

**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** **MARSHALL AND KRISTINE STEAD** 703B Te Kowhai  
Road, RD 8, Te Kowhai 3288

**Appellant**

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

**Respondent**

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

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**Harkness Henry**  
SPECIALIST LAWYERS

[www.harknesshenry.co.nz](http://www.harknesshenry.co.nz)

**Phone** (07) 838 2399  
**Fax** (07) 839 4043  
**Address** Level 8, KPMG Centre,  
85 Alexandra Street, Hamilton 3204  
**Mail** Private Bag 3077, Hamilton 3240,  
New Zealand, DX GP 20015

**Appellant's Solicitor:**  
J S Rajendram  
([jay.rajendram@harkness.co.nz](mailto:jay.rajendram@harkness.co.nz))

**Counsel Acting:**  
J S Rajendram  
([jay.rajendram@harkness.co.nz](mailto:jay.rajendram@harkness.co.nz))

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

To:           The Registrar  
                  Environment Court  
                  Auckland

### INTRODUCTION

- 1       Kristine and Marshall Stead (**the Appellants**), 703B Te Kowhai Road, Te Kowhai, 3288, appeal 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 FUZ.
- 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 are set out below.

### PARTS OF THE DECISION BEING APPEALED

- 6       The specific parts of the decision being appealed are:
  - (a)   TKAZ decision
    - (i)   ANOC-R3 – Building height – Te Kowhai Aerodrome (Transitional Side Surfaces) and Advice Note to Part 2 Chapter 26 ANOC – Airport noise and obstacle controls (**Advice Note**).

- (ii) Obstacle Limitation Surface (**OLS**) as defined in Section 3 of APP10 – Te Kowhai Aerodrome.
  - (iii) ANOC-R7 – Noise sensitive activities – Te Kowhai Aerodrome within the 65dB Ldn Air Noise Boundary.
- (b) Zoning decision
- (i) Planning Maps: Te Kowhai – in respect of 703B Te Kowhai Road (Lot 2 DP 37883) being zoned in the Future Urban Zone (**FUZ**).
- (c) FUZ decision
- (i) FUZ(SUB-R121, SUB-R122, SUB-R123) – the subdivision rules for the Future Urban Zone.

## REASONS FOR APPEAL

- 7 The Appellants live at 703B Te Kowhai Road, Te Kowhai 3288, which shares its Southern boundary with Te Kowhai Airpark. The Appellants have been part of the Te Kowhai community for over 38 years. The property is legally described as Lot 2 DP 37883. The property was initially zoned 'Village' in the notified version of the Waikato PDP.
- 8 The Appellants sought for their '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). The Appellants considered that a Village zoning would be appropriate because the property is adjacent to the existing Te Kowhai Village, it has suitable terrain and the land has good natural drainage.

### *General reasons for appeal*

- 9 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 (the Future Urban Zone) that is not consistent with consultation undertaken with the Appellants prior to and during

the PDP process and was not an option on which the Appellants 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 Appellants.

*Particular reasons for appeal*

10 TKAZ decision:

- (a) ANOC-R3 – Building Height – Te Kowhai Aerodrome (Transitional Side Surfaces) and Advice Note

ANOC-R3 states that to be a **permitted activity**, any building structure, tree or other vegetation must not protrude through the Transitional Side Surfaces of the Airport Obstacle Limitation Surface (OLS)<sup>1</sup> for the Te Kowhai Aerodrome. If this rule is breached then the activity will be a **restricted discretionary activity**.

The Appellants have many trees (many of which are 35m high) on their property which protrude through the Transitional Side Surfaces. The Appellants consider that these trees have existing use rights and therefore they cannot be made to trim these trees to comply with the OLS. The Appellants understand that the Aerodrome cannot operate under Instrumental Flight Rules (IFR) if there are objects which protrude through the Transitional Side Surfaces.

The Advice Note states that in relation to rule ANOC-R3, where the landowner of a property consents, the operator of Te Kowhai Aerodrome (NZTE Operations Limited) will facilitate and pay for either:

- (i) the removal of existing trees required to comply with the Obstacle Limitation Surfaces (including the Transitional Side Surfaces); or
- (ii) trimming of existing trees required to comply with the Obstacle Limitation Surfaces (including the Transitional Side Surfaces) on a one-off basis.

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<sup>1</sup> Please note that the Transitional Side Surfaces are a component of the OLS, so at times the OLS and Transitional Side Surfaces may be referred to interchangeably.

The Appellants consider that together ANOC-R3 and the Advice Note create uncertainty for the following reasons:

- (1) NZTE can only trim or remove trees within the Transitional Side Surfaces if the landowners consent to this;
- (2) The whole purpose of the revised OLS is to allow for the Aerodrome to operate under IFR. The Appellants understand that the Aerodrome cannot operate under IFR if obstacles (including trees) continue to protrude the Transitional Side Surfaces;
- (3) The Appellants' trees (and other existing trees within the OLS) have existing use rights. If the Appellants choose not to forfeit these existing use rights (by not allowing the trees to be trimmed), then NZTE will not be able to operate under IFR.
- (4) It is redundant to include a set of rules in the District Plan which envisages that all obstacles within the Transitional Side Surfaces will be removed, despite the fact that there is no legal authority to compel landowners to remove/trim their existing trees in order to comply with the height limits of the Transitional Side Surfaces.

As a result, the Appellant considers that ANOC-R3 and the Advice Note should be deleted.

- (b) Obstacle Limitation Surface (**OLS**) as defined in Section 3 of APP10 – Te Kowhai Aerodrome.

As per the reasons set out at paragraph 10(a)(1-4) of this Notice of Appeal, the inclusion of the OLS creates a level of uncertainty for the Aerodrome and its surrounding neighbours. The inclusion of the OLS is to allow the Aerodrome to operate under IFR. The Aerodrome cannot operate under IFR if trees within the Transitional Side Surfaces are not removed. As above, there is nothing to compel landowners (including the Appellants) to trim or remove their trees so that they comply with the OLS.

As a result, the Appellant considers that the OLS should be deleted.

- (c) ANOC-R7 – Noise sensitive activities – Te Kowhai Aerodrome within the 65dB Ldn Air Noise Boundary

The TKAZ decision found that noise sensitive activities within the Te Kowhai Aerodrome (inner) Air Noise Boundary (**ANB**) (65dB Ldn), which are not located inside the Te Kowhai Airpark Zone, should be **restricted discretionary activities**, with Council's discretion being restricted to the following matters:

- (i) Amenity values;
- (ii) Potential for reverse sensitivity effects; and
- (iii) Internal sound levels.<sup>2</sup>

This is in contrast to the activity status for noise-sensitive activities outside the 70dB Ldn contour (and therefore within the 65dB Ldn contour) which are located within the Te Kowhai Airpark Zone, which are **permitted activities**.<sup>3</sup>

These rules place an unfair burden on those landowners who are located within the ANB but are not located inside the Te Kowhai Airpark Zone. If these landowners, including the Appellants, wish to carry out a noise-sensitive activity on their property, then they will need to apply for a resource consent, while those within the Te Kowhai Airpark Zone will be able to undertake such activities without a resource consent.

The justification for these different sets of standards is that the residents of the Airpark would have a different expectation of amenity compared with those in rural or residential zones. The Appellants do not consider this to be a legitimate reason for restricting their ability to develop their land. The Appellants have lived in the Te Kowhai community for nearly four decades and are aware of the Airpark and its effects. The Appellants current property shares its southern boundary with Te Kowhai Airpark. Given the Appellants' proximity to the Airpark, it is incorrect to assume that the Appellants will have similar expectations of amenity as those who live in rural or residential zones. The development rights of all

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<sup>2</sup> See Part 4, APP1 – Acoustic Insulation, Section 3 of the PDP.

<sup>3</sup> See TKAZ Activity Status Table (Noise-sensitive activities outside the 70dB Ldn contour as shown in Appendix 1 – Acoustic Insulation Rule 3 Figure 2).

landowners within the ANB (65dB Ldn) should be the same, regardless of whether those landowners' own properties within the Te Kowhai Airpark Zone or not.

ANOC-R7 should therefore be amended so that all noise-sensitive activities within the ANB (65dB Ldn) are **permitted activities**.

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 scattered across the District.<sup>4</sup>
- (b) Future Proof and the Waikato Regional Policy Statement (**WRPS**) set 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 Appellant's property has been specifically identified for residential development (450m<sup>2</sup>) within a 10-30-year development horizon known as "Te Kowhai West".
- (d) The property 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 Appellants have the ability to proceed with development of their property in the near future. Initial stages could be 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.

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<sup>4</sup> See Future Proof 2017, Sections 6.4 and 11.3.

- (e) While the Appellants consider that the initial stages of development on their property can be self-sufficient in respect of 3-waters infrastructure, the Appellants expect that existing trunk infrastructure will be extended to Te Kowhai in the medium-term, which will allow the creation of smaller residential lots in the future.
- (f) Assigning the Appellant's property a "Village" zone status or a suitable live urban zoning would undoubtedly assist the Appellants' (and the Te Kowhai community's) ability to provide for their economic wellbeing.

12 FUZ Decision:

(a) SUB-R121 – SUB-R123

As above, Te Kowhai is a residential growth area<sup>5</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 40ha 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 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.

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

## RELIEF SOUGHT

- 13 The Appellant seeks the amendments to the PDP in the manner described in **Annexure A**.

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<sup>5</sup> See Future Proof 2017 and Waikato Regional Policy Statement.



- 14 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

- 15 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>6</sup>
    - (i) Submissions #834 and #943<sup>7</sup> (**Annexure B**);
    - (ii) Further submissions #FS1154 and #FS1178 (**Annexure C**).
  - (c) A copy of the relevant PDP decisions:<sup>8</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**).
  - (d) A copy of the relevant chapters of the Proposed Waikato District Plan – Decisions Versions:<sup>9</sup>
    - (i) Part 2 Chapter 25 – Subdivision (**Annexure G**);
    - (ii) Part 2 Chapter 26 – ANOC (Airport noise and obstacle controls) (**Annexure H**);
    - (iii) Part 3 Chapter 17 – Future Urban Zone (**Annexure I**);
    - (iv) Part 3 Chapter 24 – Te Kowhai Airpark Zone (**Annexure J**);  
and
    - (v) Part 4 Chapter 15 – APP10 – Te Kowhai Aerodrome (**Annexure K**).

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<sup>6</sup> Relevant sections of the submissions are highlighted in yellow for ease of reference.

<sup>7</sup> A collective submission which was made by McCracken Surveys Limited made on behalf of the Appellants and other individuals.

<sup>8</sup> Relevant sections of the decisions are highlighted in yellow for ease of reference.

<sup>9</sup> Relevant sections of the chapters are highlighted in yellow for ease of reference.

- (e) A list of names and persons to be served with a copy of this notice of appeal (**Annexure L**).

DATED at Hamilton this 1<sup>st</sup> day of March 2022



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J S Rajendram

Counsel for MARSHALL & KRISTINE STEAD

**Address for service of Person wishing to be a Party**

**Company/Organisation:** Harkness Henry Lawyers

**Telephone:** 07 838 2399

**Fax:** 07 839 4043

**Contact person:**

Dr J B Forret

[Joan.forret@harkness.co.nz](mailto:Joan.forret@harkness.co.nz)

07 834 4662

J Rajendram

[jay.rajendram@harkness.co.nz](mailto:jay.rajendram@harkness.co.nz)

07 959 3018

**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>Te Kowhai Airpark Zone – Decision Report 26</b></p> <p><b>ANOC-R3 – Building Height – Te Kowhai Aerodrome (Transitional Side Surfaces)</b></p> <p><b>Advice Note</b></p>	<p>The Appellants have trees (which are up to 35m high) which protrude through the Transitional Side Surfaces of the Airport Obstacle Limitation Surface for the Te Kowhai Aerodrome.</p> <p>These trees have existing use rights and therefore the Appellants cannot be made to trim/remove these trees in light of ANOC-R3.</p> <p>Similarly, the Advice Note cannot compel landowners to give consent for the trimming/removal of the trees on their property so that there is compliance with the Transitional Side Surfaces.</p> <p>The Appellants seek that both ANOC-R3 and the Advice note are deleted from the PDP on the basis that they are redundant.</p>	<p>Deletion of <b>ANOC-R3 – Building height – Te Kowhai Aerodrome (Transitional Side Surfaces)</b></p> <p>Deletion of <b>Advice Note</b> in Part 2 Chapter 26 <b>ANOC – Airport noise and obstacle controls.</b></p>
<p><b>Te Kowhai Airpark Zone – Decision Report 26</b></p>	<p>The revised OLS has been implemented so that the Te Kowhai Aerodrome can operate under IFR rules. However there is no certainty that the limits prescribed by the OLS can be enforced. The</p>	<p>Deletion of the <b>OLS</b> as defined in <b>Section 3 of APP 10 – Te Kowhai Aerodrome.</b></p>

<p><b>Obstacle Limitation Surface (OLS)</b> as defined in Section 3 of APP10 – Te Kowhai Aerodrome.</p>	<p>Appellants’ trees protrude through the height limits prescribed by the Transitional Side Surfaces (a component of the OLS) and there is nothing to compel the Appellants to remove or trim these trees.</p> <p>It is therefore redundant to include the OLS if there is no guarantee that it will be complied with.</p>	
<p><b>Te Kowhai Airpark Zone – Decision Report 26</b></p> <p><b>ANOC-R7 – Noise sensitive activities – Te Kowhai Aerodrome within the 65dB Ldn Air Noise Boundary</b></p>	<p>Noise-sensitive activities which are located within the inner ANB (65dB Ldn) and are also located within the Te Kowhai Airpark Zone are <b>permitted activities</b>.</p> <p>The Appellants consider that they should have the same development rights on their property as is afforded to landowners within the Te Kowhai Airpark Zone. Noise-sensitive activities within the ANB but outside of the Te Kowhai Airpark Zone should also be <b>permitted activities</b>, rather than <b>restricted discretionary activities</b>.</p>	<p><b>(1) Activity status: <del>RDIS</del> <u>PER</u></b></p> <p><b>Activity-specific standards:</b></p> <p>(a) Noise-sensitive activities located within the Te Kowhai Aerodrome Air Noise Boundary (65dB Ldn).</p> <p><b><del>Council’s discretion is restricted to the following matters:</del></b></p> <p><del>(b) Amenity values;</del></p> <p><del>(a) Potential for reverse sensitivity effects; and</del></p> <p><del>(b) Internal sound levels (refer criteria in APP1 – Acoustic insulation)</del></p>
<p><b>Zoning (Te Kowhai) – Decision Report 28J</b></p>	<p>The FUZ zoning of the Appellants’ property is inconsistent with higher order planning documents, including the WRPS.</p>	<p>The Planning Maps to be amended to show Lot 2 DP 37883 in the “Village” zone or with an appropriate alternative live urban zoning.</p>

<p><b>Planning Maps: Te Kowhai – Lot 2 DP 37883 being zoned in Future Urban Zone (FUZ)</b></p>	<p>The initial stages of the property’s development can be self-sufficient in terms of 3-waters infrastructure, in the medium term.</p> <p>Assigning the property FUZ status does not enable the Appellants (or the Te Kowhai Community) to provide for their social, economic and cultural wellbeing.</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 as a growth node and is seen as being suitable for residential development in the mid-to-long term.</p>	<p>Replacement of the FUZ Subdivision rules with those that applied to the Village Zone as notified in the PDP<sup>10</sup> as was sought by the submitter in an original submission.</p>

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<sup>10</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 3000m2.

Rule 24.2.2 RD2 allowed for lots connected to public water and wastewater infrastructure to have a minimum net site area of 1000m2.