

BEFORE THE ENVIRONMENT COURT

Decision No. [2012] NZEnvC 83

IN THE MATTER of appeals under Clause 14 of the First
Schedule to the Resource Management
Act 1991 (**the Act**)

BETWEEN TE KAUWHATA ACTION GROUP
INCORPORATED
(ENV-2010-AKL-000024)

Appellant

AND WAIKATO DISTRICT COUNCIL

Respondent

Heard at: Hamilton, 14 - 15, 19 - 20 March 2012

Site Visit: 16 March 2012

Court: Environment Judge J A Smith
Commissioner C E Manning
Commissioner A J Sutherland

Appearances: Ms A J Davidson for Te Kauwhata Action Group Incorporated (**the
Action Group**)

Mr L F Muldowney and Mr B A Parhan for the Waikato District
Council (**the Council**)

Mr C C Potter for Jetco Waikato Limited - Section 274 Party (**Jetco**)

Mr M Randhawa for Silverstone Developments & Ors (Section 274
Party)

No appearance for Surveying Company Pukekohe Limited (struck-
out)

DECISION OF THE ENVIRONMENT COURT



- A. The zoning of Areas K1, D & M, as shown in Annexure A (attached), are confirmed as Te Kauwhata West Living as set out in Variation Statutes P6 in Variation 13.

The zoning of Area L, as shown in Annexure A, is deleted as Te Kauwhata West Living. This reverts to that in the Partly Operative District Plan as Country Living.

- B. The provisions of Variation 13 as a result of decisions are otherwise subject to finalisation, as follows:

1. The Council are to consult with the parties to see if this matter can be resolved by consent. We would require an updated Structure Plan and provisions, showing roading, stormwater and reserves, and the concessions made by the Council at hearing:

- a. This should be undertaken by the Council and circulated to the other parties within 30 working days;
- b. The parties then have 20 working days to see if the provisions can be agreed;
- c. If they cannot, then the Council is to file its provisions stating its preference, together with the position and comments of the other parties within a further 10 working days.

2. For clarity, we do not require a Subdivision Plan at this stage.

- C. Any application for costs is to be filed within 30 working days from the date of this decision, with a response in a further 20 working days, and final response for the appellant 10 working days thereafter.



REASONS FOR THE DECISION

Introduction

[1] Is it more appropriate that a block of land on the outskirts of Te Kauwhata in the Waikato District, be Country Living Zone or Te Kauwhata West Living Zone? The land is bounded by Travers Road, Wayside Road and Te Kauwhata Road at Te Kauwhata, and is adjacent to State Highway 1 between that highway and Te Kauwhata Village, which has the North Island Main Trunk Railway along its eastern edge.

[2] Immediately north of the subject site and within the bounds of the roads we have mentioned is a portion of Country Living zone which is complemented by a larger area to the north of Travers Road. Annexed hereto and marked **A** is a Planning Map showing the area of land, including the site the subject of this appeal as it was zoned as a result of decisions on the Structure Plan.

[3] The Te Kauwhata West Living Zone is the result of decisions of the Waikato District Council hearing this Variation. Also annexed as **B** is an aerial map of the area showing the various areas the subject of hearing before this Court.

ISSUES

[4] From the perspective of the Council and the appellant, agreement had been reached that Area K1 should be included in Te Kauwhata West Living zoning, and that Area L should be removed. We should point out that the appeal did not relate to another area of Te Kauwhata West Living zoning to the south of Te Kauwhata Road, and that zoning and the provisions relating to it are now operative.

[5] The appeal is filed by owners of Country Living zoned land to the north of the area for which rezoning is sought. They seek the same zoning as the land they are living on, and issues of urban versus rural amenity are at the fore in their evidence.

[6] The relationship of visual effects to amenity and rural character drives much of the evidence in this case. Underlying this evidence there are assumptions as to how people wish to live at Te Kauwhata. Restated, the issue in this case could be seen as



whether or not the land in question should be part of the village of Te Kauwhata (being an extension to the west) or should remain on the periphery of Te Kauwhata.

[7] Behind this issue lie differing population expectations as to the demand for housing in Te Kauwhata in the next 20 - 50 years. The Council, for example, produced evidence which predicted the population would increase to 6,000 - 8,000. The appellant's expectation seems to be significantly lower. Essentially its argument is that either the land currently zoned Living Zone (new residential) or potentially able to be zoned as residential to the east is sufficient for future population growth. We acknowledge that there is a wide range of views, even between witnesses in this case, as to what constitutes a pleasant environment in which to live. There are also significant differences and expectations as to the population of Te Kauwhata into the future. The District Plan is an opportunity for each community to find a balance which works for that particular district. Fortunately the Court does gain clear guidance from the settled District Plan zoning provisions, including those settled in Variation 13, and these dictate the conclusion in this case which we will discuss later.

Settled Areas

[8] Before moving on to the substantive dispute, we consider that we are able to reach an early conclusion on the question of the land in K1 and L. The land at K1 was previously zoned Living, and has Living zones on its eastern and southern boundaries. It is flat land, already serviced with good positioning for roading access through the site. In short, save for the zoning issue, it appears to be ready for and is likely to be developed as residential land in the very near future. No other constraints were pointed out to the Court, and we have concluded that the best zoning for this land is Living, given that:

- [a] it fits the existing pattern of residential development;
- [b] there is no dispute as to its inclusion; and
- [c] services are already accessible to this site.

[9] Turning now to Area L, this area is to the east of Travers Road, and to the south of Moorfield Road. It essentially covers part of an area between the wetland to the South, and the higher land on Moorfield Road. Part of it is intended to remain Country Living, with the inclusion of a residential section within it. All the parties



agree that this is not an appropriate area to rezone as Living and we agree for the following reasons:

- [a] there is likely to be potential impact on the drainage ability of the area, given that some of the land close to Travers Road appears to be zoned Living rather than reserve;
- [b] the higher land towards Moorfield Road relates to the Country Living areas to the north, east and west; the lower land is close to the wetland;
- [c] no particular provisions are suggested in either the Te Kauwhata West Living or Country Living zones to protect the margins of the wetland; and
- [d] given that there is an area of Country Living on Travers Road to the south of this area, a zoning of Living would be disconnected from any other residential area of similar density. The area to the south of the wetland, which is residential, does not assist as it is separated by the low-lying drainage land.

[10] Although we will examine these matters under Section 32 of the Act again, later in this decision, having undertaken the fuller tests under Section 32 we have concluded that the parties have correctly agreed that this area should be excluded from potential development, at least at this stage.

The Approach to Zoning

[11] The Court does not start with any presumption as to one zoning being more appropriate than the other. Its task is essentially to evaluate the provisions of the Plan which are settled, to try to ascertain the intent and context of the two zones, and then to achieve the best fit in terms of the Plan provisions for this land. We then move to consider the various aspects of Section 32 as they bear upon this evaluation before reaching a conclusion under Part 2 of the Act.



Plan Sequence

[12] As is becoming increasingly common, councils often undertake various tasks under different legislation, which may have implications for RMA, but have no statutory force in this Court until they are incorporated into an RMA document.

THE OPERATIVE DISTRICT PLAN

[13] In this particular case, the Council was proceeding with the proposed Waikato District Plan in 2007, and the provisions relating to Te Kauwhata were largely operative. It subsequently resolved in July 2011 to make that Plan partly operative on 16 July 2011.

[14] However, in the meantime, it was clear by 2009 that the partly operative provisions of the Waikato District Plan did not reflect the Council's emerging long-term growth strategy. This was encapsulated in both future-proof strategy and district-growth strategy. Accordingly, the zoning that had been adopted in the District Plan essentially saw the containment of the existing village with some modest growth, and with the area to the west of the railway line a small amount of existing residential, a modest extension area K1, with the balance Country Living. The land zoned for further residential which was not at that stage developed included an area demonstrated on Plan annexed here as C, being the zoning prior to the Te Kauwhata Structure Plan.

[15] Accordingly, Variation 13 was introduced to address new expectations as to future population growth, and to make zoning alterations to the partly operative WDP.

[16] Nevertheless, the underpinning philosophy of the District Plan (use of zones) is now set out in the partly operative Plan, and Variation 13 as we examine in due course merely makes minor alterations to the provisions.

THE WAIKATO DISTRICT PLAN

[17] The partly-operative Waikato District Plan (WDP) refers to *Land Use Pressures*, including:

1.4 Land Use Pressures

Urban expansion, land subdivision, rural lifestyle demands and soil erosions can compromise access to versatile soil and mineral



resources that are of economic importance to the district and the region, as well as contributing to the loss of cultural and heritage values. Rural residential uses can be sensitive to the effects of mining, farming, intensive farming, and horticulture operations and there is potential for conflict.

[18] In *Rural Land*, it is noted:

1.5 Rural Land

... There is potential for conflict between rural activities and other land uses including residential activities on lifestyle blocks ... Clustering of residential activities around villages will be favoured to minimise cross-boundary conflicts, including those caused by reverse sensitivity.

[19] In *Towns and Villages*:

1.6 Towns and Villages

The vision for the future of the towns and villages of the district is that:

- (a) the amenity, quality of life, and wellbeing of the residents and their community will be maintained and improved
- (b) the environment will be safeguarded as development proceeds
- (c) existing towns and villages will be consolidated in preference to new towns being created
- (d) services will be provided for new residential development
- (e) a sense of place will be fostered, with urban design that complements both human scale and physical setting

[20] Later at *Te Kauwhata*:

1.6.4 Te Kauwhata

Te Kauwhata will grow in response to demand for housing within commuting and day trip distance of Auckland, while retaining its rural village atmosphere. Population growth is also expected to arise from growth in the wine industry, tourist industry, and arts and crafts. Business activity may expand to service the surrounding population. Residential development will offer a variety of allotment sizes while retaining rural views, trees and open space. Low-density residential development will be favoured over infill.



[21] When we come to Issues, Objectives and Policies, two chapters that are of particular interest for this case are *Chapter 6: Built Environment*, and *Chapter 13: Amenity Values*.

Chapter 6: Built Environment

[22] Objective 6.2.1 refers to *development that is connected or grouped around infrastructure*. This is supported by policies including:

6.2.2

Subdivision or development should be located, and have a density, scale and intensity, to ensure efficient use of land, public facilities and utilities.

6.2.3

Residential and business development should occur in current towns and villages in preference to isolated rural locations.

[23] Policy 6.3.1 reads in part:

6.3.1 Disconnected and Scattered Development

This objective encourages urban consolidation to safeguard the environment, promote community wellbeing, and ensure public infrastructure and utilities are used as efficiently as possible. In smaller villages that are not fully serviced, a compact urban form is desirable to achieve the economies of scale necessary to provide new services. The objective also contributes to other objectives of the plan relating to preserving agricultural land, rural character, and natural features and landscapes.

[24] Policy 6.3.2 addresses *Efficiency and Effects*:

6.3.2 Efficiency and Effects

While the first policy encourages efficiency through urban consolidation, it also recognises that there are limits to density, scale and intensity of development. The adverse effects of over development include loss of character of the locality, environment effects and conflicts between activities that are too close in proximity.

[25] Policy 6.3.3 deals with *Residential and Business Development*:

6.3.3 Residential and Business Development

This policy ensures that residential, business and industrial development is consolidated into current towns and villages. This promotes the vitality of existing towns and villages, and the efficient use of infrastructure. The policy is also aimed at preventing new



residential clusters being created in rural areas by cumulative rural subdivisions ...

[26] When it comes to *Chapter 6.6*, an issue is identified with land use intensification (including subdivision), and its environmental effects. Objective 6.6.1 provides:

6.6.1

Adverse effects of use and development are avoided by provision of wastewater and stormwater disposal, supply of water, energy and communications.

[27] Policy 6.6.2 provides:

6.6.2

Where land is subdivided or its use intensified, then adequate water supply, wastewater treatment, and land and stormwater drainage must be provided to each allotment, by connection to available reticulated services, or by on-site facilities where reticulated services are not available.

[28] From this it is clear to us that the WDP Objectives and Policies have a definite preference for reticulated services over on-site facilities. Importantly, in the *Reasons and Explanation 6.7* and *On-site Management 6.7.1*, it is identified that:

... Water supply, wastewater treatment, drainage, and electricity and telephone connections make important contributions to amenity, as well as to health and safety and the environment generally.

[29] When we turn to look at the *Anticipated Environmental Results 6.12*, we can see under *Issues 6.12.1 – Scattered development* that *intensification of development where appropriate* is seen as one of the outcomes.

Chapter 13: Amenity Values

[30] The *Chapter 13.1 Introduction* identifies green and open spaces among other matters that contribute to amenity values. It is clear, however, that other matters such as infrastructure and utilities also contribute to amenity values as is explained in Chapter 6. It is recognised that residential amenity in rural areas will be affected by existing rural activities, explicitly that:

... The towns of Raglan, Ngaruawahia, Huntly and Te Kauwhata, and the rural villages and localities, all have different amenity values that add to the diversity of the district.



[31] This theme of containing similar activities with similar effects and maintaining compatibility with the amenity and character of localities is carried through in Objectives 13.2.1 and 13.2.2. Zoning is seen as an appropriate response, *Zones 13.3.4*, and the fact that amenity values occur in different localities, *Localities 13.3.3*.

[32] It is also noted that economic and community wellbeing is enhanced by providing a degree of certainty about the effects likely to be encountered in a locality. *Chapter 13.4 Issue – Subdivision, Building and Development* recognises that subdivision can have adverse effects on amenity values, and Objective 13.4.1 identifies that:

13.4.1

Amenity values of sites and localities [should be] maintained or enhanced by subdivision, building and development.

[33] Importantly, although Policy 13.5.5 refers to view sharing, the Policy does not set out to preserve views from private land.

Is the Country Living Zone a Rural Zone, demonstrating Rural Character?

[34] One of the core issues that arises in this case is the assertion that the Country Living Zone is in fact a Rural Zone, and thus the zone exhibits a rural character. Many plans in New Zealand have a dichotomy between rural and urban zoning. This Plan does not include Country Living Zone as a Rural Zone. Rural Zones are provided under Chapter 25. Instead, some Special Zones are provided for in Chapter 26 with *Coastal Zones*, and Chapter 27 with *Country Living Zones*. Chapter 27.2 states:

27.2 The Country Living Zone provides for low density living at specific locations in rural areas. Rules seek to manage activities to maintain a high standard of amenity.

[35] This compares with Chapter 25.2, which states:

25.2 ... It is anticipated that the amenity values experienced by residents of the Rural Zone will be lower than those enjoyed in the Living Zone.

[36] Although no explicit discussion of the Country Living Zone is given, one would assume a level of amenity affected by the lower amenities of the Rural Zone, but still to a high standard. The Country Living Zone allows subdivision down to 5,000m² and on-site sewage disposal can be provided as an alternative to connection



to a reticulated system. It appears that many of the properties are receiving some form of reticulated water by trickle delivery, but we noted that many had tanks on site. It also appears that power is supplied, largely by overhead line. A number of properties are accessed from a single long entry from the road, e.g. the Peach property on Wayside Road, and there have been several Country Living subdivisions which have sections around the 5,000m². However, most of the sections within the Country Living areas to the north of Areas M, and D are larger than 5,000m². There is also an area of business zoned land on Wayside Road near the corner with Travers Road. This is subdivided to smaller sizes again, and seems to be largely utilised for housing.

[37] Mr C C Potter, a property developer and shareholder in Jetco told us that Jetco undertook the development of the Country Living area to the north of Area M on Travers Road, and found that there were groundwater springs creating some difficulties for the design of septic tank fields. The low-lying wet area between Area M and this Countryside Living area is such that we would consider there are likely to be groundwater issues in the area, and other springs. Certainly there is catchment drainage running through this area, and exiting eventually to the wetland which is the reason that proposed developments of this area and the area to the east of Travers Road all demonstrate water catchment areas.

[38] The land in Areas M and C exhibit rural characteristics, being an orchard, a grape vineyard, and other crops and open pastureland. Given its proximity to State Highway 1 and the town, it cannot be said to have a truly rural character, but nevertheless is clearly currently being used as rural land. The area to the north of D and M, to Travers Road, has a more residential quality. We would describe it, even as it stands, as large lot residential, and perhaps as residential land-in-waiting. We so conclude because the land on the corner of Travers Road and Wayside Road conditions our expectations as to the type of development, given that the sections in that case appear to be in the order of 800m² - 1,000m². There are also houses relatively close to the side of the road along Wayside Road, and Travers Road, most of which give the impression of being residential lots. On many occasions the house and curtilage occupies around 1,000m², and the rest appears to be either in pasture or just mown lawn. The larger sites, towards the interior of the block, are not so easily seen from the road but do give a more open, although still mixed, view. If the sections were developed to 5,000m² this area would clearly appear as a large lot residential area associated with Te Kauwhata.



[39] The land to the north of Travers Road has a more transitional nature currently, and has the appearance of more rural land beyond the immediate environs of Travers and Moorfield Roads. Overall it gives an impression of rural farmlets rather than large scale residential lots. If this area was developed to 5,000m² per lot, it would be difficult to know how it would provide a transition into Te Kauwhata village.

[40] Certainly one would anticipate a higher level of development south of Travers/Moorfield Roads, which is more immediately associated with the village. There is no doubt that the village is unable to expand significantly to the north or south east of the railway line, bounded as it is by the Whangamarino wetland and Lake Waikare. The designation of a bypass road shown on Annexure A, in our view marks the practical demarcation of the village to the south, at least for residential purposes. There is the potential for further residential development between State Highway 1 and the bypass south of Te Kauwhata Road, but again the potential for that is particularly limited – probably again to some form of Country Living similar to that north of Travers/Moorfield Roads.

Town Limits

[41] We agree that the State Highway 1 constitutes a clear and defensible boundary for the town to the west, and that Wayside Road in practical terms constitutes the limit of the town to the west. Currently Swan Road constitutes the limit to the town to the east. Although there is the potential for further expansion at least to the east of Swan Road and north of Waerenga Road, topography would limit expansion in this area. For our part, we have concluded that the potential rezoning of the land D and M is an appropriate extension to Te Kauwhata for the following reasons:

- [a] There is already residential development on the western side of the railway line;
- [b] The railway line does not divide the town in any cultural sense, it simply limits access points;
- [c] The area will always be seen as part of Te Kauwhata because it sits between State Highway 1 and the centre of the town;



[d] The main access road to Te Kauwhata is Te Kauwhata Road. Although an alternative might be to use Travers Road, this would travel around the boundary of the subject site.

[42] Accordingly, we have concluded that the WDP anticipates residential development around Te Kauwhata and that Areas D and M are appropriate for it. Clearly both the Country Living Zone or other Living zones would be appropriate zonings on this site. To ascertain the justification for the Te Kauwhata West Living Zone, we must turn to the Variation 13.

VARIATION 13

[43] Variation 13 appears to have developed as a result of further work by the Council in estimating populations, and involves a number of changes to the Plan to recognise and provide for such population increases. We have already cited the previous 1.6.4 *Te Kauwhata* of the WDP. Variation 13 now deletes the existing text and inserts:

1.6.4 Te Kauwhata

Significant growth is expected at Te Kauwhata. This is managed under the Te Kauwhata Structure Plan, see Chapter 15A.

[44] It can be seen from this change that, in fact, the change is not an acknowledgement of growth in the area, but rather the use of the Structure Plan method to address such growth.

Variation 13 - Chapter 15A: Te Kauwhata Structure Plan

[45] The introduction to Chapter 15A gives far more detail as to the growth anticipated, formerly under the provisions of the WDP now replaced. It *anticipates a population* in Te Kauwhata *of 7,800 by 2061*, and states that:

... This chapter presents plan provisions that are specific to the Te Kauwhata Structure Plan area, as shown in the planning maps, which are designed to ensure growth is properly managed ...

[46] Overall, it is clear from the introduction compared with the WDP, that both provisions recognise Te Kauwhata as an area for growth. Chapter 15A, however, is more specific about the population anticipated (7,800 from the growth strategy) and the method by which this is to be achieved. For current purposes we can assume that



the majority of the provisions of this amendment are operative, given that the only outstanding appeal relates to the actual zoning of these pieces of land. Although there was a great deal of dispute about the population calculations, these were agreed by the parties in a joint statement, and the provisions of the plan itself, including the statement of population at *Chapter 15A.1 Introduction*, is not the subject of appeal.

[47] We therefore proceed on the basis that the settled objectives and policies subject to the Variation now recognise the need to provide for 7,800 people by 2061, and to do so on a basis which manages that growth while avoiding the adverse effects identified in *15A.2 Issue – Te Kauwhata effects of growth*. The chapter explains that poorly managed urban expansion in Te Kauwhata has the potential to produce:

15A.2 Issue – Te Kauwhata effects of growth

... a loss of village character; a lack of community or neighbourhood identity; a loss of landscape values; low residential amenity; conflicts with heavy and through traffic; poor connectivity and lack of transport options; inefficient development of infrastructure; conflicts between land uses; degraded water quality and loss of natural habitat and ecosystems; and a lack of quality open space and amenity, including streetscapes.

[48] For the purposes of this appeal, the Court has no ability to change the content of the Country Living Zone, but does have a wide discretion to change the content of the Te Kauwhata West Living Zone if it concludes that this is appropriate, so long as the provisions provide for development broadly within the densities envisaged for each zone. Fundamentally, it is difficult to see how the particular adverse effects described in the issue statement can be addressed by Country Living Zone, which does not contemplate or address population growth generally, or the adverse effects thereof. Though quite clearly it addresses the question of open space and amenity, it is difficult to see how Country Living can address the other aspects in a detailed way.

Chapter 15A: Te Kauwhata Structure Plan

[49] Objective 15A 2.1 indicates the Te Kauwhata Village characteristics should be maintained and enhanced. We do not consider that the Country Living Zone is currently part of the village, mainly because the developed area is currently disconnected from Te Kauwhata Road and the village entry. Essentially the Country Living area has been concentrated into the Travers Road/Wayside Road area, particularly to the north. Areas D and M are currently Rural land, with a vineyard operated over part, and other pastoral activities over the balance. Although we would



have described the area of K as part of the residential containment of the village, even though undeveloped, the same could not be said of the Country Living residences further north of Travers Road, Moorfield Road or Wayside Road.

[50] Policy 15A 2.2 indicates that:

15A.2.2

Development should contribute to the Te Kauwhata village character, including:

- (a) a predominance of residential lots that contain significant open space
- (b) retaining amenity trees
- (c) public open space which is conveniently accessed and highly visible
- (d) retaining views to natural landscape and features
- (e) a strong association with rural amenity values
- (f) compact form that does not sprawl into the countryside
- (g) integrated development that reinforces the town centre as a community focal point
- (h) convenient access to light industries
- (i) locating light industry predominantly along heavy traffic routes
- (j) recognising cultural and historical values and land uses including horticulture, viticulture and traditional Māori values
- (k) the integration of buildings, private open space and public open space
- (l) a general consistency of building scale that integrate into the natural landscape
- (m) compliance with the Te Kauwhata Structure Plan and Urban Design guide.

...

[51] There follows Objectives 15A2.3, 15A2.7, 15A2.10, 15A2.15, 15A2.18, 15A2.22, 15A2.23, 15A2.26, 15A2.28, and 15A2.31. This is followed by discussion of the town centre, open space, and amenity values, living and working environments, infrastructure developments, hydrological characteristics, ecological values, public access, flooding and drainage, land transport.

[52] Fundamentally, we consider that the appellants have misunderstood the purpose of the Variation. This is to provide for expansion of the Te Kauwhata Village



in a managed way, particularly to provide for the population anticipated. Given the agreement of all the experts, including those for the appellants, as to population estimates likely to be achieved, albeit more slowly than originally anticipated, the question is where that population should be provided for in the village. Given that the current village footprint is not of sufficient size, it must be extended. Given the very limited ability to extend to the north and south, due to the wetland and lake, it is clear and accepted by witnesses that expansion must occur to the east and west. In relation to the west, the residential area of the village has already crossed the railway line, and is therefore only limited by State Highway 1. All witnesses accepted that SH1 was an appropriate boundary for the village.

[53] To the east, the demarcation point is not so clear. What is clear, however, is that it is moving into clear rural land where issues as to competition between rural land use and urban use become of some importance. There are limitations in relation to Swan Road, given it is used as access to a major quarry. Although we do not see this as a final boundary line, it is clear that at the time of examination the Council considered Swan Road to be an appropriate demarcation point to the east, given that they had designated a bypass route (around Te Kauwhata village) with Swan Road as its eastern route.

Role of the Country Living Zone

[54] Fundamentally therefore, the Variation requiring provision for greater extension of the village requires land that is zoned for Country Living as opposed to that for rural purposes. We cannot see how Country Living zoning is appropriate, being, as it is intended to be, in rural areas. We agree with Mr Raeburn that a Country Living Zone can be a legitimate transitional zone between rural and urban town/village areas. The most significant problem with such a zoning is that the form of development to which it gives rise cannot be adapted to provide for more conventional urban densities when population pressure requires denser occupation of land on the periphery of towns and villages.

[55] As Mr Raeburn accepted, there are major difficulties with rehabilitating Country Living areas for residential use, not the least of which are the difficult ownership patterns involving often multiple homes off long accessways, difficulties of installing infrastructure including sewer and stormwater, major difficulties with upgrading public space with footpaths, underground power, street lighting and the like, and the difficulty of maintaining appropriate urban design with street frontages to



houses. We agree with Mr Raeburn that in the case of this land, those areas already developed as Country Living are going to prove very difficult, if not impossible, to incorporate into residential zones in due course.

[56] We also agree with Mr Raeburn, that Country Living zones have a legitimate role on a permanent basis to provide a buffer between rural areas and residential areas. Unfortunately, no plans that we are aware of properly provide for this as a method of development. On a permanent basis one would imagine that this would involve covenants against further subdivision, and a notation on the title. The District Council is in a very fortunate position, in that the land closest to the village boundary that was previously zoned Countryside Living is still undeveloped. There is, in our view, a rare opportunity to provide for a consolidation of the village to the west by rezoning this land as residential and thereby providing for a significant population increase without utilising the important rural land resources producing an uncoordinated form of development lacking appropriate connectivity.

[57] An application of all of the provisions of Chapter 15A that we have discussed leads to the inevitable consequence that the Council sees a section size similar to that of the existing village (around 800m² from our observation) with good quality street amenities, trees and recreation areas, and provision of advanced infrastructure (sewer, underground electricity and the like) as being an appropriate development for Te Kauwhata.

[58] Although the Country Living Zone does provide a form of consolidated residential dwelling, it does not provide for an integration of infrastructure requirements. Nor does it reduce the impact upon the rural land resource. Put in simple terms, 8,000 more people within the Country Living Zone around Te Kauwhata would involve (at 2.3 persons per household) 3,000 homes or 1,500 ha. Mr Raeburn agreed that this would be unacceptable as a demand and we consider that this would be contrary to the objectives and policies of the Plan as a whole.

[59] In respect of providing further residential Living Zones in Te Kauwhata, it is clear that the Council considered that the various elements of village character would be recognised by development of the type now broadly envisaged. We can indicate that the provisions now sought to be included allow for larger average lot sizes, and involve some significant improvements in terms of amenity over that originally proposed in the notified Plan.



Village Characteristics

[60] Nevertheless, it is the Te Kauwhata Village character that is seeking to be repeated, not that of the surrounding Rural or Country Living Zones. Amenity in this context is more to do with public open space, recreation reserves, infrastructure. The Explanation and Reasons for the policies at 15A3.3 discusses *Landscape, open space and amenity values*, and describes a *backdrop with views towards Whangamarino Wetland, Lake Waikare and beyond to the Hapuakohe Range*. Vegetation, landforms and waterways are also mentioned, with the Plan noting that it:

... is envisaged that subdivisions will be designed to take advantage of features within a site to create identity and to reflect increasing community interest in environmental issues ...

[61] In this regard the waterway through the site and the retention area appear to be envisaged by the developers as being developed in this way. In short, the appellant's contentions that private open space is intended to provide amenity for the Te Kauwhata Village are not reinforced by reference to either the general plan provisions, or those under Chapter 15A (Section 32 of the Act tests).

[62] The purpose of the Court's examination is to discuss which zone is most appropriate or better for this site. Given the matrix of objectives and policies supporting the Te Kauwhata West Living Zone, it is difficult to see how the Court would be able to reach any other conclusion than that the specialised zoning designed for these areas is the more appropriate zone. It is clearly more efficient in terms of both land use and enabling the utilisation of infrastructure, including waste water treatment.

[63] It offers higher levels of amenity to the village in terms of roading networks, recreational areas, street lighting, footpaths; the cost of this is borne by the developer and is able to be realised through section sales by virtue of the density being achieved. Nevertheless, it appears that the densities that the developer has in mind are within the frame of those considered by the Plan to maintain the character of the Te Kauwhata Village. We are confident that from within this area there will still be clear views towards wetland and waterways, and with further views into the countryside beyond.

[64] Although we acknowledge that there will be an adverse effect on the views of those living in the Country Living Zone, it is clear that the Plan contemplates that those in the Country Living Zone will be proximate to villages and town. We have



concluded that this means they will have visual impact as well as impact in terms of noise, light and the like, from the village which they surround. Although inefficient, Country Living Zones are provided for because they provide a transition between the general rural area and its impacts, and the impacts of its rural activities, and the residential area with its high level of urban amenity.

[65] Clearly, the Living Zone of Te Kauwhata West is more effective and efficient in delivering the objectives for housing future population. Given the statements in relation to amenity contained within the Plan, and the activities that require consent, we are confident that the planners in examining subdivisions will be seeking to ensure that the village character is maintained. We cannot have the same faith that the village character would be maintained through Country Living. Such a zoning would essentially remove it from the Structure Plan, given that only changes to the Planning Maps were shown and accordingly Structure Plan Planning Map 25A Zone does not show any Country Living. Removal of these areas of land from that would simply revert them to their previous zoning, unaffected by Variation 13. As such, none of the provisions of that variation would apply, meaning that such a zoning could not, by its very operation, seek to achieve or implement the objectives and policies of Variation 13.

[66] When we come to consider the question of costs and benefits, these would have to be broadly evaluated in terms of achieving the objectives and policies of Variation 13. While Country Living Zone might achieve and implement the policies and objectives relating to general growth in the original Plan, the provisions of 1.6.4 *Te Kauwhata* at least have now been changed, and the Structure Plan has become central to achieving the growth envisaged by the Plan. Given that Countryside Living is outside the Structure Plan, by definition Countryside Living is not designed to achieve the purpose of Variation 13, or the general provision as now altered to seek growth in Te Kauwhata.

[67] In terms of cost, therefore, a major purpose of the Variation would not be achieved. This would require a further variation to be introduced to identify how the Structure Plan could achieve the population growth envisaged. It seems to be tacitly acknowledged that the current growth figures, with the removal of the land in L and certain other areas, means that the total target cannot be achieved in any event.

[68] Overall we have concluded that only the adoption of this land as Te Kauwhata West Living achieves and implements the objectives and policies of Variation 13.



PART 2 OF THE ACT

[69] In the end, all the powers, including those under Section 32 of the Act, are to achieve the purpose of the Act. This is to provide for managed use and protection of natural and physical resources in a way or at a rate that enables people and communities to provide for their social, economic and cultural wellbeing, and health and safety while meeting Section 32(2)(a),(b) and (c). In the end the only way in which we can see that Variation 13 can be achieved is by the adoption of the Te Kauwhata West Living Zone.

[70] Putting the matter more broadly, it is our view that the village of Te Kauwhata is enhanced by the development of further areas at similar densities, and with at least the same if not higher standards of construction, footpaths, lighting. All areas would be connected to sewer, and linked into a single community structure. This enhances the facilities provided by the village, by reinforcing the schools and other community facilities with ongoing population into the future years. This also gives a spread of section sizes and style of housing for people who wish to live in the area.

[71] Overall we conclude that the appropriate zoning of this area is Te Kauwhata West Living Zone. This will achieve the purposes of the Act and the objectives and policies of the Plan.

The Contents of the Zone

[72] By the time of the hearings, the arguments between the parties as to the contents of the zone had narrowed considerably. Most of the issues were resolved, and in the event the Court felt that it was appropriate to zone the land as Te Kauwhata West Living. The Council's draft provisions for the zone are annexed hereto.

[73] There was some discussion by witnesses for the appellants as to whether or not there should be some form of large lot along the common boundary with the residential zone. We acknowledge that the area on D will be visible to people such as Mr Peach living in the dip off Wayside Road. For the most part, after planting and growth of trees, there will be partial views of houses, it will be clear that there will be a greater concentration of houses in the Te Kauwhata West Living Zone, than within the Country Living Zone, but this will be most obvious to those with boundaries adjacent.



[74] Overall there is a buffer area on M relating to the low-lying wetlands, which provides an adequate buffer between sites. In respect of the boundary on D, which abuts the Country Living Zone, there was some discussion about whether the Court should provide larger sections, say 1,200m² – 1,800m² or 40m common boundaries for each lot, or some other mechanism for control. We recognise that the hillside will be visible, and even larger sites immediately adjacent to the boundary will not prevent views of other buildings further into the subdivision.

[75] A reduced density on the new zone boundary could reduce the impacts on privacy, and lessens the impact on spaciousness that is an important element of living in some *countryside living* areas. We consider sections 30m wide with a 6m setback from the zone boundary could achieve this. We do not think such a section on the zone boundary provision is necessary where a road separates the two zonings, but only where properties from each zone abut each other.

[76] We recognise that houses in close proximity to the site boundary between Country Living and Te Kauwhata West Living Zones creates clear contrast in housing density.

CONCLUSION

[77] For the reasons we have set out, we have concluded that areas M and D are most properly zoned as Te Kauwhata West Living, as demonstrated in the Plans. We do understand that the balance of the area owned by Jetco adjacent to M, shown in some maps as C, was to be utilised and an area further into the site was to be utilised for residential activity. It would be our preference that the balance of Area C is shown as reserve if that is the intention of the Reserve/Recreation Zone, along with the hilltop area. We also consider that a more detailed Structure Plan needs to be provided, showing in broad terms the subdivision of the site, including:

- [a] areas of waterway which are to be retained as Recreation or other reserve zoning;
- [b] areas for water ponding at the bottom of the site, including any areas of M and C; and
- [c] the roading plan through the site.



[78] On this basis we would accept that there could be an indication of section sizes subject to modification in due course to achieve the overall average and balance anticipated in terms of the Plan provisions. We would also consider that such a Structure Plan should show in relatively precise terms the stormwater runoff catchment and ponding system, and the wastewater, power and telephone reticulation. In addition to street treatments, in this regard we understand that the main arterial running through the site would be a double boulevard with trees in the centre island. We also understood that the area would have at least one footpath and street lighting.

[79] We wish to give an opportunity for the Council to consult with the parties to see if this matter can be resolved by consent. We would require an updated Structure Plan and provisions, showing roading, stormwater and reserves, and the concessions made by the Council at hearing:

- [a] This should be undertaken by the Council and circulated to the other parties within 30 working days;
- [b] The parties then have 20 working days to see if the provisions can be agreed;
- [c] If they cannot, then the Council is to file its provisions stating its preference, together with the position and comments of the other parties within a further 10 working days.

For clarity, we do not require a Subdivision Plan at this stage.

[80] The Court would then proceed to finalise the Plan provisions.

[81] This does not appear to be appropriate occasion for costs. However, if notwithstanding an application for costs is made:

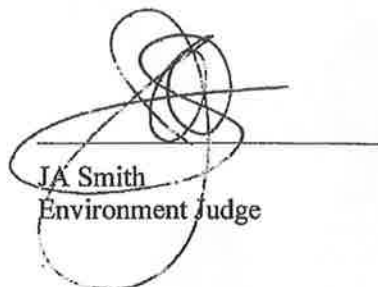
- [a] It is to be filed within 30 working days from the date of this decision;
- [b] Response to be filed within 20 working days; and
- [c] Final response for the appellant 10 working days thereafter.



[82] The intention is that questions of costs will reach the Court simultaneously with those relating to final provisions.

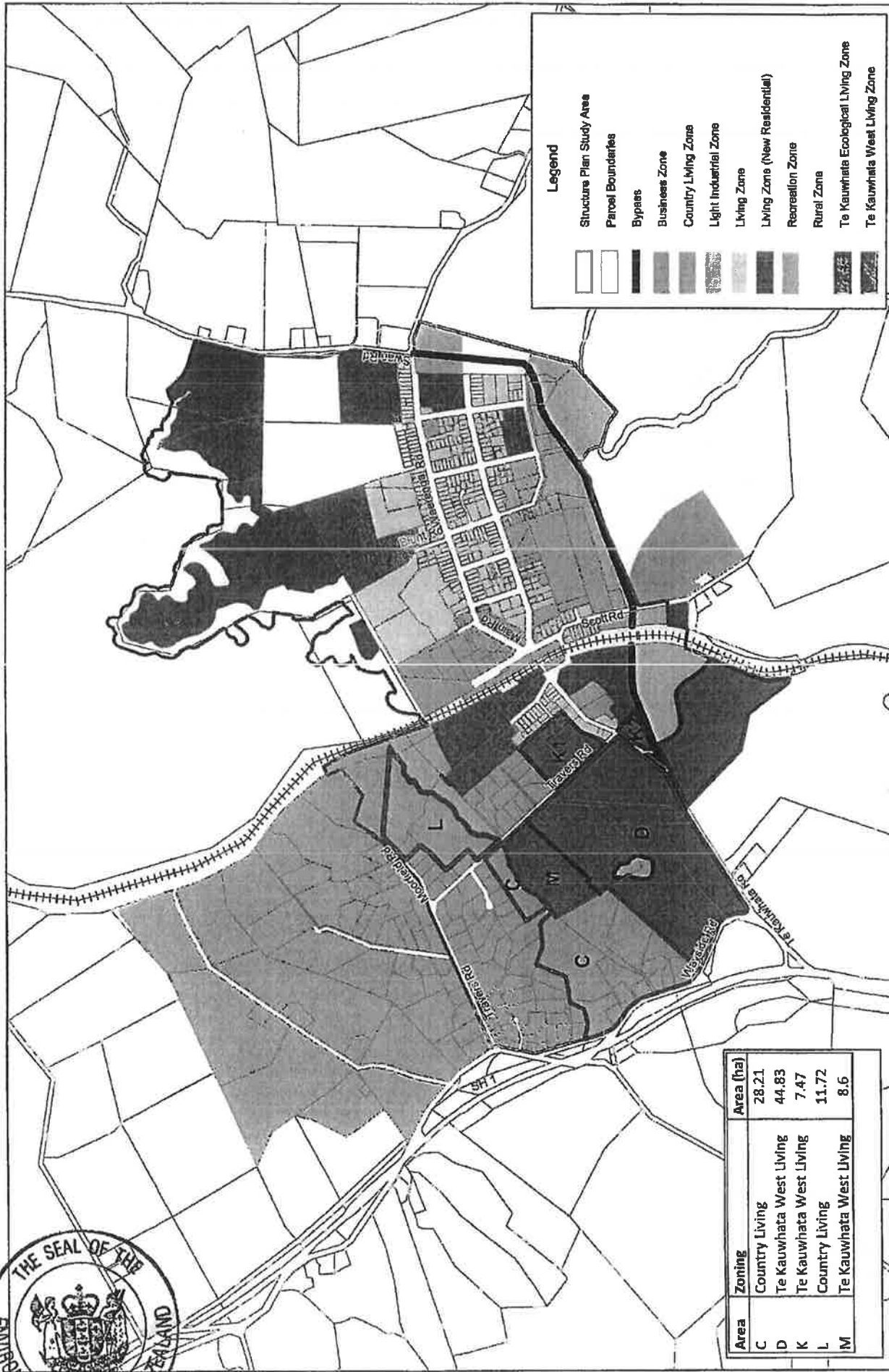
DATED at CHRISTCHURCH this 1st day of May 2012

For the Court


JA Smith
Environment Judge



Annexure A



Legend

- Structure Plan Study Area
- Parcel Boundaries
- Bypass
- Business Zone
- Country Living Zone
- Light Industrial Zone
- Living Zone
- Living Zone (New Residential)
- Recreation Zone
- Rural Zone
- Te Kauwhata Ecological Living Zone
- Te Kauwhata West Living Zone

NORTH
A3

Waikato District Council
 Planning Department
 Planning Officer: [Name]
 Date Created: [Date]
 Date Revised: [Date]
 Author: [Name]
 Reviewer: [Name]
 Reference No: [Number]

Scale: 1:15000
 0 100 200 300
 Meters

Te Kauwhata Structure Plan Zonings at Council's Position March 2012 with Identifiers

Area	Zoning	Area (ha)
C	Country Living	28.21
D	Te Kauwhata West Living	44.83
K	Te Kauwhata West Living	7.47
L	Country Living	11.72
M	Te Kauwhata West Living	8.6



Annexure B

APPEAL AREA

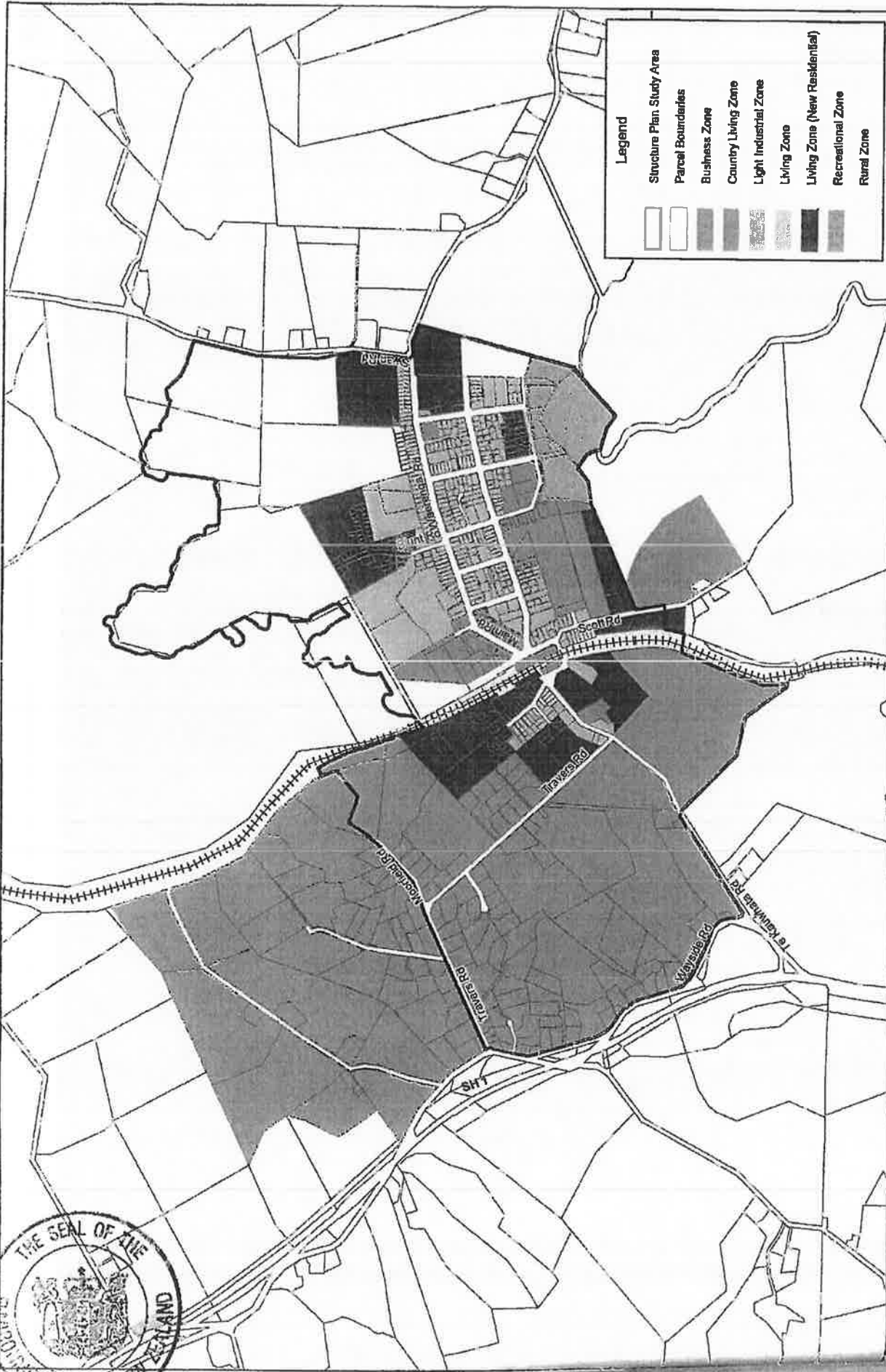
SCALE 1:10,000 AT A3 - MARCH 2012 - MAP NO-31 REV-D

PROPOSED TE KAUWHATA WEST LIVING ZONE

Legend
1 Appeal Area



Annexure C



NORTH
A3

DATE OF PREPARED: 2008
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]
 PROJECT NO: [Number]

Scale: 1:15000
 0 100 200 300
 Meters

26/7/10

Operative Zoning prior to Te Kauwhata Structure Plan

