

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991 ("the Act")

AND

IN THE MATTER of a reference pursuant to clause 14 of the First
Schedule to the Act

BETWEEN **ANSWER SERVICES HOLDINGS LIMITED**

Lodgement: ENV-2009-AKL-000

Topic: ENV-2009-304-000

Appellant

AND **AUCKLAND CITY COUNCIL**

Respondent

NOTICE OF APPEAL

**BROOKFIELDS
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TO: The Registrar
Environment Court
AUCKLAND

1. The appellant:

The appellant is **ANSWER SERVICES HOLDINGS LIMITED ("ASHL")**.

2. The respondent:

The respondent is **AUCKLAND CITY COUNCIL ("the Council")**.

3. Date of decision appealed against:

2 May 2009

4. Date decision received by appellant:

4 May 2009

5. Nature of reference:

- (a) ASHL appeals against parts of the decisions of the Council in respect of submissions by ASHL to the proposed Auckland City District Plan – Hauraki Gulf Islands Section ("the proposed District Plan - HGI").
- (b) ASHL made submissions and further submissions on the proposed District Plan - HGI and presented evidence before the Council's Hearings Committee ("the Panel").
- (c) The decision to reject or accept in part, ASHL submissions and further submissions in respect of the proposed District Plan - HGI was made by the Panel. ASHL is identified as Submitter 1287 in the decision.

6. Provisions referred:

The decision appealed relates to the Council's rejection of submissions by ASHL on the following provisions of the proposed District Plan - HGI:

- (a) Part 1 – specifically clauses 1.3, 1.3.2, 1.4, 1.4.1.3, 1.4.2, 1.6.2, 1.6.2.2, 1.6.4.2; and
- (b) Part 2 – specifically clauses 2.2, 2.4.1, 2.5, 2.5.2; and
- (c) Part 3 – specifically clauses 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.3, 3.3.2, 3.3.3, 3.3.4, 3.3.5, 3.4, 3.4.3; and
- (d) Part 4 – specifically clauses 4.2, 4.3, 4.4, 4.8, 4.8.2, 4.9, 4.10, 4.10.4, 4.11, 4.11.3; and
- (e) Part 6 – specifically clauses 6.5.2.2, 6.6, 6.6.2.2, 6.7, 6.7.2, 6.8, 6.9; and
- (f) Part 10 – specifically clauses 10, 10a, 10a.20, 10a.20.5, 10c.3, 10c.4.3, 10c.1T, 10c.4T, 10c.4.7, 10c.4.9; and
- (g) Part 11; and
- (h) Part 12 – specifically clauses 12, 12.9.3, 12.9.4, 12.9.3.3, 12.1T, 12.2T; and
- (i) Part 13 – specifically clauses 13, 13.2.2, 13.2.3, 13.2.6, 13.2.7, 13.3.1, 13.3.2, 13.3.3, 13.3.4.1, 13.3.4.2, 13.3.5, 13.3.6, 13.4.3, 13.4.4, 13.4.5, 13.4.6, 13.4.7, 13.4.10, 13.6.1; and
- (j) Part 14 – specifically clauses 14.3, 14.3.118, 14.3.119, 14.3.135, 14.3.68, 14.3.29, 14.3.41; and
- (k) any other provisions which require amendment as a result of the relief sought by ASHL.

7. Overall reasons for the appeal:

7.1 ASHL's overall reasons for the appeal are as follows:

- (a) ASHL considers that in respect of the provisions identified above (in paragraph 6), and described in more detail below, the Council's decisions regarding the proposed District Plan - HGI:
 - (i) are inconsistent with the relevant provisions of the Resource Management Act 1991 ("the Act"), including the purpose and principles of the Act under Part 2;

- (ii) will not promote the sustainable management of natural and physical resources;
- (iii) are inappropriate; and
- (iv) are contrary to good resource management practice.

8. Specific Reasons for the Appeal

- 8.1 In particular, without limiting the generality of the overall reasons for the appeal outlined above, the Council's decision does not appropriately address the specific issues identified below.
- 8.2 ASHL made submissions on a number of provisions in the proposed District Plan - HGI. Of these, two can be identified as fundamental matters underpinning ASHL's position regarding the approach taken in the proposed District Plan – HGI. These two issues are:
- (a) Zoning (land unit classification) on ASHL's land at Thompsons Point; and
 - (b) Comprehensive Development provision options by way of a Comprehensive Management Plan as a resource management method.
- 8.3 Additional matters have been raised by ASHL which support the overarching relief sought regarding the core issues or are required subsequent to the amendments proposed.
- 8.4 The appeal is in two parts. Part 1 seeks to rezone the Site and the introduction of a Comprehensive Management Plan ("CMP") and supporting objectives, policies and rules for ASHL's land. Part 2 is framed in the alternative should the Court decide not to introduce a CMP for Thompson's Point and seeks the introduction of or amendment to, objectives, policies and rules in a number of Chapters in the proposed District Plan - HGI.

Zoning of Thompsons Point

ASHL's submissions

- 8.5 ASHL made a number of submissions seeking the re zoning of 120ha at 306 Sea View Road, Thompson's Point ("the Site"). These submissions included:

- (a) Reclassification of 120ha at the Site from Landform 1 (coastal cliffs and slopes), Landform 4 (wetland systems) and Rural 2 (westerns landscapes) to proposed Rural 2A, Rural 2B and Island Residential 1.
- (b) A concept plan of development be included as part of the proposed District Plan - HGI provisions applying to the Site to identify all building areas and roads/infrastructure so the proposed land use management regime allows for all buildings meeting specified development control standards to be approved as controlled activities. Where buildings do not meet the specified development controls, such buildings will be provided for as restricted discretionary activities.
- (c) The coverage rules applying to the Site should be framed to provide for a minimum of 500m² coverage as a permitted activity.
- (d) Provide appropriate planning provisions for the Site, to enable the creation of approximately 20 lots using no less than 4ha of land area on the suggested Island Residential 1 part of the property.
- (e) Provide appropriate planning provisions for the suggested Rural 2A part of the Site, with separate Rural 2B provisions applying only to Thompsons Point, so that rural residential lots are created at a 1:3.5ha / dwelling average density for the Rural 2A part of the Site.
- (f) Provide appropriate planning provisions for the Rural 2B part of the Site, this area will provide for additional 'building areas/dwellings' based on a maximum density of 1 building area/dwelling:5ha.
- (g) Provisions supporting the proposed land units at the Site will include particular environmental and enhancement management outcomes including wetland management, coastal edge management and will incorporate a set of environmental and design principles to be included as part of any assessment criteria.

The Council's decision

8.6 The Panel considered ASHL's submission regarding the Site and stated:

"...the panel recognise that the provisions for Thompsons Point in the Proposed Plan would not achieve the best outcome for development and it is considered that further work is required outside of the Plan review process to ensure that the most appropriate outcome can be achieved. Therefore, the panel also recognise that the detail outlined in the above submissions, regarding aspects of managing the land and appropriate development controls is something that will be addressed and where necessary, amended in order to achieve the desired outcomes."

and further:

"The panel consider that this area could be suitable for more intensive residential development... As discussed in section 4.12 of the report above, [the] panel recognise that neither the Operative or the Proposed Plan provisions would achieve the best outcomes on the site but due to time constraints with the Plan review process, the officers have not been able to formulate an alternative approach. Therefore, the panel recommend that the submitter either apply for resource consent for the development proposed, or that a Plan change is undertaken once the Plan becomes operative so that a proposal for development on Thompsons Point can be finalised."

Specific grounds of appeal

8.7 ASHL appeals this decision on the grounds that the Council has effectively not made a decision, instead deferring any decision on the Site and on the Thompson's Point area generally by way of relying on a resource consent application or a plan change application at some undetermined time in the future. Those methods do not carry any certainty as to outcome and leave the submissions by ASHL unresolved.

8.8 ASHL considers that this putative decision will not promote the sustainable management of natural and physical resources and is contrary to effective management of the Hauraki Gulf Islands land resource.

Relief sought

8.9 ASHL seeks that the land at the Site be rezoned as outlined in ASHL's submission (above at paragraph 8.5(a)) and provisions be introduced to the proposed District Plan - HGI to enable development of a type and at the densities proposed in ASHL's submissions (above at paragraphs 8.5(b)-(g)) and below at paragraphs 8.12-8.22.

Comprehensive Development

- 8.10 ASHL seeks a range of changes to the land use and subdivision provisions as they relate to the Site, to the whole of Waiheke Island and to the greater Hauraki Gulf Islands.
- 8.11 ASHL's position is that the proposed District Plan - HGI should be more focused on an effects based planning regime derived from an integrated catchment management structure. Integrated catchment management is the fundamental approach taken in the Operative Plan and there is no substantive basis for the Council moving away from that approach.

Comprehensive Management Plans

- 8.12 ASHL submitted that comprehensive management plans should be provided for as a discretionary activity in various land units and also in the subdivision controls. The proposed District Plan - HGI should also be amended to include allied assessment criteria and an appendix containing environmental and design principles.

ASHL's submissions

- 8.13 ASHL made a number of submissions seeking specific changes to the proposed District Plan - HGI to provide for comprehensive management plans as part of the planning framework and associated assessment criteria and rules to support these plans. The submissions included:
- (a) That the land use provisions applying to Rural 2 including Thompsons Point, if retained, include specific provision for comprehensive management plans as discretionary activities.
 - (b) Amendments to the proposed land use assessment criteria for discretionary activities to include specific provisions for comprehensive management plans.
 - (c) Provision for cluster subdivision and/or land use activities as a development option within comprehensive management plans. Such

development must meet prescribed design and environmental outcomes (identified in a new appendix to the proposed District Plan - HGI).

- (d) Amendments to all rural zone (and non-conservation islands) land use provisions to enable comprehensive management plans as a discretionary activity (and the introduction of a set of allied assessment criteria) but not including the Rural 2 zone (other than for Thompsons Point) and only on sites over 4ha in the Rural 1 zone and excluding landforms 1-4.
- (e) Amendments to the residential zone activity lists to enable comprehensive management plans as a discretionary activity within ASHL's proposed residential zone on the Site and the introduction of a set of allied assessment criteria.
- (f) Amendments to the proposed subdivision assessment criteria for discretionary activities to include specific provisions for comprehensive management plans.
- (g) The proposed District Plan - HGI provisions should enable comprehensive management plans as a discretionary activity and provide for land use activities and subdivision proposals that are not currently enabled in the proposed rules (whether or not amended by other allied submissions) and thus are deemed non complying. Only one consent for a comprehensive management plan should be granted during the life of the proposed District Plan - HGI in respect of any site or property;
- (h) The proposed District Plan - HGI (in particular Part 2) should be amended to enable the planning techniques sought by ASHL to be applied to the Site as well as for the proposed District Plan - HGI provisions per se - other than landforms 1 – 4;
- (i) That the subdivision provisions applying to Rural 2 including Thompsons Point, if retained, include specific provision for comprehensive management plans as discretionary activities;

- (j) Amend the residential zone subdivision provisions to enable comprehensive management plans as a discretionary activity within ASHL's proposed residential zone on the Site (and introduce a set of allied assessment criteria).

The Council's decision

- 8.14 The Panel considered that the rules for comprehensive rural development outlined in the Auckland City Council District Plan – Hauraki Gulf Islands Section – Operative (1996) ("the Operative Plan") have effectively become redundant as the majority of the land within land unit 22 has been subdivided. Therefore, the Panel considered providing for comprehensive management plans within these rural areas (now zoned Rural 2) will serve no additional purpose for subdivision. The Panel further considered that Part 12 - Subdivision, of the proposed District Plan - HGI appropriately recognises the relationship between subdivision and the effects on landscape character from built forms. Therefore, ASHL's submissions were rejected by the Panel.

Specific grounds of appeal

- 8.15 ASHL considers that the planning framework adopted in the proposed District Plan - HGI is not the most appropriate way to promote the sustainable management of natural and physical resources and is contrary to good resource management practice.
- 8.16 The proposed District Plan - HGI provisions (as notified) do not enable sufficient flexibility or innovation in land use and development especially, where significant conservation and enhanced land management outcomes may result.

Relief sought

- 8.17 ASHL seeks the introduction of comprehensive management plans into the planning framework and associated assessment criteria and rules to support comprehensive management plans as outlined in ASHL's submissions (above at paragraph 8.13(a) – (j) and below at 8.18-22).

Density and Cluster housing

ASHL's submissions

- 8.18 In support of and aligned to the submissions on comprehensive development plans, ASHL made a number of submissions regarding the appropriate density for housing on land subject to a comprehensive management planning approach. The submissions included:
- (a) Clauses 12.9.3 and 12.9.4 be amended to allow for a bonus density approach (similar to the method adopted in the Operative Plan for land unit 22).
 - (b) In the land use provisions, provide for residential development consolidation as a development alternative to residential clusters where it is more appropriate on a site specific basis to create a hamlet form of development. The balance area from any such development should be set aside into a combination of productive land (where it exists), and environmental enhancement processes and protection mechanisms.
 - (c) The proposed District Plan - HGI should include provisions providing a comprehensive management approach to residential land use whereby bonus density is enabled at a ratio in proportion to securing areas of protected land and management and environmental enhancement proposals including re-plantings of native vegetation.
 - (d) The multiple dwelling provisions (eg at clause 10a.3.6(1)) need amendment and in all the places where the rule is repeated in the proposed District Plan - HGI to remove any confusion that will arise from the reference to one dwelling per site and also need amendment to specifically reference the subdivision rules that form the basis of any multiple dwelling application.
 - (e) Cross reference to the rural property management plan should be made in the multiple dwelling provisions (eg at clause 10a.3.6(1)),

subject to the relief sought in respect of comprehensive management plans.

- (f) In the multiple dwelling provisions (eg at clause 10a.3.6(1)) delete the statement that 'provisions that do not meet these rules are non-complying'. Make any such variations to the multiple dwelling provisions a discretionary activity in regard to density variation.
- (g) The land use rules for the residential zones on Waiheke in relation to any sites over 6000m² should include a provision for a bonus density regime, being the equivalent of the rural significant environmental feature (SEF) type approach but in an urban context, as a means of securing higher residential density within a bush protection environment and allowing cluster development to occur within such land up to a maximum density of one dwelling/ 1000m² only where communal infrastructure is proposed and where significant environmental feature type protection covenants secure the greater proportion of the site.
- (h) A bonus density regime should be applied to Rural 2 (western landscape) sites (Table 12.2 and clause 12.9.3). Beyond the minimum lot size areas in Table 12.2 (as modified) the proposed District Plan - HGI should include provision whereby an appropriate density is determined by a ratio in relation to sustainability and environmental management enhancements including areas of protected land, open space and land management and enhancement proposals including re-plantings of native vegetation and management of water systems. Therefore for every 1ha of additional significant environmental feature type outcome secured beyond a minimum subdivision requirement of 50% of parent site sustainably managed/protected/enhanced, one additional lot, beyond the Table 12.2 (as amended) density regime is enabled.
- (i) In the subdivision provisions, provide for residential development consolidation as a development alternative to residential clusters where it is more appropriate on a site specific basis to create a hamlet form of development. The balance area is to be set aside into a

combination of productive land (where it exists), and environmental enhancement processes and protection mechanisms.

The Council's decision

- 8.19 The Panel considered that providing for cluster subdivision within land units which do not have the means to mitigate the clustering of built forms, may generate adverse effects on landscape character. This may detract from the character and amenity of these areas and may not be consistent with the objectives set out in the proposed District Plan - HGI for these land units. Moreover, the Panel decided it would be inappropriate to provide for bonus density and cluster provisions in exchange for environmental protection in certain zones. Further, the Panel considered that providing for bonus density is not consistent with the objectives of securing appropriate management of resources, and would not be consistent with achieving sustainable land use development.
- 8.20 For those properties which are available for development the Panel considered that some may be suitable for the type of bonus density regime sought by ASHL. The Panel considered that further work had to be done to look at the properties and determine the likely costs and benefits of introducing such a regime. The work has not yet been done and therefore the Panel rejected the submissions.

Specific grounds of appeal

- 8.21 ASHL appeals the Council's decisions regarding density and cluster housing on the following grounds:
- (a) The Panel effectively did not make a decision regarding a bonus density regime for properties available to be developed;
 - (b) Providing for increased density of housing will not generate adverse effects on the landscape character;
 - (c) Amenity and character will be protected and enhanced in accordance with the objectives set out in the proposed District Plan – HGI; and
 - (c) Environmental protection especially of significant environmental features is important and will be best achieved through the introduction and use of appropriate provisions for cluster housing.

Relief sought

- 8.22 ASHL seek that the proposed District Plan - HGI be amended in accordance with ASHL's submissions on cluster housing and density outlined in paragraphs 8.18 (a) – (i).

Prescriptive Lists for managing activities and effects based planning

ASHL's submissions

- 8.23 ASHL submitted that clause 4.2 should be amended to reflect an effects based approach rather than a prescriptive use of activity tables and further that the approach taken in the proposed District Plan - HGI (specifically in Part 10) to managing activities through prescriptive activity lists and then deeming all activities outside of such lists to be non-complying, should be deleted.
- 8.24 ASHL considers that the approach used in the proposed District Plan - HGI as notified should be replaced with an effects based approach similar to that used in the Operative Plan. The proposed District Plan - HGI should retain and restructure the current effects based approach of the Operative Plan (amending existing discretionary use lists taking into account state of the environment monitoring of the Operative Plan for the last 10 years).

The Council's decision

- 8.25 The Panel considered that the approach taken in the proposed District Plan – HGI (as notified) addressed problems which have been identified in the Operative Plan. Therefore, the Panel rejected ASHL's submissions seeking an effects based regime derived from an integrated catchment management structure.

Specific grounds of appeal

- 8.26 ASHL appeals the Council's decision on the basis that the approach taken in the proposed District Plan - HGI (as notified) (using prescriptive activity lists) is not the most appropriate means of assisting the Council to fulfil its functions, powers and duties under the Act.

Relief sought

- 8.27 ASHL seeks that the approach to planning in the proposed District Plan HGI be deleted and new plan provisions put in place which reflect an effects based approach to planning rather than the use of prescriptive activity tables.

Strategic Management Areas

ASHL's submissions

- 8.28 ASHL made submissions on the use of strategic management areas for parts of Waiheke Island. The submissions included:

Miscellaneous submissions

- (a) Change clause 3.2.4 in relation to the protection of key infrastructure matters and the protection of the landscape and amenity of the island.
- (b) Amendments to the wording of clause 3.2.2 to better reflect that the proposed District Plan - HGI is focused on management and not solely on limitations.

Submissions about clause 3.2.3

- (c) The wording of clause 3.2.3 should be amended to provide for adaptive and flexible opportunities as opposed to signalling negative messages of limitation. There should be another policy that encourages and enables growth and development to occur on sites outside of the 'settlement areas' and in dispersed locations where comprehensive development proposals support the resource management issues in clause 3.2.2.

Submissions about clause 3.3.1 Waiheke strategic management area - Introduction

- (d) Clause 3.3.1 should be amended to include the more recent history and development of the Western Landscape area including Te Whau, Church

Bay, Park Point and Owhanake and remove erroneous descriptions of the development which has taken place in these areas over the last 10 years.

- (e) There are significant diverse small scale productive land uses within these 'rural' areas and the planning methodologies should be recognised as representing a sustainable (including economically sustainable) model for the Hauraki Gulf Islands context that can be carried over into other parts of the Hauraki Gulf Islands including Great Barrier and the eastern end of Waiheke
- (f) Amended wording in clause 3.3.1 is needed to set out the means through which a more holistic management of landscape including reinforcement of landform protection, natural systems, visual amenity and ecological enhancement can be secured.
- (g) The proposed District Plan - HGI (specifically clause 3.3.1) places an entirely invalid interpretation on the evolution of landscape and land uses. It is also simplistic to define Waiheke as comprising two areas with different planning characteristics. Amendments should be made to the proposed District Plan - HGI to properly reflect the identity of the different parts of Waiheke.
- (h) The description in clause 3.3.1(2) of eastern Waiheke needs amendment as it is misleading. There are a number of small scale activities that include mixed use activities, home working, bush and landscape enhancement programmes and tourism.

Submissions about clause 3.3.2 and 3.3.3 – Essentially Waiheke and Resource Management Issues

- (i) The statement that the five principles (of Essentially Waiheke) are reflected in the Waiheke strategic management area needs to be amended as it is incorrect - the strategic management area does not for example properly address employment or economic development.
- (j) Clauses 3.3.2 and 3.3.3 need to be amended to reflect a much more positive tenor to the significant resource management issues, which needs to be addressed in the proposed District Plan - HGI. The wording and language utilised in the proposed District Plan - HGI needs to be refocused to secure a

more proactive, innovative environmental and design oriented outcome that promotes diversity and excellence over a protection status quo based paradigm. Clause 3.3.3(1) should reference 'sustainably manage' not 'protect.

Submissions about clause 3.3.4 – Waiheke objective and policies

- (k) The objective and the allied policies in clause 3.3.4 need to be amended so that they promote positive sustainable change and not simply retention of existing patterns of development.
- (l) Policy 2 of clause 3.3.4 is not appropriate with regard to the validity of large scale rural developments being the appropriate means to achieve the proposed District Plan - HGI outcomes and in fact the opposite is likely. The wording should be changed to reflect the appropriateness of applying the types of provisions that land units 21 and 22 encompass and also by including the notion of comprehensive management approaches to secure diverse landscapes and land uses.
- (m) Policy 3 of clause 3.3.4 needs amending as it is inconsistent with
 - (a) Essentially Waiheke; and
 - (b) Determines a growth strategy direction outside of those matters being addressed in the proposed District Plan - HGI (which is a deficiency in terms of achieving the purpose of a Plan review per se).
- (n) Objective 3.3.4 does not support the proposed policies as they do not identify properly how the three key dimensions of the objective will be achieved thus the proposed District Plan - HGI requires substantive amendment.
- (o) The proposed District Plan - HGI provisions need to be amended to focus on the understanding of the future management needs of the general environment and landscape promoting and encouraging diverse and innovative developments set within the emergent cultural landscape that has evolved since the 1980s.

Submissions about clause 3.3.5 – Resource Management Strategy

- (p) Clause 3.3.5 needs amending as the identified strategy elements reflect past paradigms and should be forward thinking strategies that pick up on the successes of the Operative Plan provisions

Submissions relating to the differences between privately owned other islands and publicly owned other islands

- (q) The objective in clause 3.4.3 and associated policies need amendment to better reflect the potential development for the privately owned islands as distinct from publicly owned islands. The resource management strategy should be made more explicit to set out how there is intended to be a balance between these two different ownership regimes and use potentials as a means to secure an overall long term outcome for the outer islands as a whole.

The Council's decision

- 8.29 The Council made individual decisions on each of the clauses submitted on by ASHL as follows:

Miscellaneous submissions

- (a) These submissions are not supported by the Panel because Clauses 3.2.4(4) and 3.2.4(5) identify that activity based land units and council designations have been applied to protect important infrastructure such as wharfs, community facilities, the airfields at Claris and Okiwi and the Claris landfill. Also Clause 3.2.4(2) identifies that development controls will be used to ensure that development does not have an adverse effect on the landscape and amenity of the islands.
- (b) These submissions are not supported by the Panel as the resource management issues have been specifically phrased in accordance with what the Council understands as best planning practice.

Submissions about clause 3.2.3

- (c) These submissions are supported by the Panel to the extent that there are agricultural, horticultural and tourism activities occurring outside of the settlement areas which need to be recognised. It is considered that this issue has been addressed by the additional policy which states:

‘By facilitating the use and development of land outside the settlement areas for agriculture, horticulture and tourism activities.’

Submissions about clause 3.3.1 Waiheke strategic management area - Introduction

- (d) It is the Panel's view that Part 1 of clause 3.3.1 provides a broad overview of the character of western Waiheke. Further detail on the character of these areas is provided within the introduction section clause 10a.20.1.
- (e) - (f) It is the Panel's view that the resource management issues, objective, policies and strategy within clauses 3.3.3 to 3.3.5 provide further detail, but still at a broad Waiheke wide level on how land use is managed within the proposed District Plan - HGI. These parts of the proposed District Plan - HGI provide a broad framework under which the more specific land units and landforms (part 10a of the proposed District Plan - HGI) within Waiheke Island have been developed. Within the introduction to the Rural 2 land unit, clause 10a.20.1, reference is made to "small scale rural activities, primarily with a horticultural focus". In addition, farming, horticulture and visitor accommodation for up to 10 people are permitted activities within this land unit. Therefore rural activities are recognised within the proposed District Plan - HGI. The Panel considered that the matters raised in these submissions are addressed within clause 3.3 and other parts of the proposed District Plan - HGI, therefore no alterations to the proposed District Plan - HGI were necessary.
- (g) The Panel noted that the development of the proposed District Plan - HGI recognised the different landscape characters within the Hauraki Gulf as a whole and Waiheke specifically. Clause 3.3.1 appropriately divides the Waiheke strategic management area into two areas, eastern and western Waiheke. The descriptions within this section briefly highlight the differences between these two areas, which is based on the landscape character of these

areas. Western Waiheke comprises the area where the majority of settlement has occurred and eastern Waiheke has more of a rural character.

- (h) The Panel noted that clause 3.3.1.(2) of the proposed District Plan - HGI describes the general and dominant characteristics of the eastern part of Waiheke. It does not intend or need to describe all the activities which operate within this part of Waiheke. The Panel do consider that the beaches on Eastern Waiheke are more correctly described as 'remote' rather than 'undeveloped'. Further detail on the characteristics of particular areas is provided in the landforms which apply to particular parts of eastern Waiheke. These include landform 5 (productive land), landform 6 (regenerating slopes) and landform 7 (forest and bush areas).

Submissions about clause 3.3.2 and 3.3.3 – Essentially Waiheke and Resource Management Issues

- (i) The Panel considers that clause 3.3.2 as proposed is the most effective method of integrating the Essentially Waiheke documents within the proposed District Plan - HGI. The Panel consider that the word 'protect' provides a clearer indication for people reading the proposed District Plan - HGI of the intent of the council in regard to landscape character and natural features. It is also more consistent with the Outstanding Natural Landscapes ("ONL") requirements of Plan Change 8 of the Regional Policy Statement and one of the principles of Essentially Waiheke to "protect and enhance Waiheke's character".

Submissions about clause 3.3.4 – Waiheke objective and policies

- (k) – (o) The Panel endorses this policy because it provides broad direction of how the proposed District Plan - HGI provides for activities within eastern Waiheke. Further detail is provided within the relevant land units which relate to eastern Waiheke, for example landform 5 (productive land), landform 6 (regenerating slopes) and landform 7 (forest and bush areas). The Panel does consider that the words 'large scale' may give the wrong impression and so have amended the words to be 'larger scale'. The Panel recognise that the proposed District Plan - HGI has deliberately not mentioned how potential growth should be accommodated on Waiheke. It has been confirmed that for the immediate to mid term there is sufficient land within Waiheke for

residential purposes. Therefore, the Panel considered it was unnecessary to alter policy 3.3.4(3).

Submissions about clause 3.3.5 – Resource Management Strategy

- (p) The Panel recognises that clause 3.3.5 - resource management strategy explains broadly, within Waiheke, how the proposed District Plan - HGI manages land use. These methods follow on from the successes of the Operative Plan, and are complementary to, those within the Operative Plan. The Panel also suggests that they also provide greater clarity on what is envisaged within the proposed District Plan - HGI for particular parts of Waiheke.

Submissions relating to the differences between privately owned other islands and publicly owned other islands

- (q) These submissions are not supported as it is considered that the SMA provides a strategic framework in which use and development can occur without unduly restricting opportunities for landowners.

Specific grounds of appeal

8.30 ASHL appeals the Council's decisions on the basis that:

- (a) there is a need to recognise key rural and open space values through resilient planning controls that will set in place an enduring zoning framework.
- (b) changes are needed to the planning framework to ensure consistency with Essentially Waiheke.
- (c) there is a need to formulate a specific RMA framework that recognises the positive outcomes arising from the provisions relating to Land unit 22 in the Operative Plan.

Relief sought

8.31 ASHL seeks amendments to the provisions as outlined in its submissions above at paragraph 8.28(a)- (q).

Subdivision

- 8.32 Subdivision and land use provisions for all rural zones (including non conservation islands) need amending to incorporate more flexible and diverse opportunities for land use and development outside of the strategic limitations imposed by the focus on concentrating development within existing settled areas with limited subdivision and use options elsewhere.

ASHL's submissions

- 8.33 ASHL made a number of submissions regarding subdivision for various land zones and specifically regarding the Site. These submissions included:
- (a) Remove subjective wording from clause 12.9.3.3(3).
 - (b) Clause 12.9.3.3(2)(b) requires consequential amendment as it implies there is a connection between cessation of active 'farming' and qualifying for consideration as a significant environmental feature but does not link across into any consideration of proposed planting.
 - (c) Amend clause 12.9.3.3(7) so that where land has already been voluntarily protected by some legal instrument it may still qualify as part of the significant environmental feature process if a proposal increases the level of protection - such as vesting land in council as a reserve.
 - (d) Amend Rural 2 subdivision rules in Table 12.1 applicable to the Site and Rural 2 generally to a minimum 5ha lot size.
 - (e) Amend clause 12.9.3 to include Rural 2 land with a minimum area of 1.5ha and a minimum average site area of 3.5ha, and a minimum requirement of 50% of the parent site sustainably managed / protected / enhanced.
 - (f) Amend Table 12.2 to include Rural 2 land with a minimum area of 1.5ha and a minimum average site area of 3.5ha, and a minimum

- requirement of 50% of the parent site sustainably managed / protected / enhanced.
- (g) The provisions set out in clause 12.9.3 need amendment and extension so that a number of linked provisions are better framed to achieve sustainable development and so that the provisions apply more widely.
- (h) Delete the requirement that all areas be net site areas. Clearly state these are gross areas.
- (i) Clause 12.9.4 needs to be amended so that it enables cluster subdivision to occur without a requirement that all new lots have an equal undivided share in the residual lot.
- (j) The subdivision rules for the residential zones on Waiheke in relation to any sites over 6000m² should include a provision for a bonus density regime, being the equivalent of the rural significant environmental feature type approach but in an urban context, as a means of securing higher residential density within a bush protection environment and should allow cluster development to occur within such land up to a maximum density of one dwelling / 1000m² only where communal infrastructure is proposed and where significant environmental feature type protection covenants secure the greater (>50%) proportion of the site.
- (k) The proposed lot size regime in clause 12.9.4 for clustered lots at 3000-4000m² area per site is not sufficiently flexible and will not facilitate appropriate development patterns.

The Council's decision

- 8.34 The Panel considered the rules and specific assessment criteria for the proposed Rural 2 land unit at Thompson's Point and concluded that the operative and proposed plan provisions would not achieve the best outcomes on the Site. However, the Panel also considered that ASHL's proposal for the Site may not be the most appropriate method for achieving the objectives of the proposed District Plan - HGI.

Therefore the Panel noted that further discussion with the landowners at Thompson's Point was necessary. The Panel rejected ASHL's submissions regarding subdivision as they relate to the Rural 2 land unit without actually making a decision.

- 8.35 The Council also considered that some of ASHL's submissions regarding subdivision provisions were too general and therefore rejected them. Additionally, the Panel considered that its earlier decisions on density and cluster housing meant that a number of the amendments sought to the subdivision provisions would not provide the best possible outcomes for the land units in question.

Specific grounds of appeal

- 8.36 ASHL appeals the Council's decisions concerning the subdivision provisions set out above as it considers that there is a need to enable subdivision of the Site and other land in a manner that is consistent with ensuring long term protection of the land, so that the dominant rural qualities are preserved and so that the landscape and ecological values of the land are maintained for the future and enhanced where appropriate.

Relief sought

- 8.37 ASHL seeks relief in accordance with the submissions set out in paragraph 8.33(a)-(k) above.

Land Use and Development

- 8.38 ASHL made submissions on the development controls pertaining to the following topics

Development controls - General

ASHL's submissions

- 8.39 ASHL made the following general submissions to the Council, concerning development controls and the need for amendments to the development controls as a result of the changes suggested elsewhere in its submissions.

- (a) Clause 4.3(1)(a) and (b) should be amended as the co-joining of any building activity to any land use activity, and then only where it is listed in the activity tables, will prevent many permitted activities being carried out in existing buildings as the provision is subject to misinterpretation.
- (b) Clause 4.3(2) should be amended on the same basis as clause 4.3(1)(a) and (b) and more particularly as it is unreasonable, unrealistic, unnecessary and unduly onerous and complex.
- (c) All prohibited activities should be listed in clause 4.4 rather than elsewhere such as in part 7.
- (d) The activity tables for all land units and landforms should be amended so that they clearly provide for residential uses as permitted activities as a dwelling is a building and not a use.
- (e) The activity tables for all land units and landforms should be amended so that new buildings or additions to existing buildings are provided for as a controlled activity in all places where the proposed District Plan - HGI makes them restricted discretionary activities.
- (f) For all rural zones as well as for the Site, (whether or not it is reclassified as sought) the activity tables should be amended to also include the following activities in addition to those already in the proposed activity tables:

Activity	Status
Cafes/restaurants	RD
Outdoor recreation/adventure activities	RD
Residential use	P
Wineries	RD
Farm buildings	C
Art galleries and museums	RD
Care centres	RD
Educational facilities	D