

**IN THE ENVIRONMENT COURT  
AUCKLAND**

**ENV – 2009 – AKL - 000339**

**IN THE MATTER OF**

A reference pursuant to clause 14 of  
the first schedule of the Resource  
Management Act 1991

**BETWEEN**

**RONALD A WALDEN**

Appellant

**AND**

**AUCKLAND CITY COUNCIL**

Respondent

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**AMENDED NOTICE OF APPEAL IN A REFERENCE UNDER CL 14 OF THE  
RESOURCE MANAGEMENT ACT 1991**

**DATED: 30 JULY 2009**

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**Form 7: 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,  
8<sup>th</sup> Floor, District Court Building,  
3 Kingston Street,  
Auckland.

**1) The Appellant:**

The appellant is Ronald Alfred Walden in person and as trustee of the Walden Family Trust. (the Appellant)

**2) The Respondent:**

The respondent is the Auckland City Council. (the Respondent)

**3) The matter appealed:**

The matter appealed is the Proposed Hauraki Gulf Islands District Plan 2006 (proposed plan)

**4) Submission**

The appellant made submission on that plan. (Submissions)

Submission 1289 & others

**5) Date of Decision**

2 May 2009

**6) Date of notice of the decision**

4 May 2009

The decisions were delivered to me on a Cd Rom. Please see attached letter.

**7) The decision – maker**

The decision- maker was the respondent.

## **8) The Decision.**

The copies of the decision are filed by Cdrom.

## **9) The General Reasons for the appeal are:**

### **General Reasons.**

- a) The appellant says with regard to its submissions that the respondent's decisions are not consistent with the purpose and principles of the Resource Management Act 1991 (the Act), in particular but not only to Part II of the Act. The decisions are also inconsistent with the Hauraki Gulf Marine Park Act 2000 (HGMPA) in particular but not only parts 7 & 8.
  - i) The respondent's decisions will not promote the sustainable management of the natural and physical resources.
  - ii) Are not appropriate, and are
  - iii) Contrary to good resource management practice.

### **Further**

- iv) The respondent's decisions will not support the life supporting capacity of the environment including:
- v) The social, economic recreational and cultural wellbeing of people and communities.
- vi) Will not be a use of the resources of the Gulf by the people and communities of the Gulf and New Zealand for recreation.
- vii) The respondent's decisions do not recognise the National Significance of the Hauraki Gulf, its Islands and Catchments, and nor do they fulfill the objectives of the management of the Hauraki Gulf, its Islands, and Catchments, including:
- viii) The decisions do not protect and where appropriate enhance the natural, historic and physical resources of the Hauraki Gulf its Islands and Catchments.
- ix) The decisions do not provide for the protection of the historic associations of the people and communities in and around the Hauraki Gulf with its natural, historic and physical resources.
- x) The decisions do not provide for the maintenance and where appropriate the enhancement of the contribution of the natural, historic and physical resources of the Hauraki Gulf its Island and Catchments to the social well being of the people and communities of the Hauraki Gulf and New Zealand.

- xi) The decisions do not provide for the maintenance and where appropriate the enhancement of the natural historic and physical resources of the Hauraki Gulf its Islands and Catchments with contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.
- b) The relevant decisions do not fulfill the respondent's functions under section 31 of the Act and meet its duties under s 32 of the Act, nor the requirements of section 74 to 76 of the Act.

**Specific Reasons for Appeal.**

- a) The appellant is appealing against decisions of or parts of decision of the respondent in relation to submissions made by the appellant to the proposed plan.
- b) The appellant made submissions and presented evidence to the respondent's hearing committee.
- c) The decision to reject, or accept only in part the appellant's submissions in relation to the proposed plan were made by the hearings panel. Those decisions did not appropriately address the issues identified in the appellant's submissions.
- d) The Appellants submissions had a particular focus which was not appropriately addressed. They are referred to below.

## Heritage

### 10) Submission

- a) As to 2912. I support the heritage provisions of the proposed plan. In particular I support heritage 7.6, 7.7, 7.8, 7.9, 7.11, 7.12, 7.13.
- b) As to 2915. This is a submission in support of the provisions. It seeks further that the respondent commission a comprehensive guide as to heritage maintenance and enhancement of traditional heritage buildings in the Hauraki gulf. This should be accompanied by an historical analysis to contextualise the buildings.

### 11) The reasons for the appeal are as follows:

The appellant repeats the general reasons for the appeal at 9 above

#### Particular Decisions Referred.

- a) Without derogating in any way from the general reasons for appealing as outlined above, the respondent's decisions do not address the particular submissions addressed below. The respondent decided:
- b) To accept 2912.
- c) To 2915 – This decision could not be found and is considered rejected.
- d) History and heritage is necessary for the wellbeing of man. The preservation of historic heritage is part of obligations under the HGMPA. Heritage is a matter of national importance under s 6.

### 12) I seek the following relief:

- a) As to 2912, I seek the heritage provisions in the above sections be upheld.
- b) As to 2915, I seek that the respondent will establish a policy that it will produce a comprehensive guide to the preservation, maintenance and enhancement of heritage items and buildings in the Hauraki gulf.
- c) This guide should have a focus on enabling those commissioning and carrying out works to meet the requirements of the proposal.
- d) The guide may embody an historical analysis of the buildings in the Hauraki gulf.
- e) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.

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

### **13) Submission 1289**

- a) That the submitters land being some 42.6 ha in area be given a zoning of *Island Residential 2A (Bush Residential)* which would enable residential development in clustered form retaining significant areas of green belt as well as some productive forms.
- b) This would be a special sub zone and provide a buffer residential zone as a transition to Rural 1.
- c) The density under that zoning should be based on providing for a maximum number of 80 dwellings as a restricted discretionary activity.
- d) That such zoning could be a deferred zoning triggered when the stated Essentially Waiheke “90% take up rate need trigger” kicks in.

### **14) Respondent’s Decision.**

- a) The respondent rejected the appellant’s submissions.
- b) The respondent has basically deferred making a decision stating that further work was needed to establish if the land was suitable for more intensive residential development.
- c) The respondent also believed that further public consultation was required.
- d) The respondent believed that land was located outside the metropolitan urban limits (MUL).
- e) The respondent rejected the appellant’s submission.

### **15) The reasons for the appeal are as follows:**

**The appellant repeats the general reasons for the appeal at 9 above.**

- a) Without derogating in any way from the general reasons for appealing as outlined above, the respondent’s decisions do not address the particular submissions addressed below.
- b) The appellant repeats the submission made to the respondent. The appellant’s lands are appropriate for this type of development. It provides for the future growth of Waiheke Island in a sustainable manner in accordance with the purposes of Part II of the Act.

- c) The proposed plan provisions do not provide for flexibility in land use and development, and in particular with regard to the appellant's lands. This is especially so where the appellants lands landscape planting programs to enhance native revegetation and land management have been in practice using a landscape plan designed by Turbott & Associates, landscape architects, to take advantage of the development options under bonus density rules and subdivision options in the operative plans since about 1989.
- d) The provisions in the proposed plans are inflexible and do not provide for sustainable land use options.
- e) The land is not outside the MUL

**16) I seek the following relief:**

- a) That the appellant's relief as sought in the appellant's submissions be granted, including the amendment of related sections of the proposed plan to give effect to the submissions, including:
- b) The establishment of a deferred zoning as described as *Island Residential 2A (Bush Residential)*.
- c) The provisions of the related bonus density provisions as sought.
- d) The provision of the cluster development as sought.
- e) The deferred zoning as sought.
- f) The 80 lots as sought.
- g) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.

## Comprehensive Management Plans and Part 2 amendments.

### Submission 1289

- a) The appellant relies upon the submissions made in to the respondent's hearings panel, but says further:
- b) The appellant made submissions seeking a number of changes to land use and subdivisions as they relate to the proposed plan in general and to the appellants land specifically. The focus of a number of those submissions was the inclusion of a comprehensive development plan provision.
- c) The appellant submitted that the Rural property Management Plan and comprehensive Development should be merged to describe a new activity being a **Comprehensive Management Plan (CMP)** provision.
- d) The definition of a CMP 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.
- e) Such plan provisions should be a discretionary activity and provide for land use activities and subdivision proposals that are not currently enabled in the proposed rules (whether or not currently enabled in other allied submissions) and are thus deemed to be non complying.
- f) A CMP should require only one consent.
- g) The submissions argued that the proposed plan is very prescriptive. It is the appellant's position that the proposed plan should be effects focused, and based upon a catchment based processes.
- h) The appellant submitted that comprehensive management plans should be provided for as a discretionary activity in land units and within subdivision controls, but excluding Landforms 1 – 4 and or
- i) Amend the residential zone (and non conservation Islands) land use and subdivision provisions to enable CMP's as a discretionary activity, and introduce a set of allied assessment criteria.
- j) Revise the proposed land use and subdivision assessment criteria for discretionary activities to include specific provisions for CMP's (see far north District provisions 12.9.2, and Rodney District provisions Rule 7.14.2.7)
- k) Include as an appendix a set of environmental and design principles that apply to CMP's.
- l) **Provide for cluster subdivisions** and or land use activities as a development option within CMP's. such developments to meet prescribed design and environmental outcomes.

- m) Provide in land use and subdivision provisions for **residential development consolidation** as a development alternative to residential clusters where it is more appropriate on a specific site to create a *Hamlet Form* of development.
- n) The **balance of the areas of land** in the immediate above two provisions above should be set aside into a combination of productive land (where it exists), SEF protection areas and enhancement plantings, wetland management areas and generally secure environmental enhancement processes and protection mechanisms.
- o) The enabling of provision for a dwelling on any balance areas relevant to the above 3 clauses immediately above (**Provide for cluster subdivisions, residential development consolidation, balance of the areas of land**) means that there can be a clear allocation of ongoing management requirements for all enhancement and protection outcomes rather than requiring the complications of body corporate or society type structures.
- p) The appellant submitted that the provisions affecting the appellants land include specific provision for comprehensive management plans and cluster housing should be included.
- q) That the definition of comprehensive development should refer to “any rural subdivision” and not be limited to the creation of two additional lots.
- r) The definition of significant environmental feature should be amended to read as below (as underlined) – or any alternative with the same meaning: (see submission at Appendix 7 – Definitions.
- s) Amend Part 2.5.2 of the proposed plan to provide for flexibility in planning provisions to enable discretionary approaches to innovative developments and also to recognise the economic relationship between land values and land development as a real management driver.

## 17) **The Respondent’s Decision.**

- a) The respondent considered that the rules for comprehensive rural development as in the Auckland City Council – Hauraki Gulf Islands – Operative Plan 1996 (The Operative Plan) were redundant as the majority of the land likely to be subject to such provisions has already been subdivided., and the provision of such a mechanism will serve no additional purpose’
- b) The respondent considered the proposed plan appropriately recognised the relationship between subdivision and the effects on landscape character from built forms.
- c) The submissions were rejected.

**18) The reasons for the appeal are as follows:**

The appellant repeats the general reasons for the appeal at 9 above

**Particular Decisions Referred.**

- a) The respondent considered that the rules for comprehensive rural develop in the operative district plan were no longer needed as it stated that the majority of land within the land unit had been subdivide.
- b) Without derogating in any way from the general reasons for appealing as outlined above, the respondent's decisions do not address the particular submissions addressed.

**19) I seek the following relief:**

- a) That the appellant's relief as sought in the appellant's submissions be granted, including the amendment of related sections of the proposed plan to give effect to the submissions, including:
- b) The appellant seeks the introduction of a comprehensive management plan (CMP) process as submitted. The respondent seeks there to be appropriate assessment criteria. That such activity is a discretionary activity as outlined in the appellant's submissions.
- c) The provision of a cluster subdivision.
- d) The provisions of cluster subdivision assessment criteria.
- e) The provisions of cluster subdivision as a discretionary activity.
- f) The provision of bonus density provisions.
- g) The amendment of assessment criteria and relevant parts of the plan in order to facilitate the provision of the CMP, bonus density and cluster provisions sought.
- h) The inclusion of appropriate definitions as sought.
- i) Include a definition of cluster development.
- j) 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

### 20) Submission 1289

- a) Along with submissions on comprehensive management plans are the appellant's submissions on cluster housing.
- b) The submissions included that clauses in s 12.9.4 be amended to provide for cluster subdivision or clustered development to occur without a requirement that all new lots have an equal undivided share in the residual lot.
- c) The submission envisages that the bonus density provisions as in the operative land unit 20 will apply.
- d) The lot sizes should relate to proposed disposition and scale and form of buildings and be defined accordingly, whether stand alone or co-joined buildings.
- e) The submissions envisaged that bonus density for rule 12.9.3 – as applicable to landforms 2, 4-7 and Rural 1 & 2) and thus rule 12.9.4. this is a similar management technique to provisions in the operative plan. This approach will enable a higher density beyond that defined by a SEF type subdivision.
- f) The multiple dwelling provisions need amendment in the proposed plan, in order to achieve clarity with regard to the reference of one dwelling per site, and also to reference the subdivision rules.
- g) The rural property management plans provisions should be cross referenced to the multiple dwelling provisions.
- h) The plan should include provisions providing a comprehensive management approach to residential land use and subdivision whereby bonus density is enabled at a ratio to securing areas of protected land and management of environmental enhancement outcomes, including replanting(s) of native vegetation.
- i) Land use and subdivision rules for the Residential zones on Waiheke in relation to any sites over 6000m<sup>2</sup> 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 1000m<sup>2</sup> only where communal infrastructure is proposed and where SEF type protection covenants secure the greater (< 50%) proportion of the site.
- j) The baseline minimum lot size areas in table 12.2 as modified by the separate submission should include provisions providing a bonus density approach to rural land and subdivision where appropriate density is determined by a ratio in relation to sustainability and management enhancements including areas of protected land, open space and land management and enhancement proposals including replanting(s) of native vegetation and management of water systems.

- k) That for every 1ha of additional SEF type outcome secured beyond a baseline requirement of 50% of parent site sustainably managed/ protected/ enhanced one additional lot(s) beyond the submitter's proposed Table 12.2 density regime is enabled.
- l) The bonus density should be applied to the Walden property. The plan should use the bonus density provisions to achieve sustainable environmental outcomes, protection of significant features and archaeology sites, enhancement proposals including replanting and revegetation, and management of ecological systems.

**21) The reasons for the appeal are as follows:**

**The appellant repeats the general reasons for the appeal at 9 above**

**Particular Decisions Referred.**

- a) Without derogating in any way from the general reasons for appealing as outlined above, the respondent's decisions do not address the particular submissions addressed below. The respondent decided:
- b) The respondent's panel decided that providing for bonus density in land units which cannot mitigate the clustering of built forms may generate adverse effects.
- c) That clustering is not consistent with the objectives of the achieving appropriate management of resources and would not be consistent with achieving sustainable land use.
- d) That clustering of buildings could generate adverse effects on landscape character, and may detract from the
- e) It would be inappropriate for to provide for bonus density and cluster provisions in exchange for environment protection in certain zones.
- f) Where properties such as the appellants which are available for bonus density and cluster development may be suitable but that further work was needed to determine the likely co and benefits of such a regime, and the work has not been done.
- g) The panel rejected the submission regarding bonus density and clustering

**22) Grounds of appeal.**

- a) The panel did not make a decision with regard to bonus density for properties such as the appellants or others available to be developed.
- b) By providing for increased density will not give rise to adverse effects.
- c) Cluster development is not likely to give rise to any adverse effects.

- d) Both cluster development and bonus density provisions will not create adverse effects, and will give rise to enhanced environmental outcomes.
- e) Cluster housing will give enhanced protection of environmental features, especially of significant environmental features, including natural character, landscape, and matters of Part II of the Act.

**23) Relief sought:**

- a) The appellant seeks that the plan be amended in accordance with the appellant's submission on cluster housing and bonus density as outlined in the appellant's submission.
- b) Such further or other including consequential relief as the Court considers necessary or appropriate to give effect to the relief sought.