

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

Colin and Wendy Gordon  
Appellant

AND

Auckland City Council  
Respondent

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

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Colin and Wendy Gordon ("**Gordons**") hereby appeal against a decision of the Auckland City Council ("**Council**") in respect of the Hauraki Gulf Islands District Plan Proposed 2006 ("**the Plan**").

## 1. INTRODUCTION AND GENERAL MATTERS

### Submission

- 1.1 **Gordons** made a submission on **the Plan** on 8 December 2006. The submission was referenced by the **Council** as submission number 2643.

### Decision

- 1.2 A notice of the decision by the **Council** ("Decision") was received on 4<sup>th</sup> May 2009. The Decision approved **the Plan** and declined submission number 2643 made by **Gordons**.

### Mediation

- 1.3 **Gordons** are willing to engage in mediation or other alternate dispute resolution to seek to address their concerns as set out in submission number 2643.

### Attachments

- 1.4 The following documents are attached to this notice of appeal (the attachments have been labelled with the appropriate bullet point reference as set out below):
- (a) a copy of **Gordons'** original submission dated 8 December 2006 which was allocated the submission number 2643 by **Council** (12 pages);
  - (b) a copy of **Council's** "Summary of Submissions" allocating the references 2643/1 through 2643/9 to the decisions requested in our submission extracted from **Council's** website (3 pages);
  - (c) a copy of **Gordons'** notes for their verbal presentation to the Hearings Panel as read out to and supplied in hard copy to the Hearings Panel (9 pages) please note these notes summarise and provide pages references for the recommendations to **Council** from **Council's** Officers as set out in the Hearing Panel documents in respect of each part of submission number 2643;
  - (d) a copy of the relevant **Council** Decisions in respect of submission number 2643 (2643/1, 2643/2, 2643/3, 2643/4, 2643/5, 2643/7 and 2643/8) as copied from the **Council's** Decision Report 10-1 (8 pages);
  - (e) a copy of the relevant **Council** Decisions in respect of submission number 2643 (2643/6) as copied from the **Council's** Decision Report 10-6 (2 pages);
  - (f) a copy of the relevant **Council** Decisions in respect of submission number 2643 (2643/9) as copied from the **Council's** Decision Report 30 (6 pages);
  - (g) a copy of paragraphs 1 and 63 through 84 extracted from our Appeal Against Valuation Assessed for Rating Purposes Submission Number 2 in respect of Valuation Number 29510000017707, dated March 2009 (3 pages);
  - (h) 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 (1 page).

## 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 **Gordons** sought various changes to **the Plan** that would result in (1) a future house site being available on Awaawaroa Point ("the Point"), i.e. a designated house site and access track being removed from the scheduled area, in an area of the Point where there are few or no archaeological features; and (2) **Gordons** being able to continue to farm the Point in the same way that they have done for many decades (without having to go to the effort and expense of obtaining resource consents, existing use certificates etc), which farming practices have maintained the quality of the archaeological site.
- 2.4 The initial recommendations of **Council's** Officers and **Council's** Contracted Archaeological Experts to the Hearings Panel (refer Attachment c for a summary) necessitated a verbal presentation to the Hearings Panel by **Gordons** (copy attached as Attachment c).
- 2.5 Regrettably, at the Hearing, none of **Council's** Archaeological Staff or **Council's** Contracted Archaeological Experts were present. This meant that a full and informed discussion was unable to take place between all relevant parties.
- 2.6 **Council's** Decision does not address the issues **Gordons** raised and **Gordons** are at a loss to understand the mixed messages they have received directly from **Council's** Contracted Archaeological Experts and from **Council** through its Decision.
- 2.7 We remain concerned that **Council's** Valuation Department under-estimates the impact that the scheduling of a significant area of our property has on the value of our property as assessed for rates purposes. We have appealed the latest valuation as assessed and we have been informally advised by **Council's** Officers that our appeal is to be rejected. When we receive formal notice of that rejection of our appeal we will file a formal appeal in the Valuation Tribunal. We contend that **Council** (here we mean **Council** in the widest sense i.e. **Council's** actions by all its departments) places an unfair and unreasonable rates burden on us, especially because huge inequities have resulted between ratepayers because of the way the 2008 valuation for rating purposes exercise was struck. In this regard we refer you to paragraphs 1 and 63 through 81 extracted from our Appeal Submission Number 2 in respect of Valuation Number 295100000017707, dated March 2009, which paragraphs are attached as Attachment g.

- 2.8 We contend that the Plan, by limiting us to farming sheep on the scheduled land as a permitted use, renders the scheduled land incapable of reasonable use. It would restrict our farming activities, increase our workload and necessitate us undertaking fencing (to keep cattle and horses out) were we not able to rely on s10 of the Resource Management Act 1991 ("the Act"). The only reasonable use for the scheduled land is farming. Our historic patterns of farming with sheep, cattle and horses have not destroyed, damaged or modified the archaeological features. In fact our farming and husbandry of the land has preserved the archaeological features in good condition as stated by **Council's** Contracted Archaeological Experts. A forced change in our farming patterns would place an unfair and unreasonable (workload and economic) burden on us, particularly since the scheduled area is a significant part of our farm. Such a forced change in our farming patterns would result in significant hardship to us for no apparent preservation gain.
- 2.9 We are further concerned by **Council's** comment "[t]his headland and the extent of site 19-1 (s11/61) could quite practically be fenced off. The resulting loss of grazing land would be negligible in comparison to the total property size and available grazing area...". Remember the scheduled area is 30% of this title (5.7ha of 19ha). So we are wary of **Council** since its comments suggest a desire, on **Council's** part, to in effect remove the scheduled area from our farmed area and in effect make the Point into a reserve without any compensation being payable to us. Given the **Council** has, on a previous occasion in the 1970s, taken the Point as a reserve, also without offering us compensation, we feel we have good grounds for concern. In that instance another party in a similar position mounted a legal challenge against **Council** and won and **Council's** actions were ultimately reversed. **Council's** statement about fencing the Point off and us no longer using it for grazing also perplexes us, as it has been our farming and husbandry of the land that has preserved the archaeological features in good condition and, were the Point to be fenced off, it would revert to weeds and ultimately regenerating bush over time without upkeep and of course we would have no incentive to undertake weed control if we were no longer permitted to farm the land. Would **Council** make us pay rates on the Point if we had to fence it off and could no longer farm it? *Perhaps **Council** should act honourably and buy the Point from us and make it into a Public Reserve?*
- 2.10 We object to the fact that such a significant percentage of our land has been scheduled as an archaeological site without consultation taking place between ourselves and local iwi and/or the NZ Historic Places Trust.
- 2.11 We challenge the **Council's** right to use the general provisions and processes of the RMA, being a review of the Hauraki Gulf Islands District Plan under s79(2) and (3) of the RMA, to schedule areas of our property as archaeological heritage sites when there are specific provisions and processes elsewhere in legislation, such as within the Historic Places Trust Act 1993 and Part 8 of the RMA, which offer us, as owners, greater input into and protection throughout the process.

2.12 We object to the fact that **Council** puts us to regular expense and effort to protect our property rights from further erosion by **Council**. We are exhausted by having to defend our property rights and ourselves in a system, which is stacked against us. **Council** appears to have unlimited resources (ironically funded by us the ratepayers) and we have limited time and resources. **Council** seems to think there is nothing wrong with making us have to apply for new consents (existing use, resource consents etc) to continue to do what we have already done but this places an unfair and unreasonable burden on us.

3.0 **Relief Sought**

**Gordons** seeks the following relief:

- 3.1 to amend the Plan to remove from the scheduled area on the Point a house site and access track;
- 3.2 to amend the Plan so that **Gordons** may continue to farm the Point with a mixture of sheep, cattle and horses and to undertake weed eradication as they have done for decades with little or no destruction of, damage to or modification of the archaeological site without the need for applying for any resource or existing use or other consents;
- 3.3 rates relief / support for a reassessment of and reduction in our valuation for rating purposes;
- 3.4 such further or consequential relief as may be necessary to fully give effect to the relief sought; and
- 3.5 costs.

Wendy and Colin Gordon by their authorised agent Michol Janene Fisher



Date: 23 July 2009

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