

COPY

**BEFORE THE ENVIRONMENT COURT**

**No. RMA /09**

**IN THE MATTER** of the Resource Management Act 1991

**A N D**

**IN THE MATTER** of an appeal pursuant to section 120 of  
the Act

**BETWEEN**            **NEW ZEALAND HISTORIC PLACES  
TRUST/POUHERE TAONGA**

**Appellant**

**A N D**

**AUCKLAND CITY COUNCIL**

**Respondent**

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**NOTICE OF APPEAL UNDER SECTION 120 OF THE RESOURCE  
MANAGEMENT ACT 1991**

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**TO:** The Registrar  
Environment Court  
PO Box 7147  
Wellesley Street  
AUCKLAND

**1. Name of Appellant:**

New Zealand Historic Places Trust/Pouhere/Taonga  
PO Box 105 291  
AUCKLAND

Being a body that made a submission at the Council hearing on this plan change.

**2. Name of decision-maker:**

Auckland City Council

**3. Date of decision appealed against:**

2 May 2009

**4. Date on which notice of the decision was received by appellant:**

5 May 2009

**5. Nature of the decision made:**

Decisions on submission to the Proposed Hauraki Gulf Islands District Plan 2006.

**6. Description of the land or resource affected by the decision:**

Hauraki Gulf Islands.

**7. The grounds on which the appeal is based are as follows:**

**OVERALL GROUNDS OF APPEAL**

- (a) The appeal is against decisions by Council to reject or only partly accept submissions made by the New Zealand Historic Places Trust (NZHPT). Five submissions made by the NZHPT that were rejected or only partly accepted are subject to this appeal.

(b) The Council's decision to reject or only partly accept these submissions does not accord with the Resource Management Act 1991 (RMA) for the following reasons:

- The Proposed Plan will not promote the sustainable management of natural and physical resources.
- The Proposed Plan will not sufficiently protect historic heritage from inappropriate subdivision, use and development – as required by Section 6(f) of the RMA.
- The Proposed Plan will be contrary to sections 7(c), 7(f) and section 8 of the RMA.

## **SPECIFIC GROUNDS OF APPEAL**

### **(a) Submission 8 (2641/14)**

This submission sought an additional heritage policy to be added to Part 7.3: Objectives and Policies, of the District Plan, to provide for the recognition and protection of heritage resources that have not yet been scheduled in the District Plan. At the hearing of submissions, this request was refined to seeking that the existing policy 2 be modified to remove the word 'scheduled' so that all heritage items are recognized and potentially protected by the District Plan.

Due to the limited extent of historical research that has been undertaken in the Gulf Islands outside of Waiheke, it is necessary for a precautionary approach to be taken to ensure that significant heritage items that have not yet been assessed for scheduling can have some level of recognition and protection. By removing the word 'scheduled' from this policy that outcome could be achieved to a greater extent.

### **(b) Submission 16 (2641/23)**

This submission sought further information to be added to Part 7.8.5: Rules for Archaeological Sites. This section of the District Plan has been considerably reworked in the decision version.

To NZHPT is concerned that some of the activities outlined as 'permitted' in this section of the Plan could potentially have some effect on archaeological sites, and would therefore need an authority to modify, damage or destroy an archaeological site from the NZHPT (as required by the Historic Places Act 1993 (HPA)). While mention of the HPA has been made in Section 7.8.1 of the District Plan, it is considered necessary for reference to either refer to that section of the District Plan or HPA directly, specifically in relation to permitted activities. This is necessary because a permitted activity does not require a resource consent, so therefore the District Plan is the only

opportunity to provide landowners with information about the requirements of the HPA.

The NZHPT also recommends that 7.8.6.1 point 6 which relates to the scheduled site surrounds of archaeological sites and specifically archaeological investigation of these being consistent with *ICOMOS NZ Charter for the Conservation of Places of Cultural Heritage Value*, be deleted as the NZHPT is the national agency responsible for determining the requirements of an archaeological investigation.

(c) Submission 18 (2641/26 & 2641/27)

This submission sought that greater consideration should be given to Maori heritage values in the assessment of activities that will affect scheduled archaeological sites.

At the hearing of submissions it was proposed that this could be achieved by modifying the second matter of discretion in part 7.8.6 of the Plan to include the consideration of Maori heritage values in a broader cultural heritage assessment, rather than only requiring an archaeological assessment. For a great number of archaeological sites there will be associated Maori heritage values. The amendment to the District Plan proposed would ensure that there can be proper consideration of those values when assessing an activity that will affect a scheduled archaeological site.

(d) Submission 27 (2641/41, 2641/42, 2641/43, 2641/44, 2641/47, 2641/48, 2641/49)

This submission sought that a number of heritage items have their interiors scheduled, due to their significant heritage value. Council did agree to schedule the interiors of some of the items sought, but significantly that has not included the interiors of scheduled Rangitoto baches.

There are 32 baches scheduled on Rangitoto Island and none of these baches have their interiors scheduled. It is considered that most, if not all, these baches have interiors with significant heritage value. Therefore, Council should undertake an analysis of the heritage value of the bach interiors – in consultation with the NZHPT – leading to the scheduling of these interiors.

(e) Submission 32 (2641/54)

This submission sought that the Rangitoto baches should be protected as a Conservation Area in the District Plan. The NZHPT has registered three “Historic Areas” – the Islington Bay Historic Area, the Rangitoto Wharf Settlement Historic Area and the McKenzies Bay Historic Area to recognise the heritage value of the Rangitoto baches and surrounding areas.

It is considered that each of these three areas would meet the criteria in the District Plan for determining whether localities are worthy of recognition and protection as Conservation Areas. The significant number of baches, associated buildings and boat slipways is considered to meet the criteria of being an 'identified physical, cultural or social entity, even though it may be composed of a wide variety of features'. Furthermore, the inter-relationship of the heritage features within these three areas is considered to convey a visual sense of the overall heritage environment, to be an arrangement of historically or functionally related site, to be substantially unchanged since the period of significance and demonstrates that the majority of components making up the area's character are substantially intact.

## **8. The relief the appellant seeks is:**

That the changes to the District Plan, as outlined above, are accepted. This is more specifically detailed below:

- (a) With regards to submission 8, it is sought that Policy 2 of Part 7.3: Objectives and Policies of the District Plan, be amended as follows:

"By controlling the use and development of natural and physical resources in a manner that preserves and protects the ~~scheduled~~ heritage resource, and its ~~scheduled~~ site surrounds."

- (b) With regards to submission 16, it is sought that the following point be added below Section 7.8.5.1 and Section 7.8.6.1 of the District Plan:

"All archaeological sites are protected by the Historic Places Act. See section 7.8.1 for more information on the effect of that Act."

It is also sought that 7.8.6.1 point 6 is removed from the District Plan.

- (c) With regards to submission 18, it is sought that the following matter of discretion and assessment criteria be added to Section 7.8.7.1 of the District Plan.

"The effect on the Maori heritage values of the site, as assessed through consultation with local iwi and the New Zealand Historic Places Trust."

- (d) With regards to submission 27, it is sought that Council schedule for protection the interiors of all Rangitoto baches, or in consultation with the NZHPT undertake an assessment of which bach interiors should be scheduled for protection.

- (e) With regards to submission 32, it is sought that Council includes the historic areas of the Rangitoto baches in the District Plan as protected

Conservation Areas. The NZHPT has registered three distinct Heritage Areas on Rangitoto, and Council may wish to follow this model, or include the whole island as a Conservation Area.

**DATED** the 24<sup>th</sup> day of July 2009.



.....  
G Baumann

Senior Legal Advisor

Historic Places Trust/Pouhere Taonga

**ADDRESS FOR SERVICE:**

New Zealand Historic Places Trust/Pouhere Taonga,

PO Box 2629

Wellington

**Annexures:**

- (a) Copy of submission made on application
- (b) Copy of decision in respect of application
- (c) Names and addresses of persons to be served with a copy of this notice

**ANNEXURE A**

**Copy of the submission made on the application**