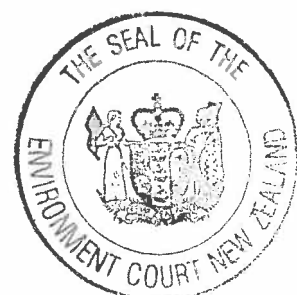
Explanation

The Council acknowledges that the provision of a building site and/or access are key elements in allowing owners to use their land. The Council acknowledges that in most situations, earthworks and indigenous vegetation removal to form access and a building platform is unavoidable. This is due to the topographical and vegetative characteristics that form part of the unique natural environment of Great Barrier Island. However, the provision of a safe and well designed access and a building site can assist people and communities to provide for their economic and social wellbeing and health and safety.

Notification requirements

Except as provided for by section 95A(4) of the RMA, this restricted discretionary activity will be considered without public notification or the need to obtain written approval of or serve notice on affected persons (in accordance with section 95A(3) and 95B(2) of the RMA).

10c.5.910 **Relationship with rules in other parts of the Plan**



Schedule 3

(additions underlined, deletions strikethrough)

Part 12 of the plan is amended as follows:

Commercial firewood harvesting

means the harvesting of living manuka, and kanuka ~~or any exotic species~~ for the production and sale of firewood. The harvesting must occur in accordance with a management plan.

It does not include other activities associated with the milling or processing of trees.

Note: The Plan does not restrict the harvesting or sale of exotic or dead vegetation

Domestic firewood harvesting

means the harvesting of living kanuka and manuka for the purpose of personal domestic firewood.

It does not include other activities associated with the milling or processing of trees or the sale of firewood.

Note: The Plan does not restrict the harvesting or sale of exotic or dead vegetation

