

27 February 2018

The Registrar
Environment Court
Specialist Courts and Tribunals Centre
Level 2
41 Federal Street
Auckland 1010

BY COURIER

Phone: 09 9169091

Att. Trent Grace

By Email: trent.grace@justice.govt.nz

**ROLAND MALCOLM ELLIOT BROWN & PAMELA BERYL BROWN – APPEAL WDC
PROPOSED PLAN CHANGE
OUR FILE REF: 303367-8**

We enclose for filing:

1. Notice of Appeal (x 2) together with attachments as follows:
 - (a) Copy of Appellant's submission
 - (b) Copy of the decision
 - (c) A list of names and addresses of persons to be served with a copy of this notice
2. Cheque for the filing fee of \$600.00

Yours faithfully

WEBB ROSS MCNAB KILPATRICK LIMITED



WAYNE MCKEAN
Director

Direct dial: 09 470 2434
Email: wayne.mckean@wrmk.co.nz

c.c. Whangarei District Council
Attention: Planning Department
DELIVER



**BEFORE THE ENVIRONMENT COURT
AT WHANGAREI**

IN THE MATTER of an appeal under clause 14(1) of Schedule 1 of the
Resource Management Act 1991

BETWEEN **ROLAND MALCOLM ELLIOT BROWN**

Appellant

AND **WHANGAREI DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION
ON PROPOSED PLAN CHANGE**

Dated 23th February 2015



Filed by **Wayne McKean**, Solicitor for the Appellant
The address for service on the Appellant is:
WRMK Lawyers, 9 Hunt Street, Whangarei
Documents for service may be left at that address, or
Posted to Private Bag 9012, Whangarei 0148, or
Emailed to wayne.mckean@wrmk.co.nz

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON
PROPOSED PLAN CHANGE**

Clause 14(1) of Schedule 1, Resource Management Act 1991

To: The Registrar
Environment Court
Auckland

Name of Appellant

1 ROLAND MALCOLM ELLIOT BROWN appeals against part of a decision of the Whangarei District Council on the following district plan change:

Plan Change 85C and 86A

Appellant's submission

2 The Appellant made a submission on the proposed plan change.

Trade competition

3 The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

4 The Appellant is not directly affected by an effect of the subject of the appeal that:

(a) adversely effects the environment; and

(b) does not relate to trade competition or the effects of trade competition.

Date on which notice of decision received by Appellant

5 The Appellant received notice of the decision on 17 January 2018.

Name of decision maker

6 The decision was made by the Whangarei District Council.

The decision

7 The decision that the Appellant is appealing is:

(a) The decision to amend and approve Plan Change 85C and 86A, and in particular to not include the land west of South Road, Waipu (as specifically described below) as part of the

Rural Urban Expansion Environment (RUEE), Urban Transition Environment (UTE) or the Rural Village Environment (RVE).

“The land” referred to above is land located at South Road, Waipu being legally described as Lots 1 and 2 DP 184238, Lot 1 DP 175580, Lots 2 and 3 DP 315027, Lots 1 and 2 DP 210438, Lots 1-3 DP 321636, Lots 1-5 DP 197716 and Lot 3 DP 189964.

Reasons for appeal

8 The reasons for the appeal are as follows:

- (a) The decision failed to recognise that the evidence and Council’s policy documents supported rezoning the land from Rural Production Environment (RPE) to either RUEE, UTE or RVE and that rezoning was appropriate in the context of the proposed Plan change.
- (b) The decision ignored relevant flood assessment evidence supporting development of higher density residential lots on the land.
- (c) The decision did not properly recognise the effect of the Hearings Panel decision to accept the submission to expand the RVE zone to the border immediately adjacent to the land.
- (d) The decision failed to recognise that the absence of a connection to the Council waste water treatment plant restricted the capacity for development of the land in the near future so that lot sizes would in reality be less than in places where there was reticulation.
- (e) The decision failed to sufficiently recognise that:
 - (i) Waipu had been identified as a growth area;
 - (ii) There is an inadequate supply of land for the expected growth in demand for residential housing;
 - (iii) The plan change had not provided adequately for the supply of land to deal with the expected growth in Waipu.

Relief

9 The Appellant seeks the following relief:

- (a) That PC85C include the land as RVE or alternatively that PC86A include the land as Rural Urban Expansion Environment.

Attached documents

- 10 The following documents are attached to this notice:
 - (a) a copy of the Appellant's submission
 - (b) a copy of the decision:
 - (c) a list of names and addresses of persons to be served with a copy of this notice:



.....
Roland M E Brown
Appellant
Date: 23 February 2018

Address for service of Appellant:

WRMK Lawyers
Legal House, 9 Hunt Street, Whangarei 0148
Private Bag 9012
WHANGAREI 0148
Telephone: 0-9-470-2400
Email: wayne.mckean@wrmk.co.nz
Contact person: Wayne McKean

Note to Appellant

You may appeal only if–

- you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and
- in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

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 Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and/or 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, Wellington, or Christchurch.

Schedule B – Persons to be served with a copy of this notice

1. B and J Salmon, C/- Cook Costello, 2 Norfolk Street, Whangarei.
henry@coco.co.nz
2. Ian and Barbara Russell, 63 South Road, RD2 Waipu 0582
3. Northpine, C/- Resource Management and Assessment Ltd, PO Box 1135, Whangarei 0140. rmal@rmal.co.nz
4. DEYI Investments Ltd C/- Precision Planning, 14 Puriri Road, Beachlands Auckland 2018. kellie@precisionplanning.co.nz
5. Ronald and Kay Dixon 3 Insley Road, Waipu 0510.
ron.kay@xtra.co.nz
6. Stewart, Jacob, Heath, Nash and Moon, C/- Cato Bolam Consultants, PO Box 1919, Whangarei 0140. simonr@catbolam.co.nz
7. Salesyards Investments, C/- Precision Planning, 14 Puriri Road, Beachlands Auckland 2018. kellie@precisionplanning.co.nz
8. Bruce Roberts, 39 The Braigh, Waipu 0582.
waipu@hammerhardware.co.nz
9. Coralie Roberts, 39 The Braigh, Waipu 0582. kirkhaus@xtra.co.nz
10. Mark and Sandee Stanley, 33 Seon Place, Birkdale, Auckland 0626.
mark@morrisstanley.com
11. Graham Dallas Watson, PO Box 11 Waipu 0545.
graham@crewmate.co.nz
12. Diane and Ken Doran, 160 South Road, RD 2, Waipu
kre8hope@xtra.co.nz

Proposed Plan Change 85, 85A-D, 86A & B

Attn: Policy and Monitoring Department
Whangarei District Council
Private Bag 9023
Whangarei 0148

Submitter Details

Full Name of Submitter

R Brown

Address for service of the Submitter

c/- Simon Reiher
Director
Cato Bolam Consultants
PO Box 1919
Whangarei 0140

Email: simonr@catobolam.co.nz
Phone: 09 438 1684

Scope of submission

This is a submission in opposition to Proposed Plan Change 85, 85A-D, 86A & B The specific provisions that this submission relates to are:

- The extent of the plan change boundary along South Road in Waipu.

Relief Sought

This submission seeks the following decision from Whangarei District Council:

- This submission seeks the Council to extend the area of the Whangarei District re-zoned as part of Plan Change 85, 85A-D, 86A & B, more specifically this submission seeks that Lots 1 and 2 DP 184238, Lot 1 DP 175580, Lots 2 and 3 DP315027 and Lots 1 and 2 DP 210438; in addition to Lots 1-3 DP 321636, Lots 1 – 5 DP 321636 and Lot 3 DP 189964 located at South Road, Waipu be re-zoned within the Urban Transition Environment (UTE).

Note: We have also assessed the submission sites (listed above) against the Rural Urban Expansion Environment provisions and believe this zoning also provides an acceptable solution for re-zoning of this land.

Submission

The Land and Context

Lots 1 and 2 DP 184238, Lot 1 DP 175580, Lots 2 and 3 DP315027, Lots 1 and 2 DP 210438, Lots 1-3 DP 321636, Lots 1 – 5 DP 321636 and Lot 3 DP 189964 are located on the western side South Road approximately 550m south of the Waipu Village.

The properties range in size from 1940m² to 4.72ha and are generally flat in topography. Sites Lots 1-3 DP 321636, Lots 1 – 5 DP 321636 and Lot 3 DP 189964 is an existing cluster rural-residential

development and the remainder of the land consists of undeveloped lifestyle blocks with the majority being undeveloped and maintained in pasture.

The Waipu River is located approximately 250m to the east from the land at its closest point.



Figure 1 Aerial Photo of submission sites (outlined in yellow)

The undeveloped land has already been subdivided down to allotments approximately between 2 and 4ha in area and are located between the existing Living 1 Environment now being re-zoned as 'Rural Village Environment' under the PC 85C; and the larger rural allotments to the south along South Road.

It is noted that another submission has been made to extend the Rural Village Environment zoning under PC 85C to include the 6 properties immediately north of the application site on Dundee Lane (legally described as Lots 3 and 4 DP 314935 and Lots 1 to 4 DP 427789).

The submitter seeks to be re-zoned to be within the Urban Transition Environment. As discussed above, the submission sites are situated on the fringe of Waipu between urban and rural development in an area where there has traditionally been a demand for this type of lifestyle, providing for people who wish to living in close proximity to urban areas and associated amenities, but prepare to live in areas that have a rural outlook, ambiance and amenity. Such a re-zoning and future development pattern would act as a buffer area between the more intensely developed residential area around the Waipu village and the more rural land surrounding it along South Road.

The Rural Urban Expansion Environment has only been proposed on the fringes of Whangarei city and not around other rural towns in the district which are also under pressure to expand. The submission sites consist of a cluster of smaller allotment located on the outskirts of Waipu village in an area characterised by a rural residential development pattern and no longer predominantly in rural

production use. We consider that re-zoning the submission sites down South Road will provide rural-residential amenity between urban and rural environments while providing choice to future residents.



Figure 2 Proposed re-zoning of Waipu (submission sites circled in red)

At a public meeting to discuss PC 85 with the Waipu Community it is understood that the Waipu Residents and Ratepayers group requested that the residential zoning be extended southwards along South Road (as is proposed in this submission), however the Council did not consider this appropriate for the following reasons:

- It has been estimated that there will be sufficient capacity to meet projected residential demand over the next 12 years;
- Within Waipu village there are constraints on electricity provisions;
- The land within South Road that is adjacent to the Living Environment comprises Land Use Capability Class 2 soils; and
- The land further along South Road is identified as being flood susceptible.

We provide comments on these matters (below):

Projected Residential Demand

The population of Waipu is expected to grow steadily and there is an estimated increase in employees working in Waipu Village. The Council considers that there is sufficient capacity to meet the projected residential demand over the next 12 years and that further expansion e.g. through re-zoning is not required. However, we believe the estimates are conservative considering the state of housing affordability in Auckland, the proximity of Waipu to the greater Auckland Region and the lifestyle opportunities in the surrounding area.

Council provides figures of an estimated projected increase in the number of employees by 2028 in Waipu is 408, however only approximately 200 additional lots are being provided for via the existing consented developments and proposed re-zoning.

Whilst the existing area within the proposed Waipu Rural Village Environment has been assumed by the Council to cater for the predicted growth, these growth assumptions have been based on historic data from the Whangarei District Growth Strategy – Sustainable Futures 30/50 (30/50) and does not take into account the rapid growth and development that has been experienced over the last 12

months in Waipu. Statistics NZ project a total regional population growth, assuming a net annual migration gain of 12,000 people per annum which calculates to a 5% increase for Mangawhai and Ruakaka, which provides a better reflection of population increase patterns expected in the Waipu area.

Further, REINZ figures state that 85% of property purchasers in the Waipu area over the last year are classified as single income or retirees.

In addition, existing sections and dwellings for sale are in high demand, based on the REINZ sales figures, showing the average number of days to sell a property is less than 20 days.

We note that a large area of land is proposed to be-rezoned around Breton Drive off Nova Scotia Drive (as a direct result of an approved 88 lot residential subdivision). The property (Lot 91 DP 396647) is in close proximity to the Waipu River and the north-western portion of it has been identified as being susceptible to flooding.

Some re-zoning is proposed along the northern side of the Braigh as part of PC 85, however this appears to be 'reactive' planning as the re-zoned lots already exist at a residential density. In addition, it is noted that these lots are located further from the village/Business 4 Environments and employment opportunities than the submission sites.

Electricity Provision Constraints

We have had initial discussions with Northpower with respect to electricity provision constraints in Waipu and have been advised that they have a mid - term solution confirmed for the Waipu area. They confirm that if future development is not particularly large or of an industrial/commercial nature, then the capacity would be increased to accommodate it, forming part of the Northpower Network upgrade cost.

Northpower have also advised that they are still looking for a substation site to accommodate growth in the area long term. Such critical infrastructure is inevitable as growth is experienced in Waipu. There is no practical or economic reasons that would make an extension to the power reticulation unfeasible in Waipu.

Productive Soils

Regardless of the fact that the submission sites comprise LUC Class 2 soils, the potential for them to be used for rural production activities has already been somewhat compromised by previous subdivision development, reducing the lots sizes below 4ha which the Council generally considers as having a degree of production capability. We consider that regularising the existing development and allowing an increase in rural living development to occur is considered to be more in keeping with the character of the existing environment. An appropriate use of land in this location on the outskirts of the Waipu village and will reduce demand pressures for the creation of smaller allotments scattered throughout the larger more productive and commercial viable land holdings around Waipu.

Flood Hazard

The Council flood hazard register identifies a small portion of the submission sites as being subject to flooding. A flood assessment has been commissioned for this area and will be available prior to this submission being presented at a hearing.

Reasons for this Submission

In summary, the reasons for this submission are:

- The number of additional allotments provided wither through consented development or proposed re-zoning is not considered adequate to cater for the estimated growth of Waipu.
- The submission sites are located within close proximity to the Waipu village and associated employment opportunities.
- Northpower have advised that there should be capacity within the existing electricity provision to be able to accommodate further development.
- Although the subject site and surrounding properties general consist of versatile soils, the productive capability has been somewhat restricted due to previous subdivision development and the size of the existing land parcels.
- The submission sites are not subject to flooding hazards.

We wish to be heard in support of our submission.

If others make a similar submission, we will consider presenting a joint case with them at a hearing.

Signature of Submitter

Date

(or person authorised to sign on behalf of submitter. A signature is not required if you make your submission by electronic means)