

IN THE ENVIRONMENT COURT  
AUCKLAND

ENV-2011-AKL-  
ENV-2011-000-

IN THE MATTER of an appeal pursuant to Clause 13  
of the First Schedule to the Resource  
Management Act 1991

BETWEEN **WILLIAM JONES**

Appellant

AND **WATERCARE SERVICES LIMITED**

Respondent

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NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION OF  
REQUIRING AUTHORITY ON PROPOSED PLAN

Dated: 11 April 2011

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**Cowper Campbell** JC Campbell / BA Watts

BARRISTERS AND SOLICITORS PO Box 3399 Auckland 1140 Tel +64 9 302 0300

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION OF  
REQUIRING AUTHORITY ON PROPOSED PLAN**

*Clause 13 of the First Schedule to the Resource Management Act 1991*

**To** The Registrar  
Environment Court  
Auckland

- 1. William Jones (“Mr Jones”) appeals against a decision of the Auckland City Council, now succeeded by Watercare Services Limited as the requiring authority on the following plan:**

Proposed Auckland District Plan, Hauraki Gulf Islands Section 2006: Notice of requirement by Auckland City Council for Owhanake Wastewater Treatment Plant.

- 2. Mr Jones made a submission on that plan.**
- 3. Mr Jones is not a trade competitor for the purpose of section 308D of the Resource Management Act 1991.**
- 4. Mr Jones received notice of the decision on 4 May 2009.**
- 5. The decision was made by the Auckland City Council.**
- 6. The decision Mr Jones is appealing is:**

The decision to approve the designation, without appropriately addressing the adverse effects of the development and operation of the Owhanake Wastewater Treatment Plant at 61 Ocean View Road, Waiheke, on the surrounding properties, particularly the property at 52 Delamore Drive, Waiheke.

**7. The reasons for the appeal are as follows:**

- (a) The proposed designation and proposed further works will cause immediate and severe adverse effects for the landowner of 52 Delamore Drive, Waiheke.
- (b) The proposed designation and proposed further works fail to adequately avoid remedy or mitigate the effects of noise, smell or visual pollution with respect to the property at 52 Delamore Drive, Waiheke.
- (c) New Condition 2.2 in Table A7.2: Conditions Applying to Designated Site – Inner Islands was not notified as part of the Proposed Plan. It is unclear from the face of the decision whether the scale of works Condition 2.2 contemplates were authorised by the original designation. If Condition 2.2 provides for works that are not classifiable as “*generally in accordance with ... the [original] notice of requirement and accompanying information*” as per Condition 1, then there is no jurisdiction for the inclusion of Condition 2.2.

**8. Mr Jones seeks the following relief:**

That adverse effects resulting from approval of the designation be avoided, remedied or mitigated in relation to the property at 52 Delamore Drive, Waiheke Island, either by:

- (a) Declining the designation; or
- (b) The imposition of appropriate conditions.

**9. Mr Jones attaches the following documents to this notice:**

- (a) a copy of Mr Jones’ submission;
- (b) a copy of the relevant part of the decision;

- (c) a list of names and addresses of persons to be served with a copy of this notice.

 (Counsel)

**JC Campbell / BA Watts**  
Solicitor for William Jones

**Date:** 11 April 2011

**Address for service of William Jones**

c/- JC Campbell / BA Watts  
Cowper Campbell  
Level 9  
Southern Cross Building  
59 – 67 High Street  
(cnr High Street and Victoria Street)  
PO Box 3399  
Auckland 1140

Telephone: (09) 302 0300

Email: [janette.campbell@cowpercampbell.co.nz](mailto:janette.campbell@cowpercampbell.co.nz)

**Note to appellant**

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

You must lodge the original and 1 copy of this notice with the Environment Court within 15 working days of receiving notice of the decision (if it is an appeal under section 174 or section 192(c) of the Resource Management Act 1991).

The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

For an appeal under section 174 or section 192(c) of the Resource Management Act 1991, you must serve a copy of this notice on the requiring authority or heritage protection authority within 15 working days of receiving notice of the decision. You must also serve a copy of this notice on the territorial authority and on every person who made a submission on the notice of requirement within 5 working days of lodging it with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

### **Advice to recipients of copy of notice**

#### *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 Environment Court, and serve copies on the other parties, within 15 working days after the period for lodging a notice of appeal ends. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

#### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the relevant submission or the relevant part of the decision. These documents may be obtained, on request, from the appellant.

#### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland.

### **Contact details of Environment Court for lodging documents**

Documents may be lodged with the Environment Court by lodging them with the Registrar.

**The Auckland address** of the Environment Court is:

Level 2  
41 Federal Street  
(cnr Wyndham and Federal Street)  
Auckland 1010  
Its postal address is:

DX CX 10086  
Auckland

And its telephone and fax numbers are:

Telephone: (09) 916 9091

Fax: (09) 916 9090

**ANNEXURE A**

**Copy of Mr Jones' submission**

# District Plan Submission Form

Proposed Hauraki Gulf Islands Section 2006

Please print clearly

Full name: Bill Jones – 52 Delamore Drive, Owhanake Bay, Waiheke Island

Organisation: (i) Waiheke Project Management Ltd

Agent: (if applicable)

Address for correspondence: Po Box 81, Oneroa, Waiheke Island

Phone: (business) 09 372 5091 (home) (fax) 09 372 5089

e-mail address: sdeery@xtra.co.nz

For office use only

Submission No.

2797

CITY PLANNING

11 DEC 2006

AUCKLAND CITY

Please use a separate form for each separate matter for submission

The specific provision that my submission relates to is:

Note: clearly identify the particular paragraph, objective, policy, rule or map.

List of designated sites - Inner islands

Table A7.1: Designated sites - Inner islands

Planning map ref	Address	Description of designation	Requiring authority	Conditions apply
1-14	61 Ocean View Road, Waiheke	<p><u>Owhanake Wastewater Treatment Plant</u> - reticulated wastewater treatment (post septic tank) and disposal purposes, including the following activities and works:</p> <ol style="list-style-type: none"> <li>1. Wastewater treatment plant processes and ancillary activities.</li> <li>2. Laboratory, workshop and staff amenity facilities ancillary to the treatment plant.</li> <li>3. Storage of fuels and chemical substances (eg methanol, chlorine) used in conjunction with treatment plant processes.</li> <li>4. Constructed wetlands.</li> <li>5. Use, construction and maintenance of drains.</li> <li>6. Vehicle accessways/roadways, parking and manoeuvring areas.</li> <li>7. Signage which is ancillary to and in connection with the use of the treatment plant.</li> <li>8. Landscaping.</li> </ol> <p>All related maintenance, construction, and earthwork activities.</p>	Auckland City Council	Yes (see table A7.2)

Owhanake Wastewater Treatment Plant, Waiheke Island - Designation of Land for Reticulated Wastewater Treatment and Disposal Purposes

Supporting Information and Assessment of Effects on the Environment  
July 2006  
42133560



Auckland City

I  support  oppose  the plan. The reasons for my / our views are;  
 Note: if you generally support the plan but seek some amendments to it you should tick both the "support" and the "seek amendments" box. If you oppose the plan but seek amendments as an alternative to deleting the specific provision, you should tick both the "oppose" and the "seek amendments" box.

The designation does not meet the sustainable philosophy of the RMA. the immediate land owners, Iwi, local Maori and community have not been consulted.

I / We seek the following decision from the council (give precise details, and clearly identify the amendments you seek)

Note: the decision requested from council should only relate to the content of the plan. Any matters raised which do not directly relate to the plan will be treated as being not "on" the plan or "outside the scope" of the plan and will not be considered.

Remove any reference to a designation, and allow only a notified application to proceed with any further development.

Or

Make any further development a prohibited activity unless all community groups as above agree with a notified process

Or

Gain consent from all neighbours and provide compensation for issues of effects.

I have attached additional information Yes No

I / We wish to be heard at the council planning hearing

Yes


No

I / We would be prepared to present a joint case at the hearing with any others making a similar submission

Yes

No

Signed



Date

11/12/06



**ANNEXURE B**

**Copy of the relevant part of the decision**

# Appendix 7

## List of designated sites

Contents	Page
1.0 Introduction .....	
2.0 List of designated sites - inner islands .....	
3.0 List of designated sites - outer islands .....	

**This marked up section of appendix 7 shows the amendments recommended in response to submissions to the designation for the Owhanake wastewater treatment plant (decision report no.37)**

**Insertions are shown with underlining and deletions with ~~strikethrough~~**



## 1.0 Introduction

This appendix includes the following tables:

- Table A7.1: Designated sites - inner islands
- Table A7.2: Conditions applying to designated sites - inner islands
- Table A7.3: Designated sites - outer islands
- Table A7.4: Conditions applying to designated sites - outer islands.

The designations included in this appendix include:

1. Designations from the operative Hauraki Gulf Islands Section of the Auckland City District Plan which have not lapsed and have been inserted in the proposed Plan with or without modification as required by the requiring authority in accordance with clause 4 of schedule 1 to the RMA.
2. New notices of requirement for designation inserted in the proposed Plan in accordance with clause 4 of schedule 1 to the RMA.

The conditions shown in tables A7.2 and A7.4 are those requested by the requiring authority. It is noted that some conditions refer to provisions contained in the operative plan.

See clause 1.6.5 for further general information about designations and notices of requirement.

## 2.0 List of designated sites - inner islands

Table A7.1: Designated sites - inner islands

Planning map ref	Address	Description of designation	Requiring authority	Conditions apply
1-14	61 Ocean View Road, Waiheke	<p>Owhanake Wastewater Treatment Plant - reticulated wastewater treatment (including post septic tank) and disposal purposes, including the following activities and works:</p> <ol style="list-style-type: none"> <li>1. Wastewater treatment plant processes and ancillary activities.</li> <li>2. Laboratory, workshop and staff amenity facilities ancillary to the treatment plant.</li> <li>3. Storage of fuels and chemical substances (eg methanol, chlorine) used in conjunction with treatment plant processes.</li> <li>4. Constructed wetlands.</li> <li>5. Use, construction and maintenance of drains.</li> <li>6. Vehicle accessways/roadways, parking and manoeuvring areas.</li> <li>7. Signage which is ancillary to and in connection with the use of the treatment plant.</li> <li>8. Landscaping.</li> <li>9. All related maintenance, construction, and earthwork activities.</li> </ol>	Auckland City Council	Yes (see table A7.2)

*[Note - rest of table A7.1, which covers other designations, is not shown here]*

Table A7.2: Conditions applying to designated sites – inner islands

Planning map ref	Conditions
1-14	<p><b>Owhanake Wastewater Treatment Plant</b></p> <p>This designation is subject to the following conditions:</p> <p><b>1.0 General conditions</b></p> <p>1.1 The scope and extent of the activities and works authorised by the designation will be generally in accordance with the notice of requirement and accompanying information, subject to final design and any modifications required to comply with the conditions set out below.</p> <p><b>2.0 Concept development plan</b></p> <p>2.1 The requiring authority shall prepare a concept development plan for the Owhanake wastewater treatment plant showing the layout of works and facilities authorised by the designation. In determining the layout for new facilities the requiring authority shall, in addition to considering operational requirements, take the following matters into account:</p> <ul style="list-style-type: none"> <li>- The avoidance or mitigation of adverse noise and odour effects associated with treatment plant operations (refer also condition 4.1 and advice note 3);</li> <li>- The landscape and visual impact of buildings and structures (refer also condition 3.1);</li> <li>- Existing indigenous vegetation on the site.</li> </ul> <p>The concept development plan shall be submitted to the team leader - Hauraki Gulf islands, Auckland City Environments for approval prior to the construction of any new facilities.</p> <p>2.2 <u>The concept development plan shall be consistent with sketches A-C for a 250m<sup>3</sup>/day plant or D-F for a 750m<sup>3</sup>/day plant as submitted at the hearing by Metrowater dated November 2008:</u></p> <ul style="list-style-type: none"> <li>- <u>the footprint of all buildings shall be located within the existing development envelope as at 19 November 2008</u></li> <li>- <u>buildings shall be a maximum of 5m in height above ground level</u></li> <li>- <u>existing landscaping on the site shall be retained</u></li> <li>- <u>no development shall be undertaken within existing landscaped areas</u></li> </ul> <p><b>3.0 Landscape and visual impact management conditions</b></p> <p>3.1 Prior to the construction of any new buildings, structures or facilities in accordance with an approved concept development plan, the requiring authority shall prepare a landscape management plan. This plan shall demonstrate how, as far as is practicable, and in accordance with this condition, the wastewater treatment plant facilities are to be appropriately visually integrated with the surrounding landscape, including:</p> <ol style="list-style-type: none"> <li>a. The design and external appearance of buildings and structures, including the type and colour of roofing and cladding materials to be used. The exterior of buildings shall be finished in colours and/or materials that are sympathetic to the natural landscape of the site;</li> <li>b. Proposed landscape treatment, including details of plant species proposed to be used. Where practicable locally sourced native species shall be used;</li> <li>c. The dimensions, graphic content and colouring of proposed signage. All signs shall comply with the provisions of the relevant Auckland City bylaw (Part 27 - Signs).</li> </ol> <p>The landscape management plan shall be submitted to the team leader - Hauraki Gulf islands, Auckland City Environments for approval prior to commencement of construction, with the approved landscape treatment subsequently being implemented no later than the first planting season immediately following completion of construction.</p> <p>In preparing and approving the land scape management plan, the requiring authority and team leader - Hauraki Gulf islands, Auckland City Environments, respectively,</p>

Planning map ref	Conditions
	shall consider the extent to which measures for addressing landscape and visual effects are reasonably necessary, taking into account the extent to which any dwellings or other potentially sensitive land uses have established after the requirement for designation for the Owhanake wastewater treatment plant was publicly notified.

Planning map ref	Conditions
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1-14      **4.0 Noise**

4.1 Operational noise

a. New facilities at the wastewater treatment plant shall be so designed and the use of the buildings and site shall be so conducted, that the following noise levels are not exceeded:

i. The  $L_{eq}$  noise level shall not exceed the following limits:

Day / time	Noise level ( $L_{eq}$ )
Monday to Saturday 0700 - 2200 hrs and Sunday 0900 - 1800 hrs	55 dBA
All other times including public holidays (night time)	45 dBA

ii. The maximum noise level ( $L_{max}$ ) at 'night' time shall be the background noise level ( $L_{95}$ ) plus 30 dBA; or 75 dBA, whichever is the lower.

b. All noise measurements shall be made at 20m from any building where people may reside overnight on a permanent or temporary basis (on another site from the noise source) or at the legal boundary, when this is closer to the dwelling. This may be referred to as the notional boundary.

c. Noise shall be measured in accordance with NZS 6801:1999 (Acoustics - Measurement of Environmental Sound).

d. The noise measured shall be assessed in accordance with NZS 6802:1999 (Acoustics - Assessment of Environmental Noise) except that the averaging of noise measured will be in accordance with the following:

*Averaging*

A noise nuisance does not generally arise from a single isolated infringement. The amount by which limits are exceeded may vary between repeat infringements. Averaging of measured  $L_{eq}$  values for separate time intervals to derive a single figure for comparison with any limit, will be subject to the following constraints:

- i. Averaging of measured  $L_{eq}$  levels for comparison with any applicable noise limit, if employed, will only be performed on LR levels derived in accordance with appendix A of NZS 6802:1999 and will only relate to time intervals during which the sound of interest is present. Measured  $L_{eq}$  levels will not be averaged if comparison is to be made with night-time limits where sleep disturbance will be of concern.
- ii. The averaged value of the descriptor eg  $L_{eq}$  will not exceed the relevant limit, and in any case the limit will not be exceeded by more than 5dB for any single time interval.  $L_{eq}$  values will be averaged on an energy basis, ie the logarithmic mean will be determined.

4.2 Noise from construction work and earthworks (refer also condition 9.2)

a. Noise resulting from earthworks or construction work (construction work is defined in NZS 6803:1999) shall not exceed the following levels:

i. When affecting all settlement areas and land units, with the exception of the transport area of the Matiatia land unit:

Time of the week	Time period	Duration of the work			
		Typical duration work (dBA) 1		Short term duration work (dBA) 2	
		$L_{eq}$	$L_{max}$	$L_{eq}$	$L_{max}$
Monday to Friday	0730 - 1800 hrs	75	90	80	95
Saturday	0800 - 1600 hrs	75	90	80	95

1. 'Typical duration work' means construction work at any one location for more than 14 calendar days  
 2. 'Short term duration work' means construction work at any one location for up to 14 calendar days

Planning map ref	Conditions
1-14	<p><b>8.0 Archaeological and cultural heritage impact management conditions</b></p> <p>8.1 Should construction work expose any archaeological remains, including human remains, the following procedures shall apply:</p> <ul style="list-style-type: none"> <li>- Immediately it becomes apparent that an archaeological or traditional site has been exposed, all works in the affected area shall cease;</li> <li>- The affected area shall be secured in a way that ensures that any artefacts or remains are untouched;</li> <li>- The requiring authority shall as soon as practicable notify local iwi, the New Zealand Historic Places Trust and, in the case of human remains, the police that artefacts or remains have been exposed so that appropriate action can be taken. Works shall not recommence in the affected area until any necessary authority required by the New Zealand Historic Places Trust is obtained.</li> </ul> <p><b>9.0 Construction management</b></p> <p>9.1 Prior to the construction of any new buildings, structures or facilities in accordance with an approved concept development plan and landscape management plan, the requiring authority shall prepare a construction management plan. This plan shall include specific details relating to the demolition, construction and management of all works associated with the upgrading of the existing wastewater treatment plant, including:</p> <ol style="list-style-type: none"> <li>a. Details of the site manager, including their contact details;</li> <li>b. The location of a noticeboard (in accordance with the relevant Auckland City bylaw - Part 27 Signs) on the site that clearly identifies the name, telephone number and address for service of the site manager;</li> <li>c. Measures to be adopted to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage and unloading of building materials and other construction activities;</li> <li>d. Location of worker's conveniences (eg portaloos);</li> <li>e. Ingress and egress to and from the site for vehicles during the construction period (including construction machinery);</li> <li>f. Proposed numbers and timing of truck movements throughout each day and the proposed routes to be used by trucks;</li> <li>g. Procedures for controlling sediment runoff, dust and the removal of soil and debris from public roads or places.</li> </ol> <p>The construction management plan shall be submitted to the team leader - Hauraki Gulf islands, Auckland City Environments for approval prior to commencement of construction. The approved plan shall be implemented and maintained throughout the entire construction period.</p> <p>9.2 All construction works shall be restricted to the hours between 0730 - 1800 Monday to Friday and 0800 - 1600 on Saturday. No work shall occur on Sundays or public holidays.</p> <p><b><u>10.0 Operational and Management Plan</u></b></p> <p>10.1 <u>Prior to commencement of works authorised by the designation, an Operational and Management Plan, incorporating the actual works that are to occur on the site shall be prepared. This plan shall be submitted to and approved by the Team Leader, Planning Hauraki Gulf Islands and include among other matters details of dealing with emergencies and complaints. Thereafter, the Operational and Management Plan shall be maintained as a document that reflects any new activities (within the scope of the designation) or where there is a substantial alteration to existing activities.</u></p> <p><b><u>11.0 Other</u></b></p> <p>11.1 <u>The designation shall be compatible with the resource consent for discharge</u></p>

Planning map ref	Conditions
	<p><u>currently held.</u></p> <p><u>Advice notes</u></p> <ol style="list-style-type: none"> <li>1. The requiring authority needs to obtain all other necessary consents and permits, including those under the Building Act 1991, and comply with all relevant council bylaws.</li> <li>2. Under the Historic Places Act 1993 an authority must be obtained from the New Zealand Historic Places Trust for the modification, damage or destruction of any archaeological site.</li> <li>3. It is noted that the wastewater treatment plant is subject to an air discharge permit issued by the Auckland Regional Council which requires (amongst other things) that the plant be operated and maintained so that discharges of odour will not be of a noxious, offensive or objectionable nature beyond the boundaries of the site (Lot 37 DP183455).</li> <li>4. The storage and handling of any hazardous substances used in conjunction with wastewater treatment plant operations shall be undertaken in accordance with the provisions of the Hazardous Substances and New Organisms Act 1996 and the relevant Hazardous Substances Regulations.</li> </ol>

***[Note - rest of table A7.2, which covers other designations, is not shown here]***

***[Note - rest of appendix 7, which covers outer island designations, is not shown here]***

ANNEXURE C

**List of names and addresses of persons to be served with a copy of this notice**

Watercare Services Limited  
c/- Russell McVeagh  
Attn: Francelle Lupis  
PO Box 8  
Shortland Street  
AUCKLAND 1140

Auckland Council  
Attn: Shaun McAuley  
Private Bag 92300  
AUCKLAND 1143