

**BEFORE THE ENVIRONMENT COURT AT  
AUCKLAND**

**ENV-2022-AKL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of an appeal under Clause 14(1) First Schedule of the  
Act in relation to the Proposed Waikato District Plan  
Decisions

**BETWEEN** **Jason Ross Howarth**

**Appellant**

**AND** **WAIKATO DISTRICT COUNCIL**

**Respondent**

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**NOTICE OF APPEAL**

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**TO:** The Registrar  
Environment Court  
Auckland

- 1 **Jason Ross Howarth** ("**Appellant**") appeals against decisions of the Waikato District Council ("**Respondent**") on its Proposed Waikato District Plan ("**PWDP**").
- 2 The Appellant made a submission on the PWDP.
- 3 The Appellant is not a trade competitor for the purposes of section 308D of the Act.
- 4 The Appellant received notice of the decisions on 17 January 2022 and understands that the appeal period closes 1 March 2022.
- 5 The decisions were made by the Respondent.
- 6 The decisions appealed, reasons for the appeal and relief sought are grouped together by topic and are set out below generally in the order in which the relevant provisions appear in the PWDP.

## **Decision Report-18 Country Living Zones**

### **4.19 Subdivision under the Airport Overlays**

#### **Airport Subdivision Control Boundary**

- 7 The decision appealed is as follows:
  - (a) The decision not to remove the Airport Subdivision Control Boundary (ASCB)
- 8 The reasons for the appeal are as follows:
  - (a) The appellant's concern is that information and the basis of the decision is made on evidence about 'holding the line', when there is no evidence to suggest this has occurred.
  - (b) The ASCB does not consider/acknowledge actual aerodrome/flight operations in the overlay. The decision fails to acknowledge aircraft operating outside of the ASCB in areas of greater residential density
  - (c) Insufficient weight in the decision has been given to the evidence provided, that aviation operations are not informed, limited, or restricted in their operation in anyway by the ASCB.

- (d) The decision gave excessive weight to 2003 decision for establishing ASCB and gave little or no weight considering that airport operations had changed.
- 9 The appellant seeks the removal of the ASCB and all related matters to ASCB, with the result that subdivision requirements are consistent across the Tamahere Country Living Zone.

### **Minimum net lot size to be 1.1Ha in the ASCB**

- 10 The decision appealed is as follows:
- (a) The decision not to make the average net site area of all proposed lots 5000m<sup>2</sup> inside the ASCB a Restricted Discretionary activity
- 11 The reasons for the appeal are as follows:
- (a) There rule creates an irregularity of lots size the affects the character of the Tamahere area
- (b) The intensification of residential lots of 5000m<sup>2</sup> within the ASCB and immediate surrounds of the ASCB has not yielded any reverse sensitivity concerns.
- 12 The appellant seeks that all rules that relate to a minimum average lot size of 1.1Ha in the ASCB be replaced with 5000m<sup>2</sup>. The result being that Subdivision within the ASCB of 5000m<sup>2</sup> is a Restricted Discretionary activity.

### **Reverse sensitivity considerations**

- 13 The decision appealed as follows:
- (a) The decision to introduce the following policy
- 5.6.19 Policy- Reverse Sensitivity*
- (a) Avoid or minimise the potential for reverse sensitivity through:*
- (i) the use of setbacks, the design of subdivisions and development*
- (ii) limiting subdivision within the Airport Subdivision Control Boundary.*
- 14 The reason for appeal as follows:
- (a) The word “limiting” creates a broad overreach of control, rather than appropriate mitigation to address perceived reverse sensitivity issues.

- (b) Creating such a policy is counter to the view of many submitters made relating to this point. A less restrictive and a stronger mitigation approach, to development within the ASCB should be considered. The current 'enhanced' acoustic provision that are required for residential buildings within the ASCB already address reverse sensitivity issues.
  - (c) The creation of such a policy negates the change in activity status for subdivisions in the ASCB.
  - (d) There is an inconsistency with the application of noise, as a reverse sensitivity issue. The PWDP states that noise limits at any point within Tamahere commercial Area B: 65dB LAeq(15min) 7am to 10pm and 75dB LAFmax, 10pm to 7am the following day, as a permitted activity. Tamahere commercial Area B is contained within the ASCB. The Outer Control Noise Boundary is an area where aircraft noise levels are predicted to be between 55 and 65 dB, has been given a non-complying activity status due to noise sensitivity issues.
- 15 The appellant seeks the policy to either be deleted or amended to the following:
- 5.6.19 Policy- Reverse Sensitivity
- (a) Avoid or minimise the potential for reverse sensitivity through:
    - (i) the use of setbacks, the design of subdivisions and development
    - (ii) applying appropriate acoustic conditions on subdivisions within the Airport Subdivision Control Boundary.
    - (iii) consideration of land covenants and liquidated damages

### **Further Relief Sought**

- 16 In addition to the matters set out in paragraphs 6 to 15 above, the Appellant seeks the following relief:
- (a) Any similar relief with like effect which addresses the Appellant's concerns;
  - (b) Any consequential amendments which arise from the Appellant's submission, the reasons for the appeal or the relief sought; and
  - (c) Such other relief as the Court considers appropriate.

**Mediation**

- 17 The Appellant consents to engaging in mediation activity or any other resolution activity that maybe appropriate.

**Costs**

- 18 The Appellant seeks costs in relation to this appeal.

**Attachments**

- 19 Copies of the following documents are attached to this appeal:
- (a) a copy of the Appellant's submission (**Annexure A**):
  - (b) a copy of the Appellants submission to hearing 12 on the Country Living Zone (**Annexure B**):
  - (c) a copy of the relevant decision (or part of the decision) (**Annexure C**):
  - (d) a list of names and addresses of persons to be served with a copy of this notice (**Annexure D**).

**DATED** this the 25<sup>th</sup> day of February 2022



Jason Howarth

**Address for service of Appellant:**

Jason Howarth  
295A Newell Road  
Tamahere  
Hamilton

E: [jason@howarthconsulting.co.nz](mailto:jason@howarthconsulting.co.nz)

**Advice to recipients of copy of notice of appeal***How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further 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 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 or service 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 appellant's submission, further submissions or parts of the decision appealed. 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

**Annexure A**  
**Appellant's Submission**

**Annexure B**

**Copy of the Appellants Hearing submission**



**Annexure C**

**Copy of the decision**

**Annexure D**  
**Submitters**