

01 March 2018

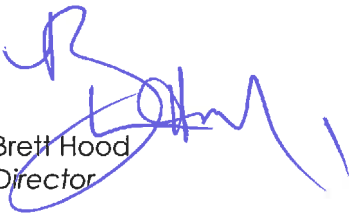
Environment Court
PO Box 7147
Wellesley Street
Auckland 1141

Attention: Court Registrar

RE: APPEAL – DARRYL DAVIES & GILLIAN DAVIES-KYTE

1. We enclose for filing a Notice of Appeal to the Environment Court and a cheque in the sum of \$600 for the court filing fee.
2. We have attended to service on the Whangarei District Council.

Yours faithfully



Brett Hood
Director

- cc. Whangarei District Council (by way of service)
Attention: Melissa McGrath
By email: mailroom@wdc.govt.nz
- cc Submitters.

IN THE MATTER OF

An appeal to the Environment
Court under clause 14 of the First
Schedule to the Resource
Management Act 1991

AND

IN THE MATTER OF

Plan Change 85A-D to the
Whangarei District Plan

BETWEEN

Darryl Davies and Gillian Davies-
Kyte
Appellant

AND

Whangarei District Council
Respondent

**NOTICE OF APPEAL TO THE ENVIRONMENT COURT BY DARRYL DAVIES
AND GILLIAN DAVIES-KYTE**

Darryl Davies and Gillian Davies-Kyte (the 'appellants') appeal against part of the decision of the Whangarei District Council ('Council') in respect of Plan Change 85A-D of the Operative Whangarei District Plan.

1. The appellants made a submission seeking that their property ('the land') be re-zoned either 'Urban Transition Environment' ('UTE'), Rural Urban Expansion Environment' ('RUEE'), or Living 3 Environment instead of 'Rural Production Environment' that was proposed in the notified version of PC85 (now 'Rural Countryside Environment'¹) ('RCE').
2. The appellants are not trade competitors for the purposes of section 308D of the RMA.
3. The appellants received notice of the Hearing Panel's recommendations and the subsequent notice of Council's decision on 17 January 2018.

Parts of the decision that I am appealing

4. The appellants are appealing the RCE zone being applied to the land as shown on the Hearings Panel Recommendations Map 33. They consider that the land is more appropriately zoned UTE, Living 3 Environment or RUEE.
5. It is understood that Council has received legal advice that rezoning the land UTE is outside the scope of the plan change. If that advice proves to be correct, this submission would then be confined to the Living 3 and RUEE zones only.

Grounds for the appeal

6. The general grounds for appeal are that zoning the land RCE:
 - (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) Will not meet the reasonably foreseeable needs of future generations;
 - (c) Does not manage the use of resources in a way that enables the community to provide for their social and economic well-being;

¹ The 'Rural Production Environment' was renamed 'Rural Countryside Environment' in the decisions version of PC85.

- (d) Does not represent an efficient use and development of natural and physical resources;
 - (e) Does not avoid, remedy, or mitigate the adverse effects on the environment; and
 - (f) Does not represent the most appropriate means of exercising the Respondents function, having regard to the efficiency and effectiveness of other available means and is therefore not appropriate in terms of section 32 and other provisions of the RMA.
7. Without limiting the generality of the above, the specific grounds of appeal are set out below.
 8. The land is located between existing Business 2 Environment land to the east and Living 3 Environment land being introduced under Plan Change 86B to the west. It is also adjacent to a well-established Living 3 Environment immediately to the south. The land is already used for rural-residential lifestyle purposes, and rural production activities are not economically viable.
 9. If the land is zoned RCE, permitted uses under this zone may be constrained by existing and proposed Living 3 Environment development immediately to the south and east (reverse sensitivity). If the land is zoned RCE, it remains a 'dishonest zone', and an anomaly in the context of the zoning pattern in the area.
 10. The land has a defensible boundary defined by the railway to the east, Living 3 Environment land to the west, and the 160m contour line to the north. The 160m contour line coincides with the northern extent of the proposed Living 3 Environment land immediately to the west of Parakiore Road. This is also the point where there is a distinct change in contour (and character) where the land then rises steeply towards the north.
 11. The hearing commissioners concerns about reverse sensitivity effects associated with the Business 2 Environment and railway land to the east can be addressed by the establishment of a suitable buffer for residential buildings.
 12. The hearing commissioners concerns about reverse sensitivity associated with the Macadamia orchard are addressed by the Macadamia orchard owner making it clear in a further submission that the operation is uneconomic and unsustainable. They also indicated that there is a significant problem with

Phytophthora in the soil. The orchard owner, along with the other property owners immediately affected by the proposed rezoning, confirmed their support for the requested Living 3 Environment or RUEE zone.

13. The fact that the land is not identified for potential rezoning in the Kamo/Three Mile Bush/Whau Valley Structure Plan is of no consequence given that the structure plan is over 8 years old (nearly the life of a District Plan).
14. Rezoning the land RCE is contrary to many of the Rural Area objectives and policies in RA.1.

Relief sought

15. The appellant seeks:
 - (a) that all of the land, being that shown on the plan in Attachment A, be rezoned either UTE, RUEE, or Living 3; and
 - (b) such consequential or related relief as may be necessary to give effect to its concerns.

Service

16. An electronic and hardcopy of this notice is being served on the Whangarei District Council.
17. The other persons who made a submission in respect to the land have been served with a copy of this notice.

Attachments

18. Copies of the following documents are attached to this notice:
 - A. The original submission.
 - B. The relevant parts of the Hearing Panel Recommendation.
 - C. The relevant parts of the Decision (Map 33).

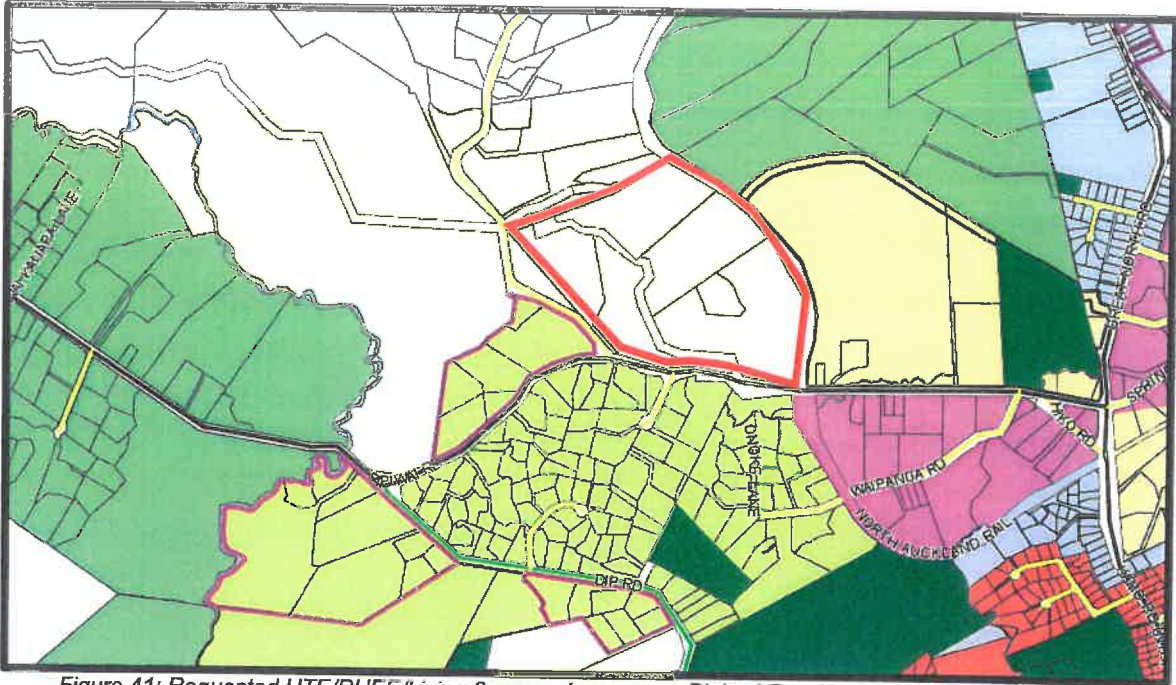


Figure 41: Requested UTE/RUEE/Living 3 expansion area on Pipiwai Road by D Davies and G Davies-Kyte

675. Mr Davies and Ms Davies-Kyte presented at the hearing reiterating their request to rezone 74, 76, 90, 108 and 110 Pipiwai Road as either UTE, RUEE or Living 3 Environment.

Pipiwai Road – Discussion

676. The Hearings Panel does not support the requested rezoning to either Living 3 or RUEE for the following reasons:

- The area is not identified for potential residential zoning under the Kamo, Three Mile Bush and Whau Valley Structure Plan.
- The average site size of the area is approximately 3ha.
- There is an existing horticultural activity in the area which may generate reverse sensitivity effects, and while there is separation from the existing Business 2 Environment, the presence of the railway line may also generate reverse sensitivity effects due to more houses being in proximity to the railway line. Development capacity in this area should be limited to reduce reverse sensitivity effects as this is consistent with policy 5.1.3 of the RPS.
- We consider that the character of the requested area is different to the surrounding Living 3 Environment.
- The topography presents challenges to development, servicing and access.

677. The Hearings Panel findings do not support UTE zoning for any of these sites as this is out of scope.

678. With regard to RUEE zoning, the Hearings Panel finds that it is finely balanced as the area does not strongly meet the RPE or RUEE criteria. However, on balance the area is not appropriate for RUEE zoning for the reasons set out above. Additionally, there is an existing pattern of fragmented subdivision

further north along Parakiore Road. By providing RUEE zoning within these sites it may enable the extension of the RUEE further along Parakiore Road with a less defensible zone boundary.

Piipiwai Road – Recommendation

679. The Hearings Panel recommends that the Council **reject** submission point 509/1.

Three Mile Bush Road – Submission Information

680. Hurupaki Ltd²⁸⁸ requested that Part Lot 4 DP 99045 be rezoned to a combination of RUEE and Living 3 Environment as per the Kamo Structure Plan, except for the portion located within the proposed ONF and ONL which should remain as RPE. The submitter states the following reasons:

- The constraints to residential development in the Three Mile Bush area (i.e. the wastewater capacity constraint on Fairway Drive and the need for a new water reservoir) are scheduled to be rectified by 2018/2019 and 2020/2021 respectively.
- Applying the RPE to the site is inconsistent with the approach taken for other land around the fringe of the city, where land identified as future Living 1 and/or Living 3 in an Urban Structure Plan has been rezoned RUEE.
- The RPE zone does not achieve sustainable management in accordance with Part 2 of the RMA (a s32 assessment has been attached to the submission).

681. James McGrath²⁸⁹ requested that Lot 1 DP 172117 be rezoned as Living 3 Environment to allow for future development in line with the Kamo Structure Plan.

Environments

- Proposed Rural (Urban Expansion)
- Proposed Rural Living
- Proposed Rural Countryside
- Proposed Rural Village Centre
- Proposed Rural Village Industry
- Proposed Rural Village Residential
- Proposed Strategic Rural Industry
- Proposed Plan Change 86B

- Business 1
- Business 2
- Business 3
- Business 4
- Town Basin
- Port Nikau
- Marsden Point Port
- Airport
- Living 1
- Living 2
- Living 3

- Kamo Walkability
- Marsden Primary Centre
- Urban Transition UTE
- Future Marine Village
- Future Environment
- Open Space
- Scheduled or Overlay Area: SA label
- Oil Refinery Overlay
- Designation
- Proposed Plan Change
- Rescue Helicopter Flight Path
- Multi-Use Site

- Indicative Road
- State Highway
- Arterial Road
- Collector Road
- Local Road
- Northpower Tower CEL-Cat11
- National Grid tower
- Northpower Overhead Critical Line Cel-Cat1
- National Grid Line
- Northpower Critical Overhead Lines CEL
- Northpower Critical Underground Lines CEL
- Coastline

- Northpower Disconnector
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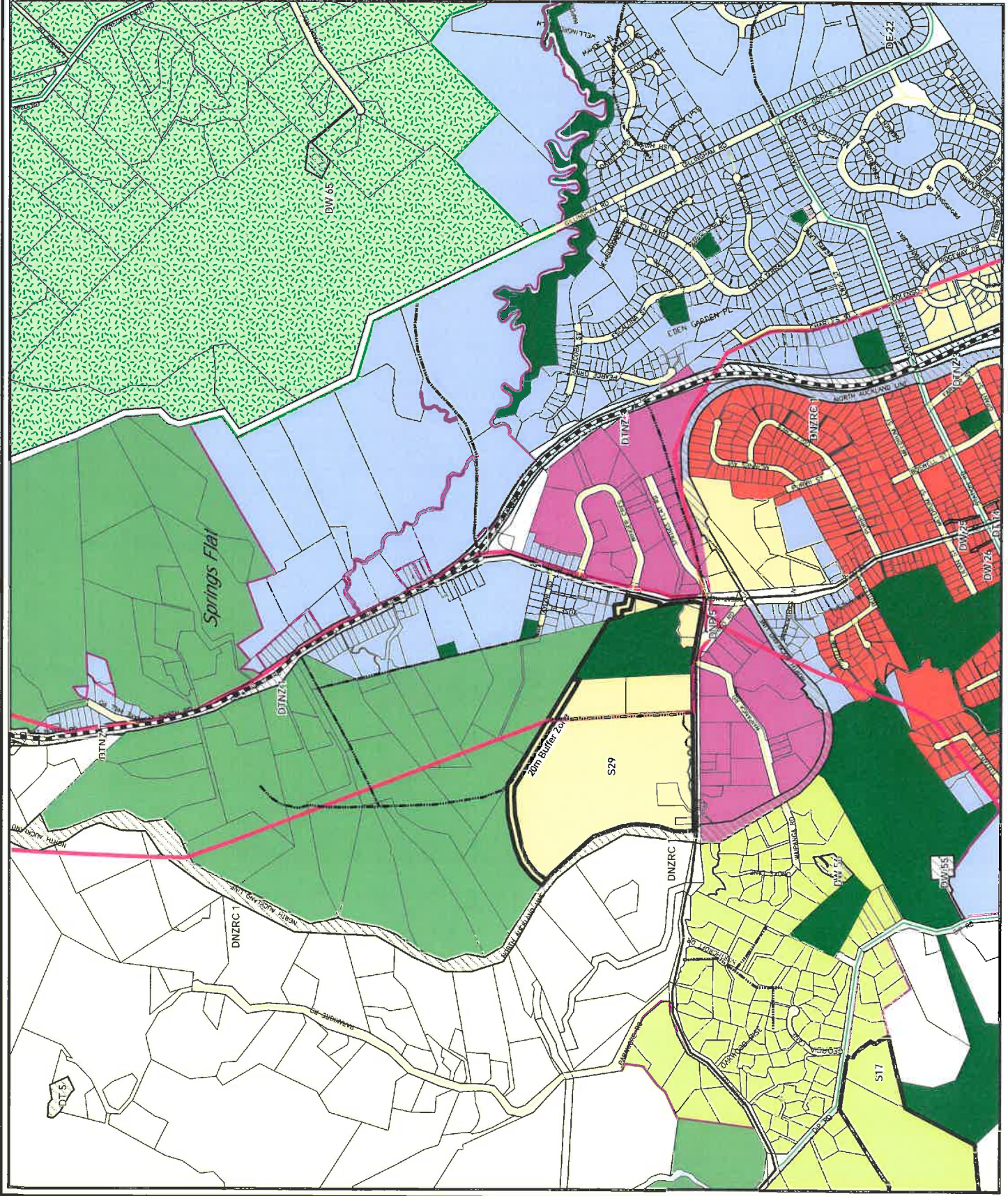
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Sub No. 0509



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W: www.wdc.govt.nz | E: mailroom@wdc.govt.nz

Office Use:

Form 5 - Submission on a Change Proposed to the District Plan

All correspondence to the Policy and Monitoring Department

Submissions must be received by: **4:00pm Tuesday, 4 October 2016**

Plan Change Numbers: PC85, A-D, PC86A and B, PC87, PC102, PC114

Please indicate by ticking below which Plan Change(s) you are making a submission on:

- PC85 Rural Area
- PC85A Rural Production Environment
- PC85B Strategic Rural Industry Environment
- PC85C Rural Village Environment
- PC85D Rural Living Environment
- PC86A Rural (Urban Expansion) Environment
- PC86B Rural (Urban Expansion) - Living Environment Zoning
- PC87 Coastal Area
- PC102 Minerals
- PC114 Landscapes

DOC ID
16/113915

Full name
Please print clearly

Darryl Davies Gillian Davies - Kytte

Postal address

P.O. Box 4510
Kamo
Whangarei

Telephone no

0276721951

Email

darryl.davies@kamohigh-school.nz

RECEIVED
CUSTOMER SERVICES
04 OCT 2016
WHANGAREI
DISTRICT COUNCIL

Delete the option that does not apply:

- I can/could not gain an advantage in trade competition through this submission
- I am/am not directly affected by an effect of the subject matter of the submission that :
 - a adversely affects the environment; and
 - b does not relate to trade competition or the effects of trade competition

Preferences for the Hearing:

I wish to be heard in support of my submission: Yes No

If others make a similar submission, I will consider presenting a joint case with them at a hearing: Yes No

Signature of submitter or authorised agent

A signature is not required if you make your submission by electronic means

Date 3 October 2016

The specific provisions of the Plan Change(s) that my submission relates to are:

See attached sheets section 1

1. My submission relates to

Plan change PC85A

We are the landowners of Lot 2 DP 4578 (90 Pipiwai Road) currently zoned rural countryside. We have been notified that our land has been identified as becoming Rural Production.

This land is not rural production environment. It is not large enough to enable any economically viable rural production to take place.

"The main objective is to sustain, protect and promote rural production in the District. The Environment is intended to be an active, productive area rather than a passive area where little change occurs over time. Residential, commercial and industrial land use and development is expected to be secondary to productive uses."

RPE. 1.2 Objectives 1. Identify and protect rural land resources for a diverse range of productive rural land use activities.

Is our land rural productive land? Does it need to be protected to enable a diverse range of rural land use activities. The size of the land prevents it from being economically productive rural land.

RPE. 5. Minimise fragmentation of rural land and promote allotment sizes that facilitate productive rural land use.

A number of council documents make mention of 20Ha being insufficient size for rural production. With my land having a lot size of less than 4 Ha and the total parcel of land in question being 18.4Ha will never facilitate productive rural land use. (see attached District map.)

2. My submission is I oppose the specific provision listed

My land does not meet the definition of rural productive land as described in the WDC Rural Development Strategy March 2013

"..... will be zoned as the Rural Production Environment. The main objective of the Rural Production Environment is to sustain, protect and promote rural production in the District. Rural productivity is a broad term and includes many uses. Typical to Whangarei are dairy and pastoral farming, forestry (native and exotic), cropping, horticulture, viticulture and quarrying."

"• The RDS does not set rural lot sizes; however, the current Operative Plan Countryside and Coastal Countryside Environments controlled subdivision lot size of 20 hectares is generally considered too small for the productivity aims of the Rural Production Environment....."

Our lot of land and the surrounding 5 lots form a parcel of land approximately 18.4 hectares more or less.

Lot 1 DP 3130956 & Lot 2 DP 3130956 (74 and 76 Pipiwai Road, owners, Kevin and Delores Hartung)
Lot 1 DP 4578 PT DP 1585 and Lot 1 DP 4578 PT DP 1585 (110 Pipiwai Road, owner, Craig Lilley)
Lot 1 DP 59956 (108 Pipiwai Road, owners Chheun Sean, Channdeth Uch)

Even if we were to "amalgamate" our land and work co-operatively in some rural venture the land would not provide a productive outcome.

This intended zoning of this land will not satisfy the objectives and policies outlined in Plan change 85A.



District Plan Map



Print Date: 30/09/2016
Print Time: 12:47 PM



*This parcel of land
to be rezoned from
rural production to
Living 3 or
U.T.E.*

Scale: 1:3000
Original Sheet Size A3

Projection:
Spheroid:
Datum:

1:3000
1717213 7920703 16051944 20483914