

APPENDIX 3

RIDDELL HEARING 12 EVIDENCE

Decision No. A 72/2007

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under clause 14 of the First Schedule concerning provisions of the proposed district plan

BETWEEN

H D PICK

ENV-2006-AKL-000152
(formerly RMA 619/03)

AND

J A RIDDELL

ENV-2006-AKL-000162
(formerly RMA 590/03)

Appellants

AND

FAR NORTH DISTRICT COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge L J Newhook (presiding)
Environment Commissioner R M Dunlop
Deputy Environment Commissioner B Gollop

Submissions from:

D A Kirkpatrick for the appellants and for Russell Protection Society Inc under s274
J S Baguley for respondent

FINAL DECISION

[1] In May 2006 we issued Decision No. A064/2006, an Interim Decision concerning two appeals about the level of heritage protection afforded Russell Township in the Bay of Islands. We held that the provisions of the Revised Proposed District Plan ("PDP")



were inadequate beneath certain high level objectives, and indicated some necessary changes.

[2] The area in which protection of heritage and associated amenity was required, extended beyond and around certain mapped Heritage Precincts.

[3] We requested that the parties endeavour to agree a draft set of new provisions and mapping for insertion in the PDP.

[4] The parties were able to agree on some aspects, but not on others, and lodged submissions. Unfortunately the materials from the parties were lost in the course of getting to us, and in tidying up the last strands of appeals concerning the PDP, it has been necessary for us to call for further copies. We have now considered the materials, and can issue our final decision.

[5] The agreed new policy provisions and rules as submitted to us in a joint memorandum of counsel for the parties, are considered appropriate, and we approve them.

[6] The dispute about the mapping of the proposed Russell Township Basin and Gateway Areas must be resolved partly in favour of the appellants, and partly in favour of the respondent.

[7] There are broadly three areas of mapping in dispute. The first of them is bounded by Hope Avenue and Florance Avenue, to the east of the agreed area between those streets. This was not within our contemplation for inclusion as part of the gateway area. We refer particularly to our finding in paragraph [39] of the Interim Decision where we said:

We include the "gateway" because Mr Salmond ultimately persuaded us that their application might extend southwards along Matauwhi Road, and along those portions of Florance Avenue and Hope Avenue that are near the Matauwhi Bay foreshore.

[8] The disputed eastern area is beyond the land described in that paragraph.



[9] The second area, the parties have called the "Brind Road area of dispute". That small area we considered had some degree of visibility from the Mataurahi Bay area, and is to be included.

[10] The third area of dispute relates to the extension of the special controls, into areas already mapped as Heritage Precincts. Contrary to the submissions on behalf of the respondent, we consider that there is essentially no overlap between those controls and provisions of the PDP relating to the Heritage Precincts. We agree with the submission of Mr Kirkpatrick that it would be ludicrous if the required bulk and location controls applied only outside and around the Heritage Precincts, and not within the precincts.

[11] Finally, we confirm that the controls are not to extend beyond the Russell Township Basin and Gateway Area, and the Heritage Precincts as mapped, and we consider that Ms Baguely was correct in that regard to refer to our findings in paragraphs [27], [28], [32] and [39] of the Interim Decision. Accordingly, her draft Rules 10.9.5.1.5. and 10.9.5.3.4, come close to reflecting our earlier directions. Those Rules are approved with minor changes principally to emphasise the differences between the protected areas and the rest of the Russell Township Zone, and shall be as follows:

10.9.5.1.5 Permitted Activity

The maximum net ground floor area of all buildings on the site shall not exceed 20% of the net site area; except where the site is within the Russell Township Basin and Gateway Area or within a Heritage Precinct, all as defined on Map 87, the maximum net floor area of all buildings on the site shall not exceed 20% of the net site area, provided that this may be exceeded on sites with a net site area less than 400m² such that the maximum net floor area may be up to 80m².

10.9.5.3.4 Restricted Discretionary

The maximum net ground floor area of all buildings on the site shall not exceed 25% of the net site area; except where the site is within the Russell Township Basin and Gateway Area or within a Heritage Precinct, all as defined on Map 87, the maximum net floor area of all buildings on the site shall not exceed 20% of the net site area, provided that this may be exceeded on sites with a net site area less than 400m² where the maximum net floor area may be up to 100m².

[12] We direct the consequential changes to the policies, rules and maps accordingly.



DATED at Auckland this *28th* day of *August* 2007.

For the Court:



L J Newhook
Environment Judge

