

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO  
TAMAKI MAKAUROA ROHE**

**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** **Kirriemuir Trustee Limited**

Appellant

**AND** **Waikato District Council**

Respondent

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**NOTICE OF APPEAL ON BEHALF OF KIRRIEMUIR TRUSTEE LIMITED AGAINST  
DECISION ON PROPOSED WAIKATO DISTRICT PLAN**

**Dated 1 March 2022**

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To: **The Registrar  
Environment Court  
Auckland**

1. The Kirriemuir Trustee Ltd (**Kirriemuir**) appeals against part of the decision of Waikato District Council (**WDC**) on the Proposed Waikato District Plan (**PDP**).
2. Kirriemuir made submissions and further submissions on the PDP.
3. Kirriemuir is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).
4. Kirriemuir received notice of the decision on or about 17 January 2022.
5. The part of the decision that Kirriemuir is appealing is WDC's decision to reject the request to rezone 6 properties totalling 38 hectares on Geraghtys Road (**Geraghtys Road block** or **block**), marked in red in **Attachment 3**, from Rural Zone to General Residential Zone. The relevant part of the decision is recorded in Decision Report 28D: Zoning – Tuakau at paragraphs 4.36 to 4.43.

**General reasons for the appeal**

6. In general, the part of the decision appealed against does not accord with the relevant requirements of the RMA and is contrary to Part 2 of the Act.
7. Without limiting the generality of the reasons for the appeal outlined at paragraph 6 above, the part of the decision appealed:
  - a) Will not promote the sustainable management of natural and physical resources;

- b) Is contrary to good resource management practice;
- c) Does not promote the efficient use and development of natural and physical resources; and
- d) Does not appropriately address the specific issues set out in the following paragraphs.

### **Specific reasons for appeal**

- 8. Geraghtys Road forms the predominant western edge of the Tuakau township, with rural zoning and land use on the western side of the road and residential zoning and land use on the eastern side.
- 9. The primary reason cited in the decision for declining Kirriemuir's rezoning request was the concern that it would reduce the availability of high-class soils for primary production and the requirement under the Waikato Regional Policy Statement (**WRPS**) to protect land containing high-class soil from inappropriate subdivision, use or development<sup>1</sup>.
- 10. While the WRPS places importance on high-class soils, the relevant provisions are not to be taken as meaning that land containing high-class soils are effectively proscribed from use in any circumstances for residential development and activity. The provisions seek to protect high class soils for primary production against *inappropriate* subdivision, use, and development. For the reasons set out in this notice of appeal, Kirriemuir's proposed rezoning is not inappropriate.
- 11. The potential for reverse sensitivity effects on neighbouring industries precluded the block from inclusion in growth planning in the Tuakau Structure Plan and Waikato 2070 and in the growth cells delineated in

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<sup>1</sup> Objective 3.26, Policy 14.2, Method 14.2.1.

Future Proof 2017 and Waikato 2070. Reverse sensitivity concerns are a legacy issue arising from the Envirofert composting site and Tuakau Proteins plant located to the south of the block. However, the destruction by fire of the Tuakau Proteins plant in early 2021 and the significant operational modifications implemented at the Envirofert site in recent years (now encapsulated in conditions to resource consents granted in December 2021), mean that reverse sensitivity is no longer an issue with respect to the block. In any event, there is a sufficient separation distance from the block of 400m and 950m respectively. Residential development of the block is no longer incompatible with the surrounding activities.

12. The block is located adjacent to two growth areas identified in Waikato 2070, Buckland<sup>2</sup> and Dromgools Road. Under the Future Proof Strategy, the northern part of the block sits partly within the urban limits for the Buckland area and Geraghtys Road forms the western urban limit to the township. The block's urbanisation is a logical extension of the existing Tuakau urban environment which can be integrated with development of the adjacent growth cells.
13. Residential zoning of the block is consistent with the development principles of the WRPS and the National Policy Statement on Urban Development 2020 which seeks additional development capacity.
14. Residential zoning of the block will provide for more efficient and effective use of the land. Provision of land supply is a critical part of addressing current housing and affordability issues in Tuakau and the wider district. Waikato district growth projections identify insufficient capacity to meet demand at Tuakau for the medium-term. These projections show the need to provide for an additional 15,000–20,000 people to be accommodated in Tuakau<sup>3</sup>.

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<sup>2</sup> The Buckland area is also in the General Rural Zone under the Decisions Version of the PDP.

<sup>3</sup> Section 42A report: Hearing 25: Zone Extents Tuakau, paragraph 31.

15. The increase in density of development will not have inappropriate adverse effects. Servicing is not a constraint on residential development. The Geraghtys Road block is relatively small and located close to existing infrastructure. The costs of any necessary upgrades to water, wastewater and roading will be shared with the Dromgools development cell across Geraghtys Road.
16. WDC erred in declining to rezone the Geraghtys Road block from Rural to Residential. The relief sought by Kirriemuir below is necessary to better achieve integrated management of the land resource and better achieve the purpose of the RMA.

### **Relief sought**

17. Kirriemuir seeks the following relief:
  - a) Amend the relevant planning map(s) in the PDP by rezoning the Geraghtys Road block, marked in red in **Attachment 3**, from General Rural Zone to General Residential Zone;
  - b) Insert the proposed Geraghtys Road Structure Plan in **Attachment 4** and the following description of the structure plan into the PDP:

#### *'Geraghtys Road Structure Plan*

- *The Geraghtys Road Structure Plan facilitates a dwelling yield of approximately 425 units based on a developable area of approximately 21 hectares, and a Residential zoning.*
- *The Structure plan excludes the central gully and escarpment and vegetated wetland area to the west from development by allocating them to an open space overlay. The central gully creates two neighbourhoods; one on the east fronting Geraghtys Road and one on the west backing onto the escarpment.*

- *A simple connected road network provides two access location onto Geraghtys Road to the east and one connection to the north. The connection to the north is consistent with an indicative road alignment in the Tuakau Structure Plan and facilitates connections to Tuakau College and Primary School.*

- *A north/south walking/cycling path along the top of the gully system, connecting to a walking/cycling path on the Tuakau Structure Plan. A further path connects to land to the southwest, with potential to connect in the future to the Waikato River.*

; and

- c) Such further orders, relief, consequential amendments or other amendments as are considered appropriate and necessary to address the concerns set out above; and
- d) Costs of and incidental to this appeal.

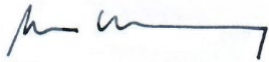
### **Attachments**

18. The following documents are attached to this notice:

- a) **Attachment 1:** A copy of Kirriemuir's submissions and further submissions on the PDP.
- b) **Attachment 2:** A copy of the relevant parts of the decision.
- c) **Attachment 3:** Proposed residential rezoning plan.
- d) **Attachment 4:** Proposed Geraghtys Road Structure Plan.

- e) **Attachment 5:** A list of names and addresses of persons to be served with a copy of this notice.

Dated 1 March 2022



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L F Muldowney / S K Thomas  
Counsel for Kirriemuir Trustee Ltd

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Contact person:    Lachlan Muldowney/Shaye Thomas

Documents for service on the appellant may be:

- (a) Left at the address for service; or
- (b) Posted to the solicitor at PO Box 9169, Waikato Mail Centre, Hamilton 3240.

**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.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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 Act.

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

**Advice**

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