

BEFORE THE ENVIRONMENT COURTENV-2009-AKLIN THE MATTER of the Resource Management Act 1991ANDIN THE MATTER of Clause 14(1) of First Schedule, Resource Management Act 1991BETWEEN RENAISSANCE AOTEAROA FOUNDATION

Appellant

AND AUCKLAND CITY COUNCIL

Respondent

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

To the Registrar
Environment Court
Auckland

We, the Renaissance Aotearoa Foundation (**the Appellant**), appeal against a decision (or part of a decision) of Auckland City Council (**the Council**) on the following plan:

Hauraki Gulf Islands District Plan 2006, adopted 2009 (**The Plan**)

We made a submission on that plan.

We received notice of the decision on 2 May 2009.

The decision was made by Auckland City Council.

The decision (*or* part of the decision) that we are appealing is:

- A. The basis and accuracy of the planning maps that denoted significant ridgelines and the several additional significant ridgelines added to the planning maps.
- B. The lack of discretion when a visual inspection finds that the 100 meter wide band on either side of a significant ridgeline will not have an adverse visual impact.
- C. The lack of a definition of "significant ridgeline" or any consistent and reasonable criteria by which the restrictive planning designation "significant" is applied.
- D. The Plan overriding prior rules set out in subdivision approvals, overriding the surety upon which subdivision purchasers bought buildable sections.

Definitions are placed (**in bold text**) for convenience.

The reasons for the appeal are as follows:

- Council admits the significant ridgelines need further work, but in the meanwhile has decided that property owners must come under the more restrictive significant ridgeline rules without knowing if the affected land is on or within 100 metres of an actual ridgeline.
- Council uses arbitrary criteria that fail to accomplish the purposes of the Act.

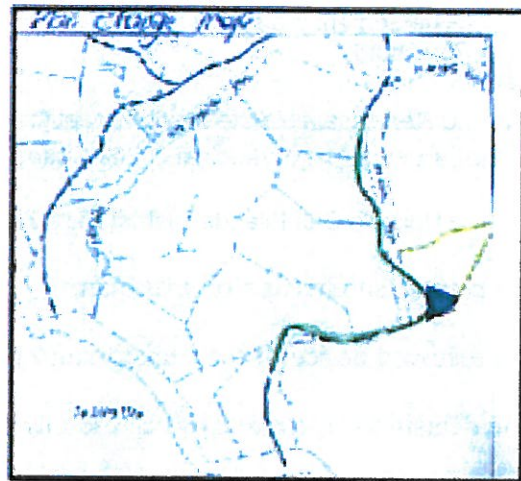
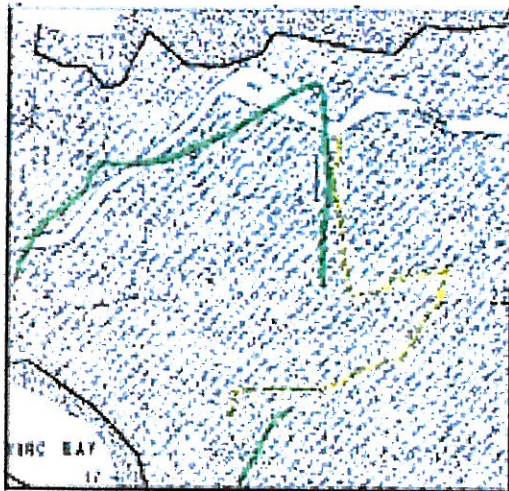
In this appeal we cite as an example, the office of the Appellant at the property known as 40 Motukaha Road, Lot 26 Church Bay Estate Subdivision (**Lot 26**). However, the issues raised are island-wide and affect many lots. In simple English, Lot 26 is not on a ridge, nor is it within 100 metres of a ridge, but under the new plan, it now has a designated significant ridgeline running through the building platform. The impact of this, as stated by Council in 2005 is:

“Under the permitted activity provision a building can be built on or above the ridgeline by eight metres, while discretionary rules permit a structure to be no more than four metres in height above the ridgeline.”

What this means is a lot that previously was not on an existing ridgeline, but now is (or is within 100 metres of) a replotted ridgeline finds its height cut in half from 8 to 4 metres, and the process made more expensive and invasive.

This appeal bases its arguments on the Council’s own documents.

1. The Council admits the replotted ridgelines have accuracy problems
 - a. On 13 June 2001, the Council notified *Proposed Plan Change: Plan Modification 21: Replotting of Existing Significant Ridgelines for Waiheke Island. (PPC-21)* PPC-21 involved replotting the existing significant ridgelines (**existing ridgelines**) plotted on

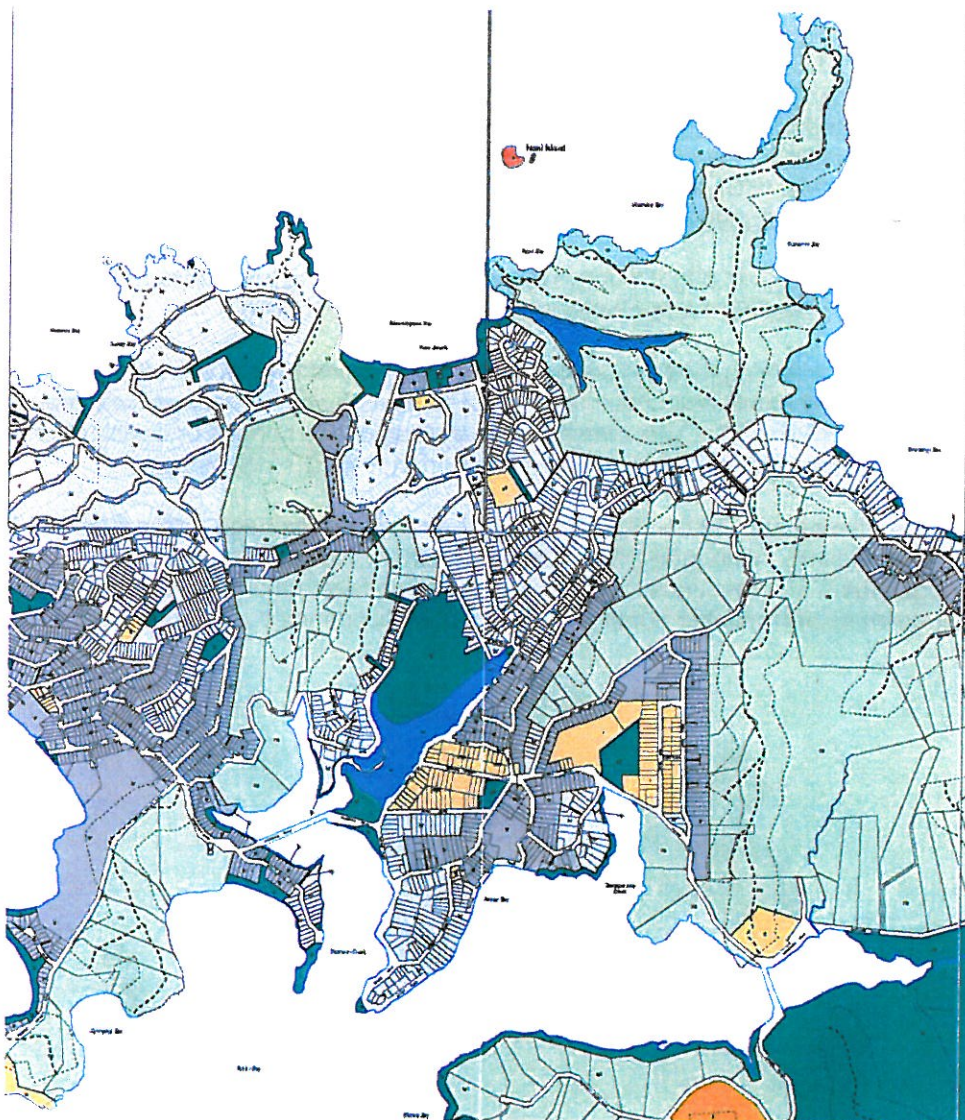


the District Planning Maps for Waiheke Island in effect at the time of the notice.

The map above left shows the existing ridgelines in effect prior to PPC-21. While the maps cover the whole of Waiheke Island, we use a section showing the area surrounding Lot 26. Colour is added for emphasis. Green = existing ridgeline.

The map above right shows above shows the proposed replotted significant ridgelines (**replotted ridgelines**) as set out in PPC-21. Colour is added for emphasis. Green = replotted ridgeline. Note that the replotted ridgeline now has made a sharp right turn going through Lot 26 and then turning sharply back again to rejoin the existing ridgeline.

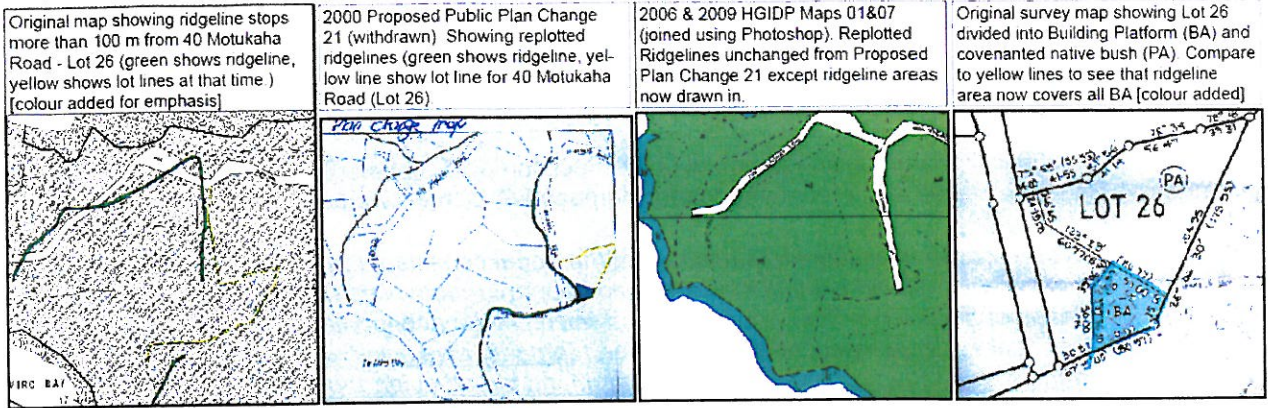
- b. On 19 May 2005, a report from Council titled *Hauraki Gulf Islands Review - Issues and Options Papers*, pages 71-2 *Ridgelines - Location of Buildings (2005 Issues paper)* states



In addition, a close examination will find that in almost all cases where the replotted ridgeline descends to the sea it appears to go down to sea-level. Again, we suggest this is an absurdity, a drawing made as an intellectual exercise where the draughter lost touch with the ordinary definition of a ridge, much less an appreciation of which constitute an area of significant concern to merit an arbitrary 100 metre swathe on either side of the drawn line.

Finally, a close examination will show that replotted ridgelines seem to be drawn with one standard in the coloured zones, and another standard in the grey zones. To make a more detailed inspection, we reference the maps in the Plan.

In plain English, the concept of a ridge when used to guide where to place the replotted ridgelines seems to have expanded to the foreshore, to rolling hills, flat wide paddocks, to cliffs along the foreshore with flat or rolling terrain behind and other non-ridge topographies. Not all such non-ridge topographies, but only where they were the most likely way to connect up a shown ridgeline on the existing maps. Somehow the fundamental concept of what a ridge is, and why building on them can present an adverse visual amenity, has grown into an intellectual mapping exercise that has significant adverse effects on the property owner and tenuous connection with the original intent of the law.



This progression of maps, above shows how the existing ridgeline was replotted to begin at the foreshore, go up the uncontested ridge, then make a sharp turn into the building platform of Lot 26 before crossing a level paddock that often sees standing water in the winter, rising a gradual slope and finally rejoining the uncontested existing ridgeline. To appreciate the topography, we reference the following photograph of Lot 26 taken facing west.

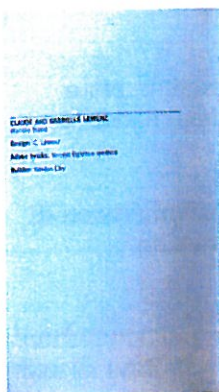


It seems difficult to find the ridge that Council alleges runs through the house, then cuts across the flat paddock by the telephone pole, crosses the street and up the hill.

The uncontested ridge stops in the upper left of the photograph where erosion has carved a gully. It then picks up again higher up the hill on the other side of the road.



Lest there be confusion about what a ridge is, dictionary definition says "a long, narrow elevation of land or a similar range of hills or mountains." In this photograph, the ridgeline is clear and obvious and its height is sufficiently prominent that a building on top or near the top would adversely affect the visual amenity. We offer this image as a useful reference to help keep perspective what a ridge is.



For another view of the property, we offer this photograph of Lot 26, as featured in the book *A Passion for Earth* ISBN 0-908990-69-3. As can be seen, the image was taken from high above along the road, near to what is the uncontested ridgeline. As can be seen it is nestled in a hillside and far to the distance there is what may be argued as another uncontested ridgeline.

- d. In 2009, in recommending approval of the Section 4.26.2 of the 2009 Plan, in the Panel's analysis and recommendations on page 61, Council writes:

"As discussed in section 4.9 of this report, the panel considers that the purpose for the control is justified in that it provides an important mechanism for controlling the location of buildings on or near ridgelines, which, if left uncontrolled, could result in significant adverse visual effects. However, the panel also acknowledges that further work is required in order to refine the control, and in particular, the selection of significant ridgelines. Overall, the panel considers that the control should be retained." [emphasis added] [Note: the control references the replotted ridgelines, not the existing ridgelines]

In plain English, in 2009 Council approved the 2009 Plan with the 2001 and 2006 replotted ridgelines while continuing to acknowledge the replotted ridgelines are still plotted wrong. In other words, it did the wrong thing and it asked the property owners to suffer the burden until it fixes it.

2. The 2006 HGIDP failed to give proper notice of the replotted ridgelines.
 - a. Unlike PPC-21 where the notification language called affected ratepayer's attention to the proposed replotting of significant ridgelines, the far more complex HGIDP 2006 plan contained no language calling ratepayer's attention to the second try at the same replotting. Quite by accident we looked at the Attached Planning Maps – Inner Island and discovered PPC-21 replotted ridgelines on the HGIDP 2006 maps.
 - b. We believe that many of the opposing submitters of 2001 would have made submissions in opposition to HGIDP 2006, had they known, but it appears that Council, either intentionally sought or by omission allowed the change to "slip in under the radar" where property owners would only learn of the new more restrictive rules when they went to apply for consent under the new plan, by which time it would be too late. We believe this is unjust and demands corrective, castigatory and punitive action by the Court.
3. As a factual matter, it is our belief that some of the lines drawn as significant ridgelines are not on ridges at all. There are three different questions raised:
 - a. The question of what to do when the topography is not a ridge but a significant ridgeline is plotted on the planning map.
 - b. The question of what is *significant* when the topography is a ridge but physical evidence fails to support that ridge as being significant on regards to future buildings on it.
 - c. The question of how far below the ridgeline buildings must be regulated as within the significant ridgeline area before they are determined to have an adverse effect on the visual landscape, and whether an arbitrary number can be applied.
4. In regards to the first question, joining up lines from uncontested ridges, and therefore making the joined lines replotted as paper ridgelines with statutory effect is a matter of definition and physical survey.

In simple English, first the topography needs to be assessed and the question answered "Is it a ridge?" This requires a reasonable definition of what a ridge is. It must be consistently and intelligently applied.

The procedure of joining up all lines, or starting ridges at the foreshore, or defining the top of an erosion cliff (where flat land behind drops off suddenly such as at Fossil Bay) should

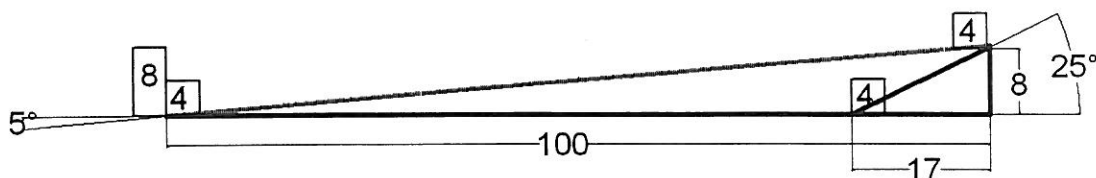
be rejected. A ridge should be defined as a certain angle of slope on two sides with a defined narrow and long top.

5. In regards to the second question (3.b.), Council sets out no criteria as to how one determines what constitutes a “significant” ridgeline. In effect it says “it is significant because I say it is.” While this may be acceptable when said by a parent to a young child, it seems inadequate when it means that a property owner who purchased an approved building section with an 8 metre height limit suddenly finds that limit cut in half and subject to more onerous costs and delays.
 - a. In some cases, most notably the grey areas of the Plan’s maps, which indicate developed areas, we find buildings built on what an ordinary person would deem a ridgeline, yet there are not classified as significant. When pressed for an answer, Council officers stated that it would be inconvenient for the existing property owners. We agree. However, while that may be a reasonable consideration, it establishes the precedent that inconveniencing any existing building owners is a basis for not designating a ridgeline as significant, and therefore it should be applied equally.
 - b. In plain English, once a ridge is determined to exist, and a line plotted to mark its ridgeline (which we presume is the highest point along the ridge), consistent and clear criteria is needed to answer the question “what makes it significant?” These criteria should be in common language and easily understood by the ordinary person.
6. In regards to the third question (3.c.), once a significant ridgeline is established, the rules set out the following explanation:

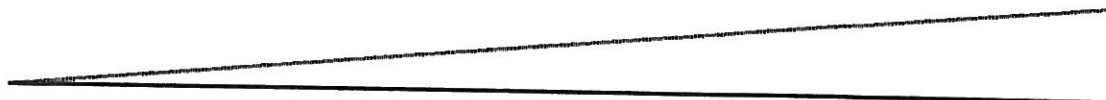
10c.4.7 Buildings that protrude above significant ridgelines can compromise the visual landscape qualities of the ridge and appear visually obtrusive giving rise to adverse visual effects. The location and height of buildings within 100m either side of a significant ridgeline is therefore controlled to manage the adverse visual impact that can occur when a building protrudes above the ridgeline.

- a. In simple English what this means is that the ridgeline at any point has an elevation, and any land less than 8 metres below that elevation should be a controlled zone so the building will not protrude above the ridgeline.

Let us consider what this actually means. It means the altitude of the ridgeline is taken and then one identifies all the land that is less than 8 metres lower in altitude, where an 8 metre building would protrude above the ridgeline.



This drawing above is a CAD drawing showing a 100 metre horizontal and an 8 metre vertical. It shows a 4 metre building on top of the ridgeline and a 4 metre building just under the 100 metre significant ridgeline area. It also shows an 8 metre building just outside the area. What this implies is that a ridge can have a side angle of 8 in 100 which hardly seems to be a ridge anymore. 8 in 100 is 5°.



8 metres in 100 metres, as above is hardly a ridge. Generally one would think of a ridge of having a steep slope. Lacking a reference as to what "steep" means, we found "The Avalanche Handbook" which defines a steep slope. "*Steep*" is generally considered to be a slope angle of greater than 25°. As shown in the measured drawing (6. a. - top), a slope of 25° will drop 8 metres in 17 metres horizontal.

- b. We suggest that this 100 metre rule is unreasonable. We suggest that with modern computer GIS software it is easy to identify both the elevation of the ridgeline and to have the GIS program draw an elevation that is 8 metres below that ridgeline elevation. This should be done at right angles to the ridgeline and the horizontal distance from the ridgeline to the lower elevation will vary depending on the slope of the land.
 - c. We suggest that the 4 metre rule is unreasonable, and instead the rule should simply say the height of the building cannot exceed a height 4 metres above the ridgeline, measured at a 90 degree angle to the ridgeline.
7. Recent subdivisions should not be subject to changing of the fundamental rules that governed the subdivision and formed an expectation on the part of the buyers of those sections.
- a. In cases of recent subdivisions (by Auckland City Council after amalgamation) such as Church Bay Estates, after considerable work both by officers and the developer, farmers Nick & Nettie Johnstone, Council approved building sections and restricted buildings on those sections to designated building platforms. In good faith buyers purchased those properties. According to the Council's Duty Planner the effects on a property that changed from no ridgeline to significant ridgeline is:

	Permitted/Controlled	Restricted Discretionary
Maximum Height	8 metres	4 metres
Deposit	\$208	\$740
Usual Cost	\$1,000	\$1,500 – \$2,000
Council working days	Usually takes 20 days	Can encounter substantial delays over 20 days

- b. In our view subdivisions constitute an agreement between the Council and the purchasers of subdivided land. Since the major subdivisions approved since 1989, the land has not changed, no new ridges have appeared. Unlike the recent replotting exercise, in subdivision planning Council officers visit the site and make extensive visual assessments in cooperation with the developer as to the appropriate placement of building platforms. In the case of the Church Bay Subdivision, this resulted in negotiations moving building platforms away from the premium view sites which are on the true ridgelines that surround Church Bay on three sides.
- c. Once new rules are approved, they are enforced. To this end, we enquired of the Council Duty Planning officer about the effect of a replotted ridgeline where the existing did not affect the building platform, but the new one did. We received the following reply:

If a property did not have a significant ridgeline identified within the operative plan but now has a ridgeline on the site as a result of the proposed plan, then any development within 100 metres of the ridgeline is subject to an assessment against

10c.4.7. Please note that, any existing buildings on the site will have existing use rights however, any future additions to the existing building(s) and any new buildings will need to be assessed in accordance with the ridgeline rules. [emphasis added]

We believe this illustrates the problem. Council approved a home at 8 metres, but when the new rules go into effect, any additions at 8 metres are non-complying. This is an absurd outcome. Presuming for the moment that in fact Council did err, and failed to properly plot a significant ridgeline (or area) prior to granting consent to build to 8 metres, it is both unfair and too late to then enforce a 4 metre standard when the building is constructed.

- d. In the case of subdivisions where Council put the developer through a long and rigorous process, there should be no further changes for at least fifty years – the minimum legal lifetime of a new building. Rezoning in a subdivision is a significant decision which for many home owners involves the largest investment of their lives. Stable governments owe it to their citizens to respect that and only make changes when urgency demands it. We respectfully submit that case has not been made here by Council.

8. The 2005 Ridgelines Issues paper states

“A legal opinion states that the exact location of the significant ridgeline is deemed to be as defined on the planning maps. There is no discretion for this to be changed when a site visit shows that the physical location of the significant ridgeline differs on the ground. This raises issues about defining the exact location accurately on the planning maps.”

It appears this legal opinion is based on the current approach by Council in its planning. It would seem sensible to amend this to allow discretion.

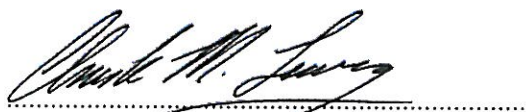
We seek the following relief:

9. Roll back to the planning maps referred to in 2001 as the *District Planning Maps for Waiheke Island*. Strike out all replotted ridgelines in the Hauraki Gulf Islands District Plan 2006, adopted 2009.
10. Instruct Council to complete their work on accurately identifying – including by mandatory visual inspection - both the ridgelines and those deemed significant and then to propose replotting the designated significant ridgelines and significant ridgeline areas as a notified Public Plan Change.
11. Define or instruct Auckland City Council to define, or refer to a common dictionary definition of “ridge” and “ridgeline”, so geographical features such as the seabed, hillside or a valley, etc. can not come under the designation of a ridge or ridgeline and so ridgeline lines are not connected or continuous unless the actual ridges are.
12. Define the criteria for determining “significant” in a “Significant Ridgeline” using clear language that can be understood and deemed reasonable by an ordinary person. (As we, the Appellant, are not experts in environment law and cannot afford to retain such expertise, we regret we cannot offer appropriate language, but if they court asks for advice, we shall endeavour to seek it out, pro-bono, at that time from an expert).
13. Require the Court’s definitions or instructions in Items 3 and 4 of this section above, be incorporated in the notified Plan Change, as in Item 2 of this section, above.
14. Instruct Council to allow discretion for the significant ridgeline rule to be changed when a site visit shows the physical location differs on the ground.
15. Strike out the arbitrary 100 metre significant ridgeline area designation and require that Council use GIS software to accurately calculate the 8 metre vertical distance from the ridgeline at a 90 degree angle to identify the horizontal distance from the ridgeline, and to plot the significant ridgeline area based on that calculated line rather than the 100 metre line.

16. Instruct Council that no approved building platform in a subdivision approved by Auckland City Council after amalgamation in 1999 shall have a replotted Significant Ridgeline or Significant Ridgeline Area overlay the building platform if prior to replotting there was no such Significant Ridgeline or Significant Ridgeline Area.
17. Instruct Council that where a replotted significant ridgeline area overlays a building platform, any building has been approved and built under the 8 metre height rules, those rules (including permitted/controlled not restricted discretionary) will continue to apply for all new construction or additions on that building platform until all such building(s) are demolished or removed from the building platform. In simple English, this means, if the existing buildings were approved without a significant ridgeline restriction, that will apply for future applications.
18. If the Court has the discretion, we suggest this is one of those egregious cases where the Court should consider a severe penalty assessed against the Council for letting it get this far. We invested considerable time writing submissions, making presentations to the Hearings Panel, who grilled the staff on why it got this far, only to find that in the end nothing happened, and we had to take more time to bring this to the Court's attention. This is the kind of case that never should have gotten this far. As the Renaissance Aotearoa Foundation is a charitable trust, we ask that any such penalty assessed against the Council be directed to this trust.

We attach the following documents to this notice:

- (a) a copy of our submission *or* further submission (with a copy of the submission opposed or supported by my further submission):
HGI-0052 Renaissance Aotearoa Foundation attached
- (b) a copy of the relevant decision (*or* part of the decision): See **Hauraki Gulf Islands District Plan 2006, adopted 2009**
- (c) any other documents necessary for an adequate understanding of the appeal:
Hauraki Gulf District Plan Review – Issues and Options Paper (Cover & pp 71-72) 13 July 2001 submission to Proposed Plan Change 21
- (d) a list of names and addresses of persons to be served with a copy of this notice.
The only party to be served is the respondent, Auckland City Council.



Signature of appellant
Director – Renaissance Aotearoa Foundation

26 August 2009

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