

BEFORE THE ENVIRONMENT COURT

ENV-2009-AKL

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of a reference pursuant to Clause 14(1) of the  
First Schedule to the Act

BETWEEN

RAINBOW MOUNTAIN HOLDINGS LIMITED

Appellant

AND

AUCKLAND CITY COUNCIL

Respondent

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NOTICE OF APPEAL AGAINST DECISIONS ON PROPOSED HAURAKI  
GULF ISLANDS DISTRICT PLAN

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TO: The Registrar  
Environment Court  
AUCKLAND

1. Rainbow Mountain Holdings Limited ("Appellant") appeals against decisions of the Auckland City Council ("the Council") regarding the Proposed Hauraki Gulf Islands District Plan ("Proposed Plan").
2. The Appellant made submissions on the Proposed Plan.
3. The Appellant received notice of the decisions on 4 May 2009.
4. The decisions were made by the Council.
5. The Appellant appeals those aspects of the decisions relating to:
  - (a) All provisions of the Proposed Plan relating to Pakatoa Island, including:
    - (i) Section 10a.26.

(ii) Table 10c.5.

(iii) Sections 12.9.9 and 12.12.6.

(b) Section 12.11 (assessment criteria).

(c) Rules 4.2 and 4.3.

(d) Part 6 (Financial Contributions).

6. The reasons for the appeal are:

(a) As stated in the Appellant's submissions in relation to the provisions of Proposed Plan subject of the decisions identified in paragraph 5 above.

(b) That the relevant decisions fail to promote sustainable management of natural and physical resources, and are contrary to the provisions of Part II of RMA.

(c) That the relevant decisions do not fulfil the Council's functions under section 31 of RMA and meet its duties under section 32 of the Act, nor the requirements of sections 74 – 76 of the Act.

(d) As stated below in relation to each aspect of the decisions under appeal.

7. The Appellant seeks the following relief:

(a) To the extent not granted by the decisions at issue, the relief sought in the Appellant's submissions in relation to each aspect of Proposed Plan, subject of the decisions identified in paragraph 5 above.

(b) Without limiting the generality of that, the relief sought in relation to each aspect of the decisions as specified below.

(c) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought in this appeal.

(d) Costs.

#### PART A – PAKATOA ISLAND PROVISIONS

8. The Proposed Plan as notified contains a specific section (10a.26) relating to the Pakatoa Land Unit. It also contains a specific development control table relating to Pakatoa and Rotoroa Islands (10c.5) and specific provisions and assessment criteria relating Comprehensive Development in the Pakatoa Land Unit (sections 12.9.9 and 12.12.6).
9. The Appellant lodged both general and specific submissions regarding these provisions, and requesting as follows:
  - (a) Deletion of all of the relevant provisions in the Proposed Plan that apply to Pakatoa Island and their replacement with an alternative planning framework as appended to the submission (Attachment 1).
  - (b) Amendments to section 10a.26.1 (Introduction) to include reference to a wider range of activities on the Island.
  - (c) Amendments to section 10a.26.2 (Resource management issues), including to remove reference to activities being limited to residential and tourist activities and to replace the reference to “limiting” impacts to “managing” them.
  - (d) Amendments to section 10a.26.3 (Objectives and Policies) to focus on managing rather than controlling activities; to incorporate reference to a diverse range of activities, to incorporate separate objectives and policies applying to residential and visitor activities, and to enable greater flexibility in the spatial distribution of buildings in the residential area.
  - (e) Amendments to section 10a.26.4 (Resource management strategy) to again reference a wider range of activities on the Island; to state a strategy for building on existing historical patterns by way of progressive development , and by way of other refinement to the wording.

- (f) Amendments to activity table 10a.26.5 to incorporate additional activities, address anomalies, and alter the status of buildings used for any of the listed activities (from restricted discretionary to controlled).
  - (g) Amendments to section 10a.26.6 (Rules – development controls) to provide for a more flexible approach to the extent and spatial distribution of residential and visitor accommodation units throughout the Island.
  - (h) Amendments to table 10c.5 (maximum heights, yard requirements and building coverage).
  - (i) Amendments to Part 12 to better provide for Comprehensive Development; such that the subdivision requirements to reflect the relief sought regarding the extent and spatial distribution of residential and visitor accommodation units, and to provide for such subdivision as a restricted discretionary activity, along with more express recognition of water based access to the Island, as well as various further minor and consequential refinements to the provisions.
10. The Respondent in its decisions granted some of the relief requested including:
- (a) Minor changes to the issues statement, objectives and policies as well as resource management strategy for Pakatoa Land Unit.
  - (b) Provision for additional activities within table 10a.26.5.

but by and large otherwise rejected the relief sought in the Appellant's submissions.

#### **Reasons for Appeal**

11. As requested in the Appellant's submissions, a more flexible, progressive and management approach to land use development and subdivision activity on Pakatoa Island is required, in order to ensure that the provisions of the Proposed Plan subject of this

appeal are the most appropriate, efficient and effective method to achieve the purpose of the RMA; the objectives and policies of the Proposed Plan as a whole, and to assist the Council in fulfilling its functions of integrated management of the effects of the use, development and protection of land.

12. In its decisions, the Council has failed to apply the most appropriate method to achieve the purpose of the RMA and fulfilling its functions, particularly in the following respects:
  - (a) Through failing to amend the introduction, issues statement, objectives and policies as well as strategy statement for the Pakatoa Land Unit to include recognition of a wider range of activities (including as now adopted within activity table 10a.26.5).
  - (b) Through continuing to apply the rigid and inefficient method (as referenced in objective 10a.26.3.2, 10a.26.4, and rule 10a.26.6.1 as well as elsewhere in the Proposed Plan) and whereby visitor accommodation and residential units are constrained in their extent and location relative to an arbitrary line, dividing the northern and southern portions of the Island.
  - (c) Through failing to provide for future land use development and subdivision on the Island, and instead seeking to constrain the level of development to at or below that which already exists.
  - (d) In providing for all built development within the Island as a restricted discretionary activity (or non-complying activity in the landscape protection area), regardless of whether the activity to be accommodated within any building is permitted, and the nature of the building or specific location proposed for it.
  - (e) Through failing to amend the development controls to enable an appropriate scale and form of development, including provision for access through coastal protection yards, in the most efficient manner.

- (f) Through adopting a framework for subdivision that fails to accommodate integrated subdivision and land use development in a comprehensive manner; that links minimum site sizes to the arbitrarily constrained provision for residential units and visitor accommodation units addressed at (b) and (c) above, and fails to provide for or accommodate a more flexible, responsive and appropriate form and pattern of such development as would be more efficient and effective in enabling social and economic wellbeing, and avoiding, remedying or mitigating effects.
- (g) As otherwise as stated in the Appellant's original submissions.

#### **Relief Sought**

- 13. The Appellant seeks all of the relief sought in its submissions in relation to those aspects of the Proposed Plan subject of this part of the appeal, and that was not allowed by the Council in its decisions, including without limitation as follows:
  - (a) The relief sought at paragraph 1 of its submissions (replacement of all provisions relating to or applying to Pakatoa Island in the manner set out in Attachment 1 to its submissions).
  - (b) The relief sought at paragraphs 2.1 to 2.4 of its submissions as to reference to a wider range of activities on the Island, a management rather than "preservation" or "controlling" approach, and to ensure separate provision for, and enable greater flexibility in the spatial distribution of, visitor accommodation and residential activities; and to state a strategy for building on existing historical patterns rather than constraining the level of development at or below that which already exists.
  - (c) The amendments to the activity table requested at section 2.5 of the Appellant's submissions, to the extent not already granted, and in particular so as to provide for the construction

and relocation of buildings as a controlled rather than restricted discretionary activity in the tourist complex and residential areas.

- (d) Amendments to rule 10a.26.6 of the Proposed Plan as sought at sections 2.8 and 2.9 of the Appellant's submissions as to greater and more flexible provision for residential units and visitor accommodation, including removal of reference to allocation between areas, and removal of the line shown as A-B on figure 10a.4 (thereby providing for a maximum of 50 residential units in cluster form or 25 in dispersed form, along with a maximum of 30 residential units and 50 visitor accommodation units in the tourist complex area).
- (e) The amendments to table 10c.5 sought at section 2.10 of the Appellant's submissions (maximum height of 10 metres, deletion of protection yards and all other yard requirements, and greater building coverage (50%) in the tourist complex area).
- (f) Amendments parts 12.9.9, 12.11 and 12.6 of the Proposed Plan as sought at sections 2.13 and 2.14 of the Appellant's submissions so as to make better provision for Comprehensive development (both subdivision and land use), to reflect the need for water based access, and to provide for existing and future buildings to have their own titles, with a minimum site area consistent with the more flexible and clustered approach to land use as addressed elsewhere in the Appellant's submissions and this appeal, and to provide for all such subdivision as a restricted discretionary activity, along with amendment to the definition of comprehensive development.
- (g) As otherwise sought in the Appellant's submissions, and in particular with respect to sections 12.9, 12.11 and 12.12.6 of the Proposed Plan.

## PART B – OTHER PROVISIONS

14. The Proposed Plan contains a number of other provisions of concern to the Appellant and addressed in its original submissions namely:
  - (a) Section 12.11 (assessment criteria – as addressed above in Part A of this appeal).
  - (b) General rules 4.2 to 4.3.
  - (c) Part 6 – financial contributions.
15. In relation to general rules 4.2 and 4.3 the Appellant sought in its submissions that the rules be amended to apply a more effect based approach, and such that permitted activities (among others) do not default to some other status (including non-complying) simply because any building established to accommodate the activity might require resource consent.
16. In relation to Part 6, the Appellant sought in its submissions amendments to the wording of rules 6.5.2.2, 6.6.2.2 and 6.7.2.2 to achieve greater certainty as to the extent (level and form) of contribution taken for open space, infrastructure and community amenities.
17. In addition, the Appellant sought in its submissions that rule 6.9 be clarified to ensure that:
  - (a) Financial contributions less than the stated maximum may be taken without resource consent as a restricted discretionary activity being required.
  - (b) A reduced contribution may be obtained in relation to activities whether or not permitted by the Proposed Plan.
18. The Council in its decisions amended the general rules (4.2 and 4.3) so as to clarify the relationship between buildings and activities as otherwise provided for within the Plan (in terms of their status)

but maintained rule 4.2 (any activity not provided for is non-complying).

19. No changes were made to the financial contributions provisions.

#### **Reasons for Appeal**

20. For the reasons stated in the Appellant's submissions regarding these provisions and in particular:

- (a) In order to ensure that activities are not inappropriately, inefficiently or ineffectively classified as (and including) a non-complying activity, rules 4.2 and 4.3 should be amended such that activities not otherwise specified are a discretionary rather than non-complying activity.

- (b) Rules 6.5.2.2, 6.6.2.2 and 6.7.2.2 need to be amended to create greater certainty and objectivity as to the level and form contribution to be taken.

- (c) Rule 6.9 needs to be amended such that it is clear that in every case the rules set financial contributions as a maximum and that the Council may determine that a lesser contribution is appropriate, without requiring further or separate resource consent for any such waiver or reduction.

#### **Relief Sought**

21. The Appellant seeks the following relief:

- (a) The relief sought in sections 2.15 and 2.16 of its submissions, and without limitation:

- (i) That rule 4.2 be amended to provide for any activity not otherwise specified in the Plan as a discretionary activity.

- (ii) That rules 6.5.2.2.1, 6.6.2.2 and 6.7.2.2 be amended to provide greater clarity and certainty as to the level and form of contribution to be taken.


- (iii) That rule 6.9 to deleted or amended such that less than the maximum may be taken by the Council, without any separate or further requirement for a resource consent, and regardless of whether the activity in question is permitted or itself requires resource consent.

22. The Appellant attaches the following documents to this notice:

- (a) A copy of its submissions.
- (b) A copy of the relevant aspects of the Council's decisions.
- (c) A list of names and addresses of persons to be served with a copy of this notice (being all submitters to the Proposed Plan).

Signature:

Rainbow Mountain Holdings Limited, by  
its solicitor:



Don Shirley

Date: 23 July 2009

Address for service: Don Shirley – Partner  
McCaw Lewis Chapman  
P O Box 3240  
Hamilton

Telephone: (07) 8382079

Email: dons@mlc.co.nz

#### 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 made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in Form 33) with the