

BEFORE THE ENVIRONMENT COURT

ENV 2009-AKL-

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of an appeal pursuant to clause
14(1) of the First Schedule of
the Act

BETWEEN Paul Downie & Richard Bruce
Somerville-Ryan on behalf of Paul Downie,
Geraldine Downie, Richard Bruce Somerville-
Ryan, Elizabeth Anne Robertson, James
William Robertson, Trevor Michael Newman,
John Cran, Edward AD Scott & Anne R Scott,
Carole & Neil Wright.

Appellant

AND

AUCKLAND CITY COUNCIL

Respondent

**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

We, Paul Downie and Richard Bruce Somerville-Ryan of 145 Shoal Bay Road, Tryphena, Great Barrier Island, on behalf of Paul Downie, Geraldine Downie, Richard Bruce Somerville-Ryan, E Anne Robertson, James W Robertson, John Cran, Edward AD & Anne R Scott, Carole & Neil Wright, and Trevor Michael Newman

appeal against a decision of the Auckland City Council on the following policy statement or plan:

Auckland City District Plan: Proposed Hauraki Gulf Islands Section

We made a submission on that policy statement or plan.

We received notices of the decision referred to in this appeal on 4 May 2009.

The decision was made by Auckland City Council.

The decision (or part of the decision) that I am appealing is:

(see attached schedule)

The reasons for the appeal are as follows:

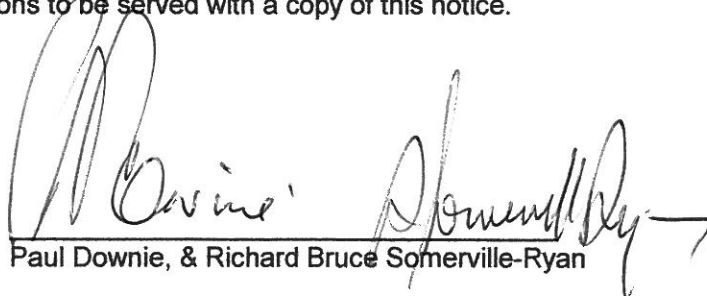
(see attached schedule)

I seek the following relief:

(see attached schedule)

I attach the following documents to this notice:

- (a) a copy of my submission *or* further submission (with a copy of the submission opposed or supported by my further submission):
- (b) a copy of the relevant decision (*or* part of the decision):
- (c) any other documents necessary for an adequate understanding of the appeal:
- (d) a list of names and addresses of persons to be served with a copy of this notice.


Paul Downie, & Richard Bruce Somerville-Ryan

Address for service of appellant:

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Contact person: Paul Downie

Schedule of Decisions Appealed, Reasons for the Appeals and Relief Sought

Decision Topic	Submission Reference	Specific Provision or Matter	Summary of relevant part of Decision	Reasons for the Appeal	Relief Sought
Part 7 Heritage Appendix 2 Appendix 4	1555 1890 1934 1969 2257 2354 2361 3670 3684	Part 7 Heritage; Appendix 4 Section 3 Criteria for Scheduling Heritage Items	Rejection of submissions	<p>The submission sought amendments to this set of criteria on the grounds that they are too broad and do not sufficiently restrain the Council to go through a thorough process of accurate identification of significant items or features that require protection, and precise definition of the boundaries of protected areas.</p> <p>Section 191 (1) would appear to require a reasonable level of definition of items and features subject to protection, and certainly that the authority had taken due care in identifying areas and items to be protected before seriously affecting the ability of landowners to find a reasonable or economic use for their properties.</p> <p>The section 32 analysis supporting such classifications was inadequate as it failed to fully assess the cost to landowners of application of the criteria.</p> <p>The plan needs to adopt a balanced approach to ensure that landowners are not unduly penalised by the heritage provisions in the plan.</p>	<p>Amend criteria for assessing heritage items.</p> <p>Amend activity tables to allow a wider range of land use in designated heritage or protected areas.</p>
Part 7 Heritage	2241 3421	Clause 7.11.1	Submission rejected	<p>Submission sought additional clauses:</p> <p>Procedure for ensuring consultation with affected landowners;</p> <p>Greater protection for the rights of landowners to use their properties for their financial, social and cultural needs.</p> <p>The plan does not provide sufficient protection for landowners.</p>	<p>Amend the plan to require greater consultation with affected landowners prior to scheduling Sites of Ecological Significance, Sensitive Areas, or other Heritage protection.</p> <p>Amend the plan to allow more flexible land use within heritage areas.</p>

Decision Topic	Submission Reference	Specific Provision or Matter	Summary of relevant part of Decision	Reasons for the Appeal	Relief Sought
Part 7 Heritage Appendix 4	1557 2254 3421 3687	Part 7 Heritage: Appendix 4 Section 4 Criteria for scheduling sites of ecological significance	Submission rejected	<p>The submission sought amendments to this set of criteria on the grounds that they are too broad and do not sufficiently restrain the Council to go through a thorough process of accurate identification of significant items or features that require protection. Section 191 (1) would appear to require a reasonable level of definition of items and features subject to protection, and certainty that the authority had taken due care in identifying areas and items to be protected before seriously affecting the ability of landowners to find a reasonable or economic use for their properties.</p> <p>The section 32 analysis supporting such classifications was inadequate as it failed to fully assess the cost to landowners of application of the criteria</p>	<p>Review of Appendix 4 Section 4 Criteria for scheduling sites of ecological significance.</p> <p>Amend all heritage designations based on Appendix 4 Section 4.</p>
Part 7 Heritage Appendix 4	1557 2254 3672	Part 7 Heritage: Appendix 4 Section 4 Criteria for scheduling sites of ecological significance		<p>The submission sought amendments to this set of criteria on the grounds that they are too broad and do not sufficiently restrain the Council to go through a thorough process of accurate identification of significant items or features that require protection. Section 191 (1) would appear to require a reasonable level of definition of items and features subject to protection, and certainty that the authority had taken due care in identifying areas and items to be protected before seriously affecting the ability of landowners to find a reasonable or economic use for their properties.</p> <p>The section 32 analysis supporting such classifications was inadequate as it failed to fully assess the cost to landowners of application of the criteria</p>	<p>Amend criteria for scheduling sites of ecological significance</p>

Decision Topic	Submission Reference	Specific Provision or Matter	Summary of relevant part of Decision	Reasons for the Appeal	Relief Sought
Part 7 Heritage: Sites of Ecological Significance and Sensitive Areas	1557 2254 3672	Part 7 Heritage: Appendix 4 Section 4 Criteria for scheduling sites of ecological significance	Submission rejected	The submission sought amendments to this set of criteria on the grounds that they are too broad and do not sufficiently restrain the Council to go through a thorough process of accurate identification of significant items or features that require protection. Section 191 (1) would appear to require a reasonable level of definition of items and features subject to protection, and certainly that the authority had taken due care in identifying areas and items to be protected before seriously affecting the ability of landowners to find a reasonable or economic use for their properties. The section 32 analysis supporting such classifications was inadequate as it failed to fully assess the cost to landowners of application of the criteria	Recognition of the need for compensation for owners of land affected by heritage orders. Inclusion of a methodology for assessing cost and compensation to landowners within the plan. Inclusion of a wider range of land-use activities within areas covered by heritage orders.
Appendix 4					
Part 7 Heritage: Sites of Ecological Significance and Sensitive Areas	1927 2247 2459 3687	Clause 7.11.4.2 (1) Discretionary Activities	Rejection of submission	As noted in submission 2254/3, the criteria for scheduling sites of ecological significance are vague and unnecessarily restrictive. Applying both these criteria and this clause will have the effect of rendering large areas of land on Great Barrier Island incapable of any reasonable use on very arbitrary criteria.	Removal of clause 7.11.4.2 (1) and replacement with a clause setting out enabling criteria for land use in well-defined sites of ecological significance and sensitive areas.
Part 7 Heritage: Sites of Ecological Significance and Sensitive Areas	2249	Part 7: Appendix 2d Section 3 Sensitive Areas Outer Islands	Submission rejected	The identified sites are based on very general surveys and application of very general criteria in Appendix 4. These are inadequate to support the level of restrictions on reasonable use and activities imposed by the classification. Site boundaries are based on inadequate research.	Removal of Appendix 2d Section 3 pending thorough site review in collaboration and consultation with landowners.
Part 7 Heritage: Sites of Ecological Significance and Sensitive Areas	2249	Planning Maps Sensitive	Submission rejected	There is inadequate research on a site-specific basis to justify all sites and site boundaries.	Submission 2249 calls for removal of the Sensitive Area classification pending adequate research based on reasonable criteria and standards.

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Part 7 Heritage: Sites of Ecological Significance and Sensitive Areas	1899 2249 3670 3690	Part 7 Heritage Appendix 2d Section 3	Submission rejected	The plan's rules are extremely restrictive on any reasonable land use in any area classified as a Site of Ecological Significance, a Sensitive Area, or classified as a heritage area. For most areas the research is very general, and the criteria are too open to support such major restrictions on reasonable land use. Areas should not be identified without thorough surveys and assessment as to features being protected and the boundaries of the areas on a site specific basis.	In respect of private land, the Council should limit its restrictions and protection to the most significant examples of ecological and heritage items included in any survey of Great Barrier Island. Criteria which govern the classifications should be redrafted to meet the objectives of protecting significant features and the reasonable needs of landowners to use their land for their financial, social and cultural needs.
Part 7 Heritage: Sites of Ecological Significance and Sensitive Areas	2249 2257	Part 7 Heritage Appendix 2d Section 2.0	Submissions rejected	The plan's rules are extremely restrictive on any reasonable land use in any area classified as a Site of Ecological Significance, a Sensitive Area, and being classified as a heritage area. For many areas the research is very general and the criteria are too open and general to support major restrictions on reasonable land use. Areas should not be subject to restriction without comprehensive surveys on a site-specific basis to identify items, precise reasons for protection, and the accurate boundaries of areas under protection.	Review of criteria for scheduling sites of Ecological Significance, Sensitive Areas, and other Heritage areas. Development of standards of 'significance' to ensure private property is not casually rendered incapable of reasonable use.

Decision Topic	Submission Reference	Specific Provision or Matter	Summary of relevant part of Decision	Reasons for the Appeal	Relief Sought
Subdivision & Multiple Dwellings Part 12 Subdivision	1923 2140 2154 2234 2356 2731	Part 12 Subdivision Landforms 1, 2 & 4 Minimum site sizes Table 12.1	Minimum site sizes in these landforms is restricted to 25 hectares. Submissions rejected	The high levels of restrictions on land use in these landforms renders many areas incapable of reasonable economic use. Landowners may be forced to consider subdivision as the only option available to them. The minimum site size requirements of 25 hectares are unreasonable. The requirement of a single dwelling per minimum 25 hectare property is not an economically sustainable use of the property.	Review of the minimum site size requirements in Landforms 1, 2 & 4. Expansion of activity tables or land use policies in such landforms to allow a greater range of reasonable land use activities. Review of multiple dwelling rules to allow more flexible use of large properties.
Part 12 Subdivision	1925 1950 2134 FS 210 FS 1769 FS 2858 Further submissions in support of Submission 1405	Part 12 Subdivision Landforms 6 & 7 Table 12.1	Minimum site size in these landforms is restricted to 25 hectares. Submissions rejected	Extensive areas of regenerating kanuka, manuka, podocarp and broadleaf forests within these landforms curtail productive economic use of properties. Land-use restrictions mean the only economic use may be subdivision into reasonable lifestyle blocks of approximately 8 hectares. The restriction of only one dwelling per 25 hectares is not economically sustainable. Allowing a reasonable number multiple dwellings on large properties would have minimal environment effects.	Amendment of land use restrictions Ease subdivision restrictions. Allow multiple dwellings.
Part 12 Subdivision	1924 3111 3675 FS 210 FS 1769 FS 1769 FS 2858 Further submissions in support of Submission 1405	Part 12 Subdivision Landform 5 Table 12.1	Minimum site size in this landform is 25 hectares	Productive use of this land may be uneconomic given current lot sizes and land-use restrictions. Reasonable subdivision may be the only economic use of the land Setting a minimum site requirement of 25 hectares is unreasonable. The land unit is similar to Landform 3 and should carry a similar subdivision requirement. Multiple dwellings should be permitted on larger sites	Amendment of minimum site size requirements. Amendment of multiple dwelling restrictions.

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Part 12 Subdivision	1925 2134 3113 FS 210 FS 1769 FS 2858 Further submissions in support of Submission 1405	Part 12 Subdivision Landforms 6 & 7 Table 12.1		Productive use of this land may be uneconomic given current lot sizes and land-use restrictions. Reasonable subdivision may be the only economic use of the land Setting a minimum site requirement of 25 hectares is unreasonable. Multiple dwellings should be permitted on larger sites	Amendment of minimum site size requirements. Amendment of multiple dwelling restrictions.
Part 12 Subdivision	1895	Subdivision where a site is divided by a legal road 12.6.6 12.7	Submission rejected	Where a property is divided by an unformed or a paper road, a de facto subdivision already exists. The plan should recognize this and permit correction of such historic planning errors.	Review of subdivision requirements where a property is cut by an unformed or legal road.
Part 10 c	3788 3791 3794	Multiple Dwellings in All landforms and settlement areas	Submissions rejected in part	Subdivision requirements and land use controls are too strict in this landform. Large land blocks can sustain multiple dwellings with a minimal impact on the environment.	Allow multiple dwellings per site as a permitted activity on sites greater than 2 hectares.

Decision Topic	Submission Reference	Specific Provision or Matter	Summary of relevant part of Decision	Reasons for the Appeal	Relief Sought
Access					
Part 10.c Development Controls Landforms 1-7 Settlement Areas	1935 2142 2256	General earthwork restrictions, and earthwork restrictions in respect of accessways.	Submission rejected	Earthwork restrictions work against owners of large sites and may prevent reasonable access to reasonable house sites. Earthwork restrictions are more suited to an urban environment than the rural situation on Great Barrier.	Review the earthworks restrictions in consultation with the Community Board and recognised specialists and consultants to provide a regime which allows sustainable use of properties without unnecessary damage to the environment and/or providing for sufficient compensatory planting to offset any damage (with specific reference to table 10c.1)
Part 10.c Table 10c.1	2308	Vegetation clearance for building sites and accessways	Submission rejected	Restrictions on indigenous vegetation removal may prevent reasonable site clearance and clearance to provide safe accessways	Amend vegetation clearance rules to ensure adequate provision is made for reasonable site clearance and clearance for accessways.
Part 11 Assessment Matters	2242	Assessment criteria for 11.3.2	Submission rejected	Seeks restraint on the Council's powers to limit or prevent reasonable access to private properties through a range of assessment controls.	Amendment of assessment criteria and standards for accessways.
Part 13 Transport (Connectivity & Linkages)	1919 2240	Part 13 Access	Submissions rejected	The plan gives insufficient flexibility to resolve long-standing access problems on private land.	Amend Part 13 and related sections and clauses to ensure owners of private properties reasonable access.
Part 13 Transport (Connectivity & Linkages)	2243 3671	Part 13 Access	Submission rejected	Plan gives insufficient recognition and practical relief to long-standing access problems on Great Barrier.	Amend the plan to resolve access problems on Great Barrier Island.
Part 13 Transport (Connectivity & Linkages)	FS 240 FS 243 FS 388 FS 981 (All further submissions in support of primary submission 46/1	Part 13 Access Paper (unformed roads) & Road Reserves	Submissions rejected	The plan needs to recognize and enable use of existing tracks and pathways. Designation of unformed roads as road reserves may provide greater ease of access. Plan gives greater weight to conservation values than to the need to use unformed roads as access. Vegetation controls on unformed roads and road reserves may prevent reasonable development and maintenance of public and private accessways.	Amend plan to allow more flexible access rights across unformed roads. Reduce restrictive vegetation and earthwork controls on unformed roads where public or private access is affected.

Decision Topic	Submission Reference	Specific Provision or Matter	Summary of relevant part of Decision	Reasons for the Appeal	Relief Sought	
Vegetation Clearance	2251 3453 3473	Part 7 Part 10c Part 10c.1 T	Submission rejected in part	Indigenous vegetation clearance rules do not allow for adequate fire-breaks, site clearance, or accessway allowances . Vegetation clearance rules should be eased for new and existing dwelling sites.	Amend indigenous vegetation clearance restrictions.	