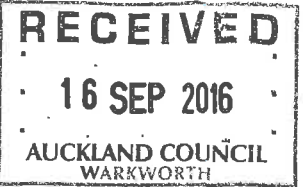


IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

Collected



No CIV

2016-404-2284

Under the Local Government  
(Auckland Transition Provisions)  
Act [LGATP] S 158

Replaces earlier  
served appeals  
now one combined  
appeal. ~~10~~

IN THE MATTER OF

The Proposed Auckland Unitary  
Plan Natural Heritage Overlays –  
ONL, ONC, HNC, Kāwau Island  
Topic 019 and

The Proposed Auckland Unitary  
Plan [PAUP] – Precincts Kāwau  
Island

Topic 081

BETWEEN

**Kāwau Island Access  
Organisation Incorporated** [KIA  
Vivian Bay, Kāwau Island, an  
Incorporated Society]

**Appellant**

AND

**Auckland Council**  
Private Bag 92300  
Victoria Street West  
Auckland 1142  
Unitary Authority

**Respondent**

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NOTICE OF APPEAL

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Next event date:

Filed by Herc Ross Coleman Treasurer/Chair  
On behalf of Kāwau Island Access Organisation Incorporated  
Address for Service:  
c/- Warkworth Post Office  
phone: 021 720 847  
email: [herc.ross.coleman@gmail.com](mailto:herc.ross.coleman@gmail.com)

To: The Registrar of the High Court at Auckland  
Auckland Council - Respondent and Decision Maker

This documents notifies you that Kawau Island Access Organisation Incorporated S.Nos 7580 and 106, hereby appeal the decision of the Auckland Council to impose [ONL], [ONC] and [HNC] overlays on Precinct A of Kawau Island from Kawati Point to North Cove Inlet, east of Vivian Bay **Topic 019**, released on 19 August 2016. The part of the decision appealed is the overlay maps covering Lots 1 and 2 DP419092 and Lot 2 DP428510 owned by the Treasurer/Chair of KIA and the rules that apply to this land and not to fully retain Precinct A [the Precinct] for Kawau Island **Topic 081** released on 19 August 2016. The parts of the decision appealed are

- i) Removal of the preface providing for the supremacy of the precinct over the overlays.
- ii) Not restoring removal of tea tree for conservation Rule 7.9.4.1.41 of the Operative Plan (Rodney) to the rules for Tree Removal on Kawau Island in the PAUP.

## **Grounds**

### **Topic 019**

- a) The vegetation removal rules conflict with the condition of an existing resource consent to subdivide Lot 1 DP419092.
- b) The heritage overlays breach natural justice by
  - i) drawing an arbitrary line between landscapes and vegetation that are indistinguishable but treated differently.
  - ii) permitting only one dwelling and associated vegetation clearance 50m<sup>2</sup> regardless of net size of the site.
  - iii) penalising landowners for not building on their land by restricting future use.

- iv) the big discrepancy between the size of houses permitted inside the overlays compared with that allowed outside the overlay in the remainder of the precinct.
- c) The Council erred in law
  - 1) basing its maps on only one criteria of "outstandingness", cohesiveness of vegetation.
  - 2) not identifying the actual features that made the landscapes outstanding, or
  - 3) imposing heritage overlays on landscapes that are neither outstanding or natural.
- d) The planner Mr Brown showed bias and acted unprofessionally in
  - i) relying on misleading descriptions of Kawau contained in Appendix 5.3.2.
  - ii) saying previous legal developments along the foreshore had eroded the quality of the environment.
  - iii) using emotive language and expressing personal views in claiming an unimplented resource consent for subdivision would "slice and dice" the landscape.
- e) Erred in law and in fact
  - i) claiming "massive Kanuka and Manuka" gave a high degree of naturalness to the landscape when the PAUP describe this vegetation as "highly modified".

- ii) attributing naturalness to a tea tree monoculture that lacks the variety and range of native species, biodiversity and bird life characteristic of natural bush, instead exhibiting a high degree of homogenisation and ecological degradation.

**Topic 081**

- a) The tree removal rules for Kawau Island do not allow landowners to make reasonable use of their land under section 85 of the Resource Management Act 1991 (RMA) because
  - i) there is no provision in the PAUP as in the Rodney Plan, for tea tree to be removed for conservation so that regeneration of native bush can occur.
  - ii) landowners are prevented from achieving good vegetation management and the prime objective for the Kawau Precinct which is once the wallabies are controlled to re-establish the ecology of the island.
  - iii) they are deprived of the amenity value of their land by being unable to promote and enjoy the regeneration of native bush due to dense tea tree blocking out the necessary sunlight and rainwater for regeneration to occur.
- b) These are relevant matters that the Council neither addressed nor took into account.
- c) The Council took into account irrelevant matters, for example that tea tree acted as a successful nursery for bush regeneration in other parts of Auckland.

- d) The Council ecologist did not provide evidence rebutting the submitted claim that controlled tea tree removal enhanced bush regeneration on Kawau Island and was generally a prerequisite for it.
- e) She has no expert knowledge of Kawau nor the intervention, such as tree removal necessary for bush regeneration to occur on it, and has provided no photographs to support her testimony or rebut the photographic evidence supplied by the Pohutukawa Trust and the submitters.
- f) the Council did not apply the legal test for substituting Precinct Rules for overlay provisions.
- g) it provided no evidence to support the removal or alteration of the Preface to the Precinct.
- h) erred in law is not providing for the re-establishment of the islands ecology.
- i) In terms of vegetation management the Precinct Rules achieve the objectives of the overlays better than the overlays themselves.
- j) the building and other regulations have been removed from the Precinct to make them conform with the general zone rules, contrary to the legal principle that the particular overrides the general.

## **Relief**

### **Topic 019**

The orders sought are specifically

- 1) the natural heritage overlays are removed from Lot 1 DP419092, and fully or partly removed from Lot 2 DP419092 and Lot 2 DP428510, and the remainder of the area from Kawati Point to North Cove,  
or
- 2) alternatively the ONL and other overlays for this area are quashed.

**Topic 081**

- 1) Rule 7.9.4.1.4 of the Operative Plan be restored to the tree removal rules for Kawau Island as follows

The cutting of Manuka for conservation including opening the canopy for re-vegetation with native species and for clearance from other existing native species.

- 2) the Preface to the Precinct be retained  
or
- 3) the decision altering it, quashed.

Dated: 16 September 2016



Herc Ross Coleman

This document is filed by Herc Ross Coleman Treasurer/Chair on behalf of the Kawau Island Access Organisation Incorporated. The address for service of the Appellant is  
c/- Warkworth Post Office  
Counter Delivery  
Warkworth