

**IN THE ENVIRONMENT COURT
AUCKLAND**

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

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

BETWEEN

BAYMI and Flinch Trusts
Appellant

AND

AUCKLAND CITY COUNCIL
Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT
AGAINST THE DECISION OF THE AUCKLAND CITY COUNCIL IN RESPECT OF THE
HAURAKI GILF ISLANDS DISTRICT PLAN
PROPOSED 2006**



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BAYMI and Flinch Trusts ("**B&F Trusts**") hereby appeal against the decision of the Auckland City Council ("**Council**") on the Hauraki Gulf Islands District Plan Proposed 2006 ("**the Plan**").

1. INTRODUCTION AND GENERAL MATTERS

Submission

- 1.1 **B&F Trusts** made a submission on **the Plan** on 6 December 2006. The submission was referenced by the **Council** as submission number 1273.

Decision

- 1.2 A notice of the decision by the Council ("Decision") was received on 4th May 2009. The Decision approved the Plan and declined the submission made by **B&F Trusts**.

Mediation

- 1.3 **B&F Trusts** are willing to engage in mediation or other alternate dispute resolution to seek to address the concerns of the Trustees of **B&F Trusts** as set out in submission number 1273.

Attachments

- 1.4 The following documents are attached to this notice of appeal (attachments are labelled with the bullet point reference set out below):
- (a) a copy of B&F Trusts' original submission – number 1273 (3 pages);
 - (b) a copy of the Land unit definitions for Land units 6 and 7 as set out in **the Plan** (2 pages);
 - (c) a copy of the recommendations to **Council** as set out in the Hearing Panel documents relevant to submission number 1273 (3 pages);
 - (d) a copy of **B&F Trusts**' notes for their verbal presentation to the Hearings Panel as read out to and supplied in hard copy to the Hearings Panel; (1 page)
 - (e) a copy of the relevant **Council** Decision in respect of submission number 1273 being extracts from Decision Report 14-8 (3 pages);
 - (f) a copy of Michol Janene Fisher's submission number 1272 (2 pages);
 - (g) a copy of the recommendations to **Council** as set out in the Hearing Panels documents relevant to submission number 1272 (1272/1 and 1272/2) (2 pages);
 - (h) a copy of the relevant **Council** Decision in respect of submission number 1272 being extracts from Council's Decision Report 13 (8 pages); and
 - (i) Part 1 of this Attachment sets out a list of names and addresses of persons to be served with a copy of the notice set out in Part 2 of this Attachment.

2. GENERAL SUBMISSION: REASONS FOR APPEAL AND RELIEF SOUGHT

- 2.1 This appeal relates to the whole of the relevant Decisions.
- 2.2 The relevant Decisions to which this appeal relates and the provisions they address are set out below. This appeal also relates to all consequential and related aspects of **the Plan**, which may affect, or be affected by, this appeal.

Reasons for appeal

- 2.3 **B&F Trusts** sought that various changes be made to **the Plan** to ensure that land contained within title DP194989 at 691 Orapiu Road, which is beneficially owned by **B&F Trusts**, was most appropriately classified under **the Plan**.
- 2.4 In a separate submission (submission number 1272) Michol Janene Fisher raised concerns about the inadequacy of the proposed land unit definitions set out in **the Plan**. **Council** responded by saying “[t]he landform land units are by their nature broad-brush and may include areas of land which do not readily fit into the generic descriptions which are found in the introduction to each land unit. Examples of the generic descriptions are found at clause 10a.7.1 for landform 6 (regenerating slopes) and clause 10a.8.1 for landform 7 (forest and bush areas)... .“ It is not necessary for every piece of land to fit precisely within the generic description. Rather the land needs to be considered in its overall context, and having regard to the objectives, policies and rules applying in the particular land unit.”
- 2.5 In submission number 1273 **B&F Trusts** sought the reclassification of Lot 2 DP194989 from Landform 7 to Landform 6. Supporting evidence was provided in the form of written expert opinion as to the make up of Lot 2 DP194989 from Dr Nigel Clunie in an independent Ecological Assessment Report dated August 2006.
- 2.6 The recommendations to **Council**, as set out in the Hearing Panel documents relevant to submission number 1273, failed to even pertain to the relevant title and no notice appeared to have been taken of the expert opinion of Dr Nigel Clunie provided in the independent Ecological Assessment Report on Lot 2 DP194989 dated August 2006 referred to in and attached to submission number 1273.
- 2.7 The inaccuracies in the recommendations necessitated a verbal presentation to the Hearings Panel by the Appellant (copy attached as Appendix d).
- 2.8 The relevant **Council** decision in respect of submission number 1273 rejects submission 1273 in full. We have been provided with no reasons for Council’s decision and are at a loss to understand on what basis Council has rejected the expert opinion of Dr Nigel Clunie as provided to Council in the Independent Ecological Assessment Report on Lot 2 DP194989 dated August 2006 referred to in and attached to submission number 1273. It is our contention that the make up of DP194989, as assessed by the independent expert, currently falls more appropriately within the definition of Landform 6 (regenerating slopes) than within Landform 7 (forest and bush areas).


Relief Sought

2.9 B&F Trusts seeks the following relief:

- (a) to amend the Plan to reclassify Lot 2 DP194989 from Landform 7 to Landform 6 or to apply differential land unit categorisations (as appropriate) to the land contained in Lot 2 DP 194989;
- (b) such further or consequential relief as may be necessary to fully give effect to the relief sought; and
- (c) costs.

BAYMI and Flinch Trusts by its authorised Trustee Michol Janene Fisher



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