

BEFORE THE ENVIRONMENT COURT

ENV A/09

Under the Resource Management Act 1991

IN THE MATTER

of an appeal under Clause 14(1) of the
First Schedule to the Resource
Management Act 1991

BETWEEN

John MacCulloch
and
Hurakia Lodge Limited
and
Heather MacCulloch
and
80 Sandford Way Limited
and
Miles Purchase
and
Louise Amanda Purchase

Appellants

AND

Auckland City Council

Respondent

**NOTICE OF APPEAL AGAINST
PROPOSED AUCKLAND CITY DISTRICT PLAN (HAURAKI GULF
ISLANDS) - DECISION VERSION 2009**

Dated: 24 July 2009

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TO: The Registrar
Environment Court
PO Box 7147
Auckland

- 1 **John MacCulloch and Hurakia Lodge Limited and Heather MacCulloch and 80 Sandford Way Limited and Miles Purchase and Louise Amanda Purchase** appeal against decisions of Auckland City Council on the Proposed Auckland City District Plan - Hauraki Gulf Islands (“the Proposed Plan”).
- 2 The appeal concerns three specific decisions made by the Council, all related to Rakino Island:
 - (A) **John MacCulloch and Hurakia Lodge Limited and Heather MacCulloch and 80 Sandford Way Ltd and Miles Purchase and Louise Amanda Purchase** lodged submissions (#441, #444, #831, #1050 and 3144) on the Proposed Plan. These submissions (wholly or in part) related to Rule 12.9.8.1 and Table 12.1 of the Proposed Plan.
 - (B) **John MacCulloch and Hurakia Lodge Limited and Heather MacCulloch and 80 Sandford Way Ltd and Miles Purchase and Louise Amanda Purchase** lodged submissions (#441, #444, #831, #1050 and #3144) on the Proposed Plan. These submissions (wholly or in part) related to Rule 12.9.8.3(2) of the Proposed Plan.
 - (C) **John MacCulloch and Hurakia Lodge Limited and 80 Sandford Way Ltd** lodged submissions (#446, #449 and #3147) on the Proposed Plan. These submissions (wholly or in part) related to the activity table within Rule 10a.21.5 of the Proposed Plan.
- 3 The appellants received a notice of the relevant decision on or about 04 May 2009.
- 4 The decision was made by Auckland City Council on 23 April 2009.

Decisions Appealed:

The decisions appealed are

- (A) The decision to provide for a minimum lot size in the Rural 3 land unit of 3ha as a ‘Discretionary’ activity as notified without adopting the amendments sought in the appellants’ submissions.
- (B) The decision to impose a subdivision standard in the Rural 3 land unit which requires the implementation of a comprehensive revegetation programme of 30 per cent of each proposed site without adopting the amendments sought in the appellants’ submissions.

- (C) The decision to adopt Rule 10a.21.5 (the activity table for the Rural 3 land unit) as notified without adopting the amendments sought in the appellants' submissions.

5 **The reasons for the appeal are as follows:**

The appellants' own properties proposed to be zoned as 'Rural 3' on Rakino Island, which are natural and physical resources that must be sustainably managed in accordance with the Resource Management Act 1991 (**RMA**).

- (a) The respondent's decisions will unduly restrict the appellants' use of their property.
- (b) The respondent's decision fails to:
- (i) Achieve the purpose of the Resource Management Act ("the RMA");
 - (ii) Adequately provide appropriate mechanisms to avoid, remedy or mitigate adverse effects on the environment and, in particular, the appellants' property;
 - (iii) Adequately recognise and provide for the relevant provisions of the RMA including Part 2, and sections 31, 32, 72 and 74;
 - (iv) Properly implement the provisions of the Auckland Regional Policy Statement and Hauraki Gulf Marine Park Act 2000.
 - (v) Properly implement the objectives and policies of the Proposed Plan relating to sustainable management, coastal, landscape, and natural environment (Part 2), natural hazards in (Part 8), the Rural 3 land unit (Part 10a), the development controls (Part 10c) and subdivision (Part 12), particularly as they relate to providing opportunities for development and opportunities for enhancement; and
 - (vi) Promote the sustainable management of natural and physical resources on Rakino Island.

In particular, and without derogating from the generality of the above:

- (c) In relation to 4(A) of this appeal, the respondent's decision fails to provide sufficient justification for a minimum lot size of 3ha, and fails to demonstrate how such a rule would result in a greater environmental benefit (to an individual lot but also Rakino Island as a whole) than a minimum lot size of 2ha. The respondent has failed to demonstrate how carefully managed subdivision would adversely affect the high amenity values of the coastal environment.
- (d) In relation to 4(B) of this appeal, the respondent's decision fails to provide sufficient justification for revegetation of 30 per cent of

each proposed site should subdivision take place, and fails demonstrate how such a rule would result in a greater environmental benefit (to an individual lot but also Rakino Island as a whole) than a determination on a case by case basis. The respondent has failed to demonstrate how less stringent controls (which would provide incentives, or at least a lack of disincentives, for investment) would adversely affect the high amenity values of the coastal environment.

- (e) In relation to 4(C) of this appeal, the respondent's decision fails to provide sufficient justification for implementing an overly restrictive activity status (for new buildings and additions/alterations to existing building in the Rural 3 (Rural Amenity) land unit. Imposing this activity restriction prevents opportunities for sustainable development and are imposed without any justifiable environmental benefit to individual properties or Rakino Island as a whole.
- (f) Failure to Recognise Uniqueness of Rakino Island (related to 4(A), (B), and (C))

The Proposed Plan (at 10a.21.1) accurately describes Rakino Island as having a "general private ownership pattern with limited Department of Conservation and council ownership". It therefore falls to landowners to undertake improvements on the island, and the Council should provide incentives rather than disincentives.

The differences between Rakino Island and other areas of the Hauraki Gulf Islands needs to be acknowledged (e.g. economic constraints, environment constraints, different objectives, multiple owners). These key differences require alternative strategies to those employed in other areas.

- (g) Lack of Overall Resource Management Strategy for Rakino Island (related to 4(A), (B), and (C))

The Council has failed to consider and develop an overall integrated resource management strategy for Rakino Island, and has failed to provide relevant supporting objectives and policies for the Island. As a consequence, the Council has failed to provide an appropriate mix of development controls and activity restrictions for the Island.

Unlike Great Barrier Island or Waiheke Island, Rakino Island has not been provided with a specific 'strategic management area' within Part 3 of the Proposed Plan. Instead, it is included within an 'Other island's strategic management area' which is generic and vague. The Council has elsewhere failed to provide Rakino Island with a specific overall description or strategic assessment in this manner.

The Council, via the Proposed Plan, has failed to set out and explain the overall outcomes sought on the Island with respect to landuse and subdivision, and fails to provide landowners with sufficient certainty in terms of development. The lack of integrated resource

management strategy provides a disincentive for current landowners to invest in the Island, which is the only method by which the ecological and visual amenity values will be improved. It also provides a disincentive for potential future landowners, who are likely to be dissuaded from purchasing land that enjoys little or no development rights at all.

- (i) In relation to 4(A), the appellants land, and other landholdings of a similar size on Rakino Island, has been included within the Rural 3 (Rural Amenity) land unit. The maximum lot size on Rakino Island is acknowledged as 5.7ha. The smallest is 4.1ha.

A key mechanism which provides opportunities to maintain or enhance the positive qualities of Rakino Island is via subdivision.

However Rule 12.9.8.1 and Table 12.1 of the Proposed Plan provides for a minimum lot size of 3ha in the Rural 3 land unit as a 'Discretionary' activity. Given the existing lot sizes on Rakino Island, the Proposed Plan essentially provides no opportunities for subdivision.

- (ii) In relation to 4(B), a key mechanism which provides opportunities to maintain or enhance the positive qualities of Rakino Island is via subdivision. The policy proposed by the Council will provide an active disincentive for potential activities such as horticulture or agriculture.

However Rule 12.9.8.1 and Table 12.1 of the Proposed Plan essentially provide no opportunities for subdivision, and where subdivision could be achieved (via a joint application with a neighbour) provides an arbitrary minimum revegetation requirement which has not been sufficiently justified.

- (iii) In relation to 4(C), the appellants land, along with other landholdings of similar size on Rakino Island, has been included within the Rural 3 (Rural Amenity) land unit.

The key activities within the table at Rule 10a.21.5 which provide a disincentive to plan and invest in privately owned land (and therefore the bulk of Rakino Island) are

- a. The construction and relocation of buildings, including buildings used for any other activities listed in the table.
- b. Alterations and additions to the exterior of existing buildings including buildings used for any of the other activities listed in the table (with the exception of "minor alterations and additions to a building" as defined within Part 14).

Within the Operative Plan (at 6.20.4.2) these activities required 'Controlled' activity consent within Land Unit 20.

However the activity table at Rule 10a.21.5 now requires 'Restricted Discretionary Activity' consent. Even though the Proposed Plan states that these applications will be considered on a non-notified basis (unless it is determined that special circumstances apply), the Council will now have the opportunity to refuse an application.

The appellants consider that these decisions are contrary to sound resource management practice. The respondent's decisions fail to justify this approach and the additional restrictions applying to development of the appellants' property (as well as all other similarly zoned lots on Rakino Island). Given the unique situation, the provisions will not enable the maintenance or enhancement the amenity of Rakino Island in any meaningful way.

(h) Removal of 'Rural Property Management Plan' Option

The Proposed Plan removes the Operative Plan option of having Council approve a 'Rural Property Management Plan'. This important planning mechanism rewards a landowner for considering and implementing medium to long term strategic resource management planning on their property (which has the wider effect of providing greater certainty to adjoining landowners, but also to the future of the Island as a whole).

The removal of this option further reduces certainty for landowners and removes an important incentive for the investment required to maintain and enhance the amenity of the Island.

- (i) In relation to 4(A) and 4(B), without the 'Rural Property Management Plan' option, a 2ha minimum lot size requirement and revegetation requirements determined on a case-by-case basis (at the time of an application) could effectively provide an alternative method of delivering the right outcomes for Rakino Island. However, under the current rules, opportunities (via appropriate incentives) for maintenance and enhancement have effectively been removed.
- (ii) In relation to 4(C), the removal of this option further reduces certainty for landowners and removes an important incentive for the investment required to maintain and enhance the amenity of the Island. The obvious result will be that landowners will need to continually rely on development controls and the activity table, which require resource consents for all activities relating to buildings (aside from the 'minor' provision). A clear incentive to undertake long-term planning is replaced by a disincentive to invest in any meaningful way. The lack of an alternative development framework means that the activity table at Rule 10a.21.5 takes on even more importance in terms of delivering the right outcomes for Rakino Island.

The appellants consider that the decision to remove the 'Rural Property Management Plan' option is therefore contrary to sound resource management practice.

- (i) Lack of Mandate (relating to 4(A), (B), and (C))

In addition to inadequate explanations of the changes made to the Operative Plan (in terms of changes to minimum lot size rules, the provision of activity restrictions, the revegetation minimum at subdivision and the removal of the 'Rural Property Management Plan' option), the Council appears to have proceeded without any active support from landowners on Rakino Island.

6 The appellants seek the following relief:

- (a) To make the following alterations (or alterations to similar effect) to the provisions of the Proposed Plan which relate to Rakino Island, and more specifically all Rural 3 land
 - (i) In relation to 4(A), provide an overall resource management strategy for Rakino Island, with related objectives and policies, and a minimum lot size of 2ha for the Rural 3 land unit, in order to provide sufficient incentives for landowners to invest in maintaining and enhancing the Island.
 - (ii) In relation to 4(B), provide an overall resource management strategy for Rakino Island, with related objectives and policies, and a provision that revegetation (up to a maximum of 10% of each lot in the Rural 3 land unit) is considered as part of an overall subdivision development on a case by case basis, in order to provide sufficient incentives for landowners to invest in maintaining and enhancing the Island.
 - (iii) In relation to 4(C), provide an overall resource management strategy for Rakino Island, with related objectives and policies, and an appropriate mix of development controls and specific activity restrictions in a way that provides sufficient incentives and encouragement for landowners to invest in maintaining and enhancing the Island. The Plan should recognise the imposition of development controls by providing for the construction and relocation of new buildings and additions and alterations to new buildings as either 'Permitted' or 'Controlled' activities (or an alternative mix of development controls and activity restrictions in a manner which is consistent with an overall resource management strategy for Rakino Island).
 - (iv) In relation to 4(A), 4(B), and 4(C) continue to provide for 'Rural Property Management Plans' as an alternative way of providing incentives to landowners to undertake holistic and

medium-to-long term resource management planning on their property.

- (b) Any other consequential amendments necessary to give effect to the above.
- (c) Costs

7 The appellants attach the following documents to this notice:

- (a) A copy of the decision of Auckland City Council (Annexure A)
- (b) A copy of the submissions made by the appellants in relation to Proposed Auckland City District Plan (Hauraki Gulf Islands), and specifically Rule 12.9.8.1 and Table 12.1, Rule 12.9.8.3(2), and Rule 10a.21.5 (Annexure B)
- (c) A list of the names and addresses of persons to be served with a copy of this notice (Annexure C **to follow**)

The appellants do not attach copies of (a) and (b) of the above to copies of this notice served on other persons, but copies may be obtained or required, from the appellants.

John MacCulloch
and
Hurakia Lodge Limited
and
Heather MacCulloch
and
80 Sandford Way Ltd
and
Miles Purchase
and
Louise Amanda Purchase
by their duly authorised agent:


.....
N. Rasmussen

Dated: 27 July 2009

Address for service of the appellant:

John MacCulloch

and

Hurakia Lodge Limited

and

Heather MacCulloch

and

80 Sandford Way Ltd

and

Miles Purchase

and

Louise Amanda Purchase

C/-

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you lodge a notice of your wish to be a party to proceedings (in form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

You may apply to the Environment Court under s281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the relevant application (or submission) and/or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington or Christchurch.

Contact details of Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar.

The Auckland address of the Environment Court is:

8th floor, District Court Building
3 Kingston Street
Auckland

Its postal address is:

PO Box 7147
Wellesley Street
Auckland

And its telephone and fax numbers are:

Telephone: 09 916 9091; Fax: 09 916 9090