

BEFORE THE ENVIRONMENT COURT

AT AUCKLAND

ENV-2009-AKL-000339

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of an appeal under clause 14(1) of the
First Schedule of the Act

BETWEEN

RON WALDEN

Appellant

AND

AUCKLAND CITY COUNCIL

Respondent

JOINT MEMORANDUM OF THE PARTIES
21 APRIL 2010

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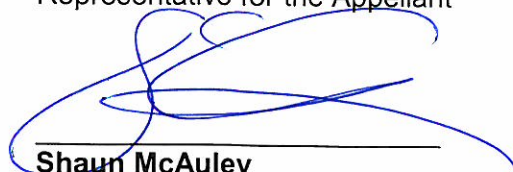
MAY IT PLEASE THE COURT

- 1 On 15 April 2010, the above appeal was subject to Court assisted mediation with the primary purpose of identifying and clarifying the points of appeal raised by Ron Walden in his Further Amended Notice of Appeal dated 22 February 2010.
- 2 As a result of the mediation, the council and Mr Walden have agreed that Mr Walden may amend his notice of appeal, with the Court's consent, to give greater identification and clarification to the particulars of the relief sought. Rather than detail the amendments in detail, for the Court's convenience, we have set out the relief now sought by Mr Walden in the schedule attached to this memorandum.
- 3 In light of this agreement, the council and Mr Walden respectfully request that the Court substitute the schedule attached to this memorandum for the particular relief sought in Mr Walden's Further Amended Notice of Appeal.
- 4 We also ask that the Court not grant the amendment sought in paragraph 4(b) of the council's memorandum dated 19 March 2010 as Mr Walden does not seek to be included as an appellant in topic ENV-2009-304-492 – HGI – Land Use Activities – Property Management Plan.
- 5 If any of these matters are not to the Court's satisfaction we respectfully suggest that a judicial telephone conference may be of assistance.

DATED 21 April 2010



Barry Kaye
Representative for the Appellant



Shaun McAuley
Counsel for the Respondent

SCHEDULE OF RELIEF SOUGHT IN NOTICE OF APPEAL

ENV-2009-AKL-339 – WALDEN v AUCKLAND CITY COUNCIL

Following the Court-assisted mediation session on 15 April 2010, Mr Walden seeks to amend his Further Amended Notice of Appeal dated 22 February 2010 as set out below (using the headings and enumeration in this notice of appeal):

Heritage

12) n/a [no relief is sought in relation to heritage]

Subdivision of Walden property forming Residential 2A (bush residential)

16) n/a [no relief is sought in relation to subdivision of Walden property. Mr Walden sought leave to withdraw paragraph 16 of his notice of appeal in the joint memorandum of counsel dated 7 April 2010.]

Comprehensive Management Plans

19) I seek the following relief:

- a) Bring together and amend the definitions of Rural Property Management Plan and Comprehensive Development to describe a new activity being Comprehensive Management Plan (CMP) – the definition of that should relate to integrated land use and subdivision proposals that relate to the whole of a property and include land management, enhancement, environmental protection outcomes etc. The Plan provisions should enable CMP's 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 CMP should be granted during the life of the Plan in respect of any site or property, and
- b) Amend all rural zone land use and subdivision provisions to enable CMPs as a discretionary activity and introduce a set of allied assessment criteria but excluding Landforms 1-4, and
- c) Revise the proposed land use and subdivision assessment

criteria for discretionary activities to include specific provisions for CMPs (see Far North District Plan provisions (Rule 12.9.2) and Rodney District Plan rural provisions (Rule 7.14.2.7)), and

- d) Include as an appendix a set of environmental and design principles that apply to CMPs (see Far North District Plan provisions (Rule 12.9.2) as one example), and
- e) Provide for cluster subdivision and/or land use activities as a development option with CMPs. Such development must meet prescribed design and environmental outcomes (included within 19(c and d) above), and
- f) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.

Bonus Density & Cluster Housing

- 23) I seek the following relief:
 - a) Land use sites and subdivision rules for the residential zones on Waiheke Island in relation to any sites over 6000m² should include a provision for a bonus density regime. This will allow higher density in a bush protection environment, and would allow cluster development to occur within such land up to a maximum of one dwelling per 1000m² only where communal infrastructure is proposed and where SEF type protection covenants secure the greater (<50%) proportion of the site.
 - b) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.

Ridgelines

- 26) I seek the following relief:
 - a) The ridgelines provisions be deleted from the proposed plan generally, and our land specifically, and/or
 - b) That any visual intrusion be encompassed within the relevant assessment criteria [where consent is needed for buildings] and/or if the ridgeline rule is retained then ridgelines be accurately defined and limited in definition to significant ridgelines where

buildings will be silhouetted on skylines and

- c) In the case where buildings will be silhouetted on skylines, a controlled activity should be required.
- d) The ridgeline definitions and rules should be amended so that the defined ridgeline on the planning maps is only a trigger mechanism and the matter whether a building has 'ridgeline effects' is determined by accurate survey information which is used as a means to create a deemed to comply standard and avoid unnecessary resource consent applications.
- e) That part 14 include a definition of: "**Significant Ridgeline Area**" be amended and reworded and included as follows. "*Significant ridgeline area means any significant ridgeline as identified on the planning maps. For the purpose of the development control rules, the significant ridgeline area includes all land falling within the 100m wide strip shown in the planning maps by way of a dotted line notation parallel to each defined ridgeline.*"
- f) **Ridgeline** in part 14 should be included and defined as a "*Ridgeline is a long narrow elevation of the land surface often crested with steep sides and forming an extended upland between valleys or a valley and the coast in which the background is the sky when viewed from any vantage point*"
- i) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.

Subdivision

- 29) I seek the following relief:
 - a) The minimum lot area in Rural 1 should be 2ha with an average lot size of 3.5ha.
 - b) Amend clause 12.9.3.7 so that where land has already been voluntarily protected by some legal instrument it may still qualify as part of a SEF process if a proposal increases the level of protection by vesting land in the council as a reserve.
 - c) Amend the proposed plan to achieve the lot densities as proposed by the appellant in Rural 1.

- d) Rule 12.9.4 needs amendment to enable cluster subdivision to occur without a requirement that all new lots have an equal undivided share in the residual lot.
- e) Delete the requirement that all areas (that is to say, the minimum, and maximum areas) be net site areas.
- f) The subdivision rules in the residential zones on Waiheke Island in relation to any lots over 6000m² should include a provisions for a bonus density regime.
- g) The minimum lot sizes for Rural 1 areas set out in table 12.1 be reduced and provide for a range of lot sizes with a minimum of 2ha and an average lot size of 3.5ha.
- h) The SEF rules for Rural 1 in rule 12.9.3 and in table 12.2 be amended to provide for lot size areas in table 12.2 of 1 ha and 1.5 ha respectively, to also include provision for bonus density development in rural 1 sites over 4 ha and that table 12.2 and all relevant sections of the proposed plan provisions be amended accordingly by inclusion reference to such bonus density provisions and other than where cluster development is to be achieved by other than attached buildings a minimum building area of 350m² to be provided to foster cluster development with the balance of the land area enabled as a single freehold lot with an additional dwelling on it enabled and the SEF definition and allied rules be amended accordingly.
- i) Provide for bridle trails as a condition of all subdivision.
- j) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.”

Activity Lists and Tables

32) I seek the following relief:

- a) Include the following activities and status of activities in table 10a.19.5:

Activity	Status
Cafes/restaurants	RD
Outdoor recreation/adventure activities	RD

Residential use	P
Wineries	RD
Farm buildings	C
Indigenous Plantation Forestry	P
Exotic Forestry	D
Art galleries and museums	RD
Care centres	RD
Educational facilities	D
Function facilities	D
Integrated visitor development	D
Open air markets	RD
Comprehensive management plans (or rural property management plans dependant on relief granted for other submissions)	D
Tourist complexes	D
Helipads	D
Windmill towers to 15m for generation of electricity	RD
Churches and places of worship, and church towers	RD
Disposal of treated wastewater	RD
Clustered residential developments	RD
Minor dwellings	RD
Farm buildings	C
Grape growing	P
Management and enhancement activities that facilitate wetland management	RD
Sustainable farming and land management (need to be defined and includes permaculture, biodynamic farming, indigenous plantation forestry etc)"	P

Recreation 3 - Rangihoua Park

- 35) I seek the following relief:
- a) As to 2908, delete the words adjacent sites in the statement under objectives and replace it with "Sites within the catchments"
- i) At policy 2 similarly change the word "adjacent" to "catchment".
- ii) Add a further policy addressing the effects of lighting

such policy reading to the effect “By ensuring that any lightning will not spill off the site into other sites within the catchment.”

- iii) Add a further policy reading to the effect “By ensuring that no light source will be visible outside the park.”
 - iv) Add a further policy that there will be no discharge of illumination to the night sky.
 - v) Include other relevant criteria in the plan.
- b) As to 2924, it is submitted that the park could include a cross country course in and over parts of the park.
- c) As to 2926, see the diagram attached to the submission:
- i) Recognise the bridle trail link from the rear of the riding club to the main road.
 - ii) Bring the bridle trail within the park along the Onetangi Road.
 - iii) Take the bridle trail behind the museum within the park
 - iv) Connect the bridle trail in the area of Gordon’s Road to the bridle trail in O’Brien’s Road all within the park
 - v) Link the bridle trail to the access way from Trigg Hill Road
- d) As to 2925, provide access behind the cemetery and along the edge of the Onetangi Road to link up with the bridle trail below the quarry in the Onetangi Road area.
- e) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.

Bridle Trails

- 38) I seek the following relief:
- a) Provide for bridle trails in all rural land forms on Waiheke Island.
 - b) In particular, add objectives, policies, rules and assessment criteria in the various section of the plan to achieve the purpose of

this submission.

- c) In the subdivision section, provide for bridle trails in all subdivisions.
- d) Amend 13.3.5 so as to include horse riding.
- e) Amend 13.4.6 so as to include horse riding.
- f) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.

Construction, Operation and Maintenance of Roads

- 41) I seek the following relief:
 - a) Add the requirement at 5.8.1 that when works are carried out on a road in the area of waterways or streams or culvert pipes that pass under a road, functional and ecologically suitable fish bypass is constructed and maintained at the same time.
 - b) Change the activity table at rule 5.5.1 Construction ... to road network to "Restricted Discretionary."
 - c) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.

Part 4 – Section 4.4 Prohibited Activities – villages – commercial and industrial

- 44) I seek the following relief:
 - a) As to 2290, list as a prohibited activity the operation of large retail stores such as the warehouse, and large food operations such as "Kentucky Fried Chicken".
 - b) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.

Colours of Buildings

- 47) I seek the following relief:
 - a) In rule 10c.4.8, delete the words "in settlement areas" from the

heading. Formulate policies, objectives, rules and assessment criteria that apply to all land units. Formulate the rule such that objects and activities in the landscape tend to merge into the landscape in landforms 1 to 7, and Island Residential 2, Rural 1, 2, 3, Recreation 1, 2, 3, Conservation, Pakatoa, and Rotoroa. But in Island Residential 1 allow for all the myriad of colours in the spectrum such that a colourful and vibrant effect is possible.

- b) In rule 10c.4.8.1, it is not appropriate to have accessory elements such as windows, window frames, barge boards, storm water guttering down pipes or doors of any colour. Some colours in particular the whites are visually dominant and adversely affect the efforts to merge or integrate the structures in the landscape. Put in place a series of colours from the BS colour charts that do not include highly reflective colours.
- c) At 10c.4.8.2.1a.1(i) and (ii), the threshold reflectivity of 60% and 40% as a reflectivity over all of the islands is inappropriate as there will be situations where these thresholds will still allow the visual intrusion of the buildings where they are intended to merge or integrate into the landscape. Further there are areas where vibrant colours of buildings are appropriate. Put in place a number of levels of reflectivity suited to particular types of vegetative colour. Allowing the myriad of colours to occur in village centres, but ensuring a merging into the backdrop of vegetation of colour in more vegetated landscapes.
- d) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.

Sale of Human Sexual Services

- 50) I seek the following relief:
 - a) 3704. Add to the definition of "home occupation" so that none of the following activities may be undertaken as a home occupation – the sale of human sexual services.
 - b) 3705. Add the words in the appropriate place in the definition of residential uses. "Does not include brothel or the sale of human sexual services."

- c) 3708. Add to the definition of retail premises under the heading of what is not included. "Sex premises whether for the retail of sexual services or for the retail of goods targeted towards human sexual activities."
- d) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.