

**IN THE ENVIRONMENT COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA  
TĀMAKI MAKAURAU ROHE**

**IN THE MATTER** of the Resource Management Act 1991 (RMA)

**AND**

**IN THE MATTER** of an appeal under Clause 14 of Schedule 1 of the RMA  
against the decision of Waikato District Council on the  
Waikato Proposed District Plan

**BETWEEN** **GREIG METCALFE** 69 Harrowfield Drive, Harrowfield,  
Hamilton 3210

**Appellant**

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

**Respondent**

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**NOTICE OF APPEAL AGAINST DECISIONS ON WAIKATO PROPOSED  
DISTRICT PLAN**

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## NOTICE OF APPEAL AGAINST DECISIONS ON WAIKATO PROPOSED DISTRICT PLAN

To:           The Registrar  
                  Environment Court  
                  Auckland

### INTRODUCTION

- 1       Greig Metcalfe (**Appellant**), 69 Harrowfield Drive, Hamilton, 3210, appeals against the decisions of the Waikato District Council (**Respondent**) on the Waikato Proposed District Plan (**PDP**). The relevant decisions are:
  - (a)   Future Urban Zone – Decision Report 24 (**FUZ decision**);
  - (b)   Te Kowhai Airpark Zone – Decision Report 26 (**TKAZ decision**);
  - (c)   Zoning (Te Kowhai) – Decision Report 28J (**Zoning decision**).
- 2       The Appellant made submissions on the PDP.
- 3       The Appellant is not a trade competitor for the purposes of section 308D of the RMA.
- 4       The Appellant received notice of the decisions on 17 January 2022.
- 5       The decisions being appealed are identified above. The Appellant appeals against parts of the decisions. Reasons for the appeal and relief sought are set out below.

### PARTS OF THE DECISION BEING APPEALED

- 6       The specific parts of the decisions being appealed are:
  - (a)   Zoning decision
    - (i)   Planning Maps: Te Kowhai – in respect of Lot 2 DP 456538 and Lot 3 DP 353526 being zoned in the Future Urban Zone (**FUZ**).
  - (b)   FUZ decision

- (i) FUZ(SUB-R121, SUB-R122, SUB-R123) – the subdivision rules for the Future Urban Zone.
- (c) TKAZ decision
  - (i) TKAZ Activity Status Table:
    - (1) Circuit Training (PREC27-R21 DIS; PREC28-R21: DIS, PREC29-R21:DIS, PREC30-R21: DIS)
    - (2) Flight Training School (PREC28-R22: DIS, PREC29-R22:DIS, PREC30-R22: DIS).
  - (ii) TKAZ-S3 (Hours of Operation for Aircraft Operations) – with Aircraft Operations being a permitted activity between:
    - (1) 0700 hours to 2200 hours in the Summer Period; or
    - (2) 0700 hours to 1900 hours in the Winter Period.
  - (iii) The omission of a rule to restrict the maximum number of annual aircrafts movements in the TKAZ.

## REASONS FOR APPEAL

### Background

- 7 The Appellant and his family have an ownership interest in the 68ha property on the western edge of Te Kowhai Village. The properties are legally described as Lot 2 DP 456538 and Lot 3 DP 353526 and have the addresses 702 and 703A Horotiu Road respectively (**the Block**). The properties were initially zoned 'Village' in the notified version of the Waikato PDP.
- 8 The Appellant sought for this "Village" zoning to be retained, as this would allow for large lot residential development (and for 1000m<sup>2</sup> lots subject to the availability of urban services) which would be consistent with the Future Proof 2017 (**Future Proof**) settlement pattern which specifically identifies Te Kowhai as a growth centre.
- 9 The Appellant's intention is to commence development on the Block within the medium term (5 -10 years).

### *General reasons for appeal*

- 10 The general reasons for the appeal are that the decision, in parts:

- (a) will not promote the sustainable management of resources, will not achieve the purpose of the RMA and is contrary to Part 2 and other provisions of the RMA;
- (b) imposes an outcome that is not consistent with consultation undertaken with the Appellant prior to and during the PDP process and was not an option on which the Appellant could have made a submission or further submission;
- (c) does not enable the social, economic, and cultural wellbeing of the Te Kowhai community and in particular, the Appellant.

*Particular reasons for appeal*

11 Zoning Decision:

- (a) Te Kowhai is specifically identified as a residential growth area in the PDP and this is supported by the objectives and policies of the PDP. This position is consistent with the wider urban growth management objectives of Future Proof 2017 (**Future Proof**) which promotes future development being concentrated in one or two existing Waikato District villages (including Te Kowhai) rather than being scattered across the District.<sup>1</sup>
- (b) Future Proof and the Waikato Regional Policy Statement (**WRPS**) sets a residential density target of 8-10 households per hectare in greenfield Waikato District villages where reticulated wastewater is available. The area is also capable of achieving the principles for new urban areas set out in Section 6A of the WRPS.
- (c) Waikato 2070 (WDC's Growth and Economic Development Strategy) also confirms Te Kowhai as a future growth node. The Block is specifically identified for residential development (450m<sup>2</sup>) within a 10-30 year development horizon known as "Te Kowhai West".
- (d) The Block has essentially been given a deferred zoning status under the PDP, which relies on a plan change process to enable development to proceed. This is not the most efficient or cost-effective use of resources in the District. The Appellant has the

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<sup>1</sup> See Future Proof 2017, Sections 6.4 and 11.3.

resources and capability to proceed with the subdivision and development of the Block now, but most likely on a staged basis. Initial stages could be larger lots that are self-sufficient in terms of 3-waters infrastructure. A formal plan change process is therefore unnecessary and will result in an inefficient use of time and other resources.

- (e) While the Appellant considers that the initial stages of the Block's development can be self-sufficient in respect of 3-waters infrastructure, the Appellant is currently in the process of formulating a private development agreement, to be advanced to WDC, for funding the extension of existing trunk infrastructure to Te Kowhai from Horotiu (or potentially Hamilton). As a result, reticulated 3-water services will be available to the Block in the medium-term and allow the creation of smaller residential lots in the future.
- (f) Assigning the Block a "Village" zone status or a suitable live urban zoning would undoubtedly assist with the economic viability aspects of extending core infrastructure to Te Kowhai.

12 FUZ Decision:

- (a) SUB-R121 – SUB-R123

As above, Te Kowhai is a residential growth area<sup>2</sup> and has been identified for residential development (450m<sup>2</sup>) within a 10-30 year period. The subdivision rules for the FUZ are too restrictive for an area which has been identified as a growth node.

SUB-R121 only allows for the creation of lots of a minimum of 40 ha in the FUZ. As Te Kowhai has been recognised as being suitable for residential development in the future, together with the fact that Te Kowhai can be self-sufficient in terms of 3 waters infrastructure in the medium term, there will be both lost development potential and economic opportunities for Te Kowhai (and the District generally) if the subdivision standards in the FUZ do not allow for the creation of smaller lots.

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<sup>2</sup> See Future Proof 2017 and Waikato Regional Policy Statement.

It would be appropriate for the subdivision rules in the FUZ to mirror those which existed in the Village Zone as notified.

13 TKAZ Decision:

- (a) TKAZ Activity Status Table – Circuit Training and Flight Training School.

It is not appropriate for Circuit Training and Flight Training School activities to be carried out at an Airpark that operates within an existing village community and certainly not where the PDP specifically contemplates expansion of the surrounding areas, with those areas being recognised as suitable for residential development in the long-term.

Such activities will result in adverse noise and amenity effects on residents in the vicinity of TKAZ. Both activities (Circuit Training and Flight Training Schools) also have different environmental effects when compared with recreational and commercial aircraft operations due to the repetitive nature of the activities. The TKAZ decision stated that these activities have different adverse effects from general flight-related activities.

As a result, the Appellant considers that Circuit Training and Flight Training School activities should be assigned a non-complying status.

- (b) TKAZ-S3 (Hours of Operation for Aircraft Operations)

The TKAZ decision states that Aircraft Operations are permitted to be carried out between:

- (i) 0700 hours to 2200 hours in the Summer Period; or
- (ii) 0700 hours to 1900 hours in the Winter Period.

The Appellant considers that these hours need to be restricted further in order to avoid flying during hours when there is no daylight.

- (c) There is no rule set out in the TKAZ decision which prescribes a maximum number of annual aircraft movements.
- (i) A maximum number of annual aircraft movements would provide clearer guidance to plan users about the Airpark's

operations and would be an appropriate way to manage adverse amenity and noise effects.

- (ii) A maximum number of annual aircraft movements is a means of ensuring that the 'noise bucket' is not exceeded.
- (iii) Rules requiring limits on vehicle movements is the mechanism that applies in parts of the district plan to manage potential adverse effects. Aircraft movements are another form of vehicle movement.

### **RELIEF SOUGHT**

- 14 The Appellant seeks the amendments to the PDP in the manner described in Annexure 1.
- 15 Such other consequential or alternative relief by way of amendments to the provisions of the PDP that addresses the grounds pleaded in the appeal.

### **ATTACHMENTS**

- 16 The following documents are attached to this notice:
  - (a) Annexure **A** setting out the relief sought;
  - (b) A copy of the Appellant's submissions and further submissions on the provisions of the PDP relevant to this appeal:<sup>3</sup>
    - (i) Submission #602 (Annexure **B**); and
    - (ii) Further Submission #1339 (Annexure **C**).
  - (c) A copy of the relevant PDP decisions:<sup>4</sup>
    - (i) Future Urban Zone – Decision Report 24 (Annexure **D**);
    - (ii) Te Kowhai Airpark Zone – Decision Report 26 (Annexure **E**);  
and
    - (iii) Zoning (Te Kowhai) – Decision Report 28J (Annexure **F**).

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<sup>3</sup> Relevant sections of the submissions are highlighted in yellow for ease of reference.

<sup>4</sup> Relevant sections of the decisions are highlighted in yellow for ease of reference.

- (d) A copy of the relevant chapters of the Proposed Waikato District Plan – Decisions Versions:<sup>5</sup>
  - (i) Part 2 Chapter 25- Subdivision (Annexure **G**);
  - (ii) Part 3 Chapter 17 – Future Urban Zone (Annexure **H**); and
  - (iii) Part 3 Chapter 24 – Te Kowhai Airpark Zone (Annexure **I**).
- (e) A list of names and persons to be served with a copy of this notice of appeal (Annexure **J**).

DATED at Hamilton this 28th day of February 2022



Dr J B Forret / J S Rajendram

Counsel for GREIG METCALFE

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<sup>5</sup> Relevant sections of the chapters are highlighted in yellow for ease of reference.



**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).

The copy of this notice served on you does not have attached a copy of the appellant's submission or the decision or part 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

Decision/Provision appealed	Reasons for appeal	Relief sought (If present, strikethrough means deletion, underlining means addition.)
<p><b>Zoning (Te Kowhai) – Decision Report 28J</b></p> <p><b>Planning Maps: Te Kowhai – Lot 2 DP 456538 and Lot 3 DP 353526 (the Block) being zoned in Future Urban Zone (FUZ)</b></p>	<p>The FUZ zoning of the Block is inconsistent with higher order planning documents, including the WRPS.</p> <p>The initial stages of the Block’s development can be self-sufficient in terms of 3-waters infrastructure, in the medium term.</p> <p>Assigning the Block FUZ status does not enable the social, economic and cultural wellbeing of the Te Kowhai community.</p>	<p>The Planning Maps to be amended to show Lot 2 DP 456538 and Lot 3 DP 353526 in the “Village” zone or with an appropriate alternative live urban zoning.</p>
<p><b>Future Urban Zone – Decision Report 24</b></p> <p><b>SUB-R121</b></p> <p><b>SUB-R122</b></p> <p><b>SUB-R123</b></p>	<p>The FUZ subdivision rules do not allow for a density of development which is consistent with the direction provided in higher order planning documents.</p> <p>In particular, the general rule for subdivision in the FUZ (SUB-R121) only allows for the creation of lots which are a minimum of 40ha. This rule is too restrictive for an area which has been identified</p>	<p>Replacement of the FUZ Subdivision rules with those that applied to the Village Zone as notified in the PDP<sup>6</sup> as was sought by the submitter in an original submission.</p>

<sup>6</sup> Note: Rule 24.2.2 RD1 allowed for lots not connected to public water and wastewater infrastructure to have a minimum net size of 3000m<sup>2</sup>.

Rule 24.2.2 RD2 allowed for lots connected to public water and wastewater infrastructure to have a minimum net site area of 1000m<sup>2</sup>.

	as a growth node and is seen as being suitable for residential development in the mid-to-long term.	
<p><b>Te Kowhai Airpark Zone: Decision Report 26</b></p> <p><b>TKAZ Activity Status Table</b></p> <ul style="list-style-type: none"> <li>• <b>Circuit Training</b> PREC27-R21: <del>DIS</del> <u>NC</u> PREC28-R21: <del>DIS</del> <u>NC</u> PREC29-R21: <del>DIS</del> <u>NC</u> PREC30-R21: <del>DIS</del> <u>NC</u></li> <li>• <b>Flight Training School</b> PREC28-R22: <del>DIS</del> <u>NC</u> PREC29-R22: <del>DIS</del> <u>NC</u> PREC30-R22: <del>DIS</del> <u>NC</u></li> </ul>	These activities will result in adverse amenity and noise effects on the Airpark's neighbours. The Airpark operates within an existing village community where it can be expected that adverse noise and amenity effects from the operation of the Airpark will be appropriately managed.	<ul style="list-style-type: none"> <li>• Circuit Training PREC27-R21: <del>DIS</del> <u>NC</u> PREC28-R21: <del>DIS</del> <u>NC</u> PREC29-R21: <del>DIS</del> <u>NC</u> PREC30-R21: <del>DIS</del> <u>NC</u></li> <li>• Flight Training School PREC28-R22: <del>DIS</del> <u>NC</u> PREC29-R22: <del>DIS</del> <u>NC</u> PREC30-R22: <del>DIS</del> <u>NC</u></li> </ul>
<p><b>Te Kowhai Airpark Zone – Decision Report 26</b></p> <p><b>Rule TKAZ-S3</b></p> <p><b>(Hours of Operation for Aircraft Operations)</b></p>	This rule will permit flying during hours when there is no daylight. This poses a health and safety risk for neighbours who reside close to Te Kowhai Airpark.	<p>Amend rule TKAZ-S3 as follows:</p> <p>In ALL PRECINCTS, Aircraft Operations must be carried out between:</p> <p>(i) <del>0700</del> <u>0600</u> hours to <del>2200</del> <u>2100</u> hours in the Summer Period;</p>

		(ii) 0700 hours to <del>4900</del> <u>1730</u> hours in the Winter Period.
<p><b>Te Kowhai Airpark Zone – Decision Report 26</b></p> <p><b>No rule which prescribes a maximum of the number of annual aircraft movements</b></p>	<p>A cap on the number of annual aircraft movements would provide certainty to plan users and would be an appropriate measure to manage adverse amenity and noise effects from the Airpark.</p>	<p>A new rule to be included:</p> <p><u>Rule TKAZ -S27 – Aircraft Movements</u></p> <p><u>P1 (a) In Precinct A, the maximum number of aircraft movements per calendar year shall be 15,000.</u></p> <p><u>One aircraft landing is one aircraft movement and one aircraft take-off is one aircraft movement.</u></p> <p><u>D1 Any activity that does not comply with RuleTKAZ – S27 P1(a).</u></p>