

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

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

AND of an appeal under clause 14 of the First Schedule to the Act in relation to Proposed Plan Change 88I to the Operative Whangarei District Plan

BETWEEN JB & RM KEITH TRUSTEES LIMITED AND VICTORY SQUARE HOLDINGS LIMITED
(ENV-2020-AKL-000120)
Appellants

AND WHANGAREI DISTRICT COUNCIL
Respondent

Environment Judge J A Smith sitting alone under s 279 of the Act
IN CHAMBERS at Auckland

CONSENT ORDER

A: Under s 279(1)(b) of the Act, the Environment Court, by consent, orders that:

- (1) the appeal is allowed in part subject to the amendments set out in this order.
- (2) the appeal is otherwise dismissed.

B: Under s 285 of the Act, there is no order as to costs.



REASONS

Introduction

- [1] This appeal relates to an appeal filed by JB & RM Keith Limited and Victory Square Holdings Limited against a decision of the Whangarei District Council on Plan Change 88I, part of the Urban and Services plan change package to the Operative Whangarei District Plan.
- [2] The appeal relates to the zoning of the property owned by Victory Square to the southeast of Tamare Place at Ruakaka (Lot 2 DP 350126 totalling approximately 4.9ha).
- [3] Under the Operative Plan the property was zoned Rural Production. The appellants sought in their submissions and appeal that the property be zoned Medium Density Residential Zone, which has been renamed to be called the General Residential Zone.

The agreement reached

- [4] The parties have reached an agreement that will resolve this appeal to zone the property General Residential Zone overlain with a new precinct – Precinct 9 Ruakaka Environmental Benefit Precinct.
- [5] The Precinct Plan for Precinct 9 maps a central ecological corridor comprising over half of the property, which is to be protected.
- [6] The ecological corridor encompasses the modified dune lake and existing conservation covenant to the south of the site and the modified stream channel running through the centre of the site – reinstating the former ecological connection between the Ruakaka Dune Lake to the North, the modified dune lake to the south and the surrounding duneland and estuarine environments.
- [7] The underlying General Residential Zone and Precinct 9 enable residential subdivision as a restricted discretionary activity subject to:
- (a) The protection of the ecological corridor;
 - (b) Connection to the reticulated wastewater network; and
 - (c) Provision of appropriate vehicle access to Tamare Place.



[8] The parties are satisfied that the agreement reached falls within the Court's jurisdiction, is consistent with sustainable management purposes and other relevant requirements of the Act.

Consideration

[9] In making this order the Court has read and considered the appeal and the memorandum of parties dated 6 November 2020.

[10] There are no s 274 parties to the appeal.

[11] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order;
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Act, including in particular Part 2; and
- (c) Parties have not participated in Alternative Dispute Resolution (this appeal having been resolved prior to mediation being scheduled).

Order

[12] Therefore the Court orders, by consent, that the Whangarei District Plan is amended so that:

- (a) The District Plan maps show the land outlined in red below, located to the southeast of Tamure Place at Ruakaka being Lot 2 DP 350126, as zoned General Residential Zone and Precinct 9 (Ruakaka Environmental Benefit Precinct); and



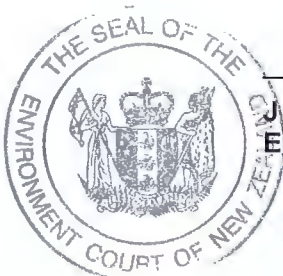


(b) A new Precinct 9 (Ruakaka Environmental Benefit Precinct) is included in the General Residential Zone Chapter in the District Plan in accordance with Annexure A.

[13] There is no order as to costs in respect of the matters covered by this order.

[14] This order resolves this appeal in its entirety.

DATED at Auckland this 17th day of November 2020




J A Smith
Environment Judge

Annexure A



General Residential Zone (GRZ)

PREC9 – Ruakaka Environmental Benefit Precinct (REBP)

Issues

The Ruakaka Environmental Benefit Precinct provides for residential development where positive ecological outcomes are achieved, and development is well integrated with reticulated infrastructure. The precinct recognises and provides for subdivision opportunities in an area with unique biodiversity values while limiting land use and development prior to subdivision to ensure that the ecological and biodiversity values are protected.

Rules PREC9-R1 and R2 apply to Lot 2 DP 350126 until that allotment has been subdivided and certificates of title have been issued for each new allotment.

Objectives

PREC9-01 – Subdivision	Residential subdivision is enabled while enhancing and permanently protecting ecological and biodiversity values.
PREC9-02 – Infrastructure	Adverse effects on reticulated three waters networks and the adjacent transport network are minimised.
PREC9-03 – Land Use	Land use activities prior to subdivision are managed to protect ecological and biodiversity values.

Policies

PREC9-P1 – Residential Subdivision	<p>To provide for residential subdivision where the following are achieved:</p> <ol style="list-style-type: none"> 1. Restoration and permanent protection of the ecological corridor that runs through the site and connects to adjacent sites. 2. Revegetation and enhancement planting within the ecological corridor. 3. Avoidance of adverse effects on: <ol style="list-style-type: none"> a. Indigenous taxa that are listed as threatened or at risk in the NZ Threat classification system lists. b. The ecological values and attributes of areas of indigenous vegetation and habitats of indigenous fauna that are significant using the assessment criteria in Appendix 5 of the Northland Regional Policy Statement 2016.
PREC9-P2 – Infrastructure	<p>To ensure that land use, development and subdivision are well integrated with the transport network and reticulated three waters networks by:</p> <ol style="list-style-type: none"> 1. Avoiding on-site wastewater treatment and disposal, except where it is proposed for a single residential unit prior to subdivision. 2. Ensuring that sufficient capacity exists within the reticulated wastewater network to accommodate the proposed development; and requiring any upgrades which are needed to service the development. 3. Requiring sufficient vehicle access to be identified at the time of land use, development and subdivision.
PREC9-P3 – Land Use Prior to Subdivision	<p>To ensure that future comprehensive residential development is not compromised and to protect the existing biodiversity and ecological values within the site by:</p> <ol style="list-style-type: none"> 1. Limiting the clearance of indigenous vegetation prior to subdivision. 2. Restricting the development density to one residential unit prior to subdivision.



General Residential Zone (GRZ)

Rules

PREC9-R1	Residential Units
	<p>Activity Status: Permitted</p> <p>Where:</p> <ol style="list-style-type: none"> 1. The maximum density within Lot 2 DP 350126 is 1 residential unit. 2. The residential unit, accessory buildings and wastewater system are located outside of the ecological corridor to be protected under PREC9-R3.4. 3. Vehicle access is located outside of the ecological corridor to be protected under PREC9-R3.4, except that one vehicle access route may be provided in general accordance with the indicative vehicle access shown on PREC9 Map 1. <p>Note:</p> <ol style="list-style-type: none"> 1. <i>PREC9-R1 applies to Lot 2 DP 350126 until that allotment has been subdivided and certificates of title have been issued for each new allotment.</i>

Activity Status when compliance not achieved: Non-Complying

PREC9-R2	Indigenous Vegetation Clearance
	<p>Activity Status: Permitted</p> <p>Where:</p> <ol style="list-style-type: none"> 1. The clearance of indigenous vegetation within Lot 2 DP 350126 is either: <ol style="list-style-type: none"> a. Outside of the ecological corridor to be protected under PREC9-R3.4; or b. Within the ecological corridor to be protected under PREC9-R3.4 and is associated with: <ol style="list-style-type: none"> i. Operation, maintenance and repair of existing tracks, fences, drains and other lawfully established activities; or ii. Pest plant removal and biosecurity works; or iii. Conservation planting, including planting for ecological restoration purposes. <p>Note:</p> <ol style="list-style-type: none"> 1. <i>PREC9-R2 applies to Lot 2 DP 350126 until that allotment has been subdivided and certificates of title have been issued for each new allotment.</i>

Activity Status when compliance not achieved: Discretionary



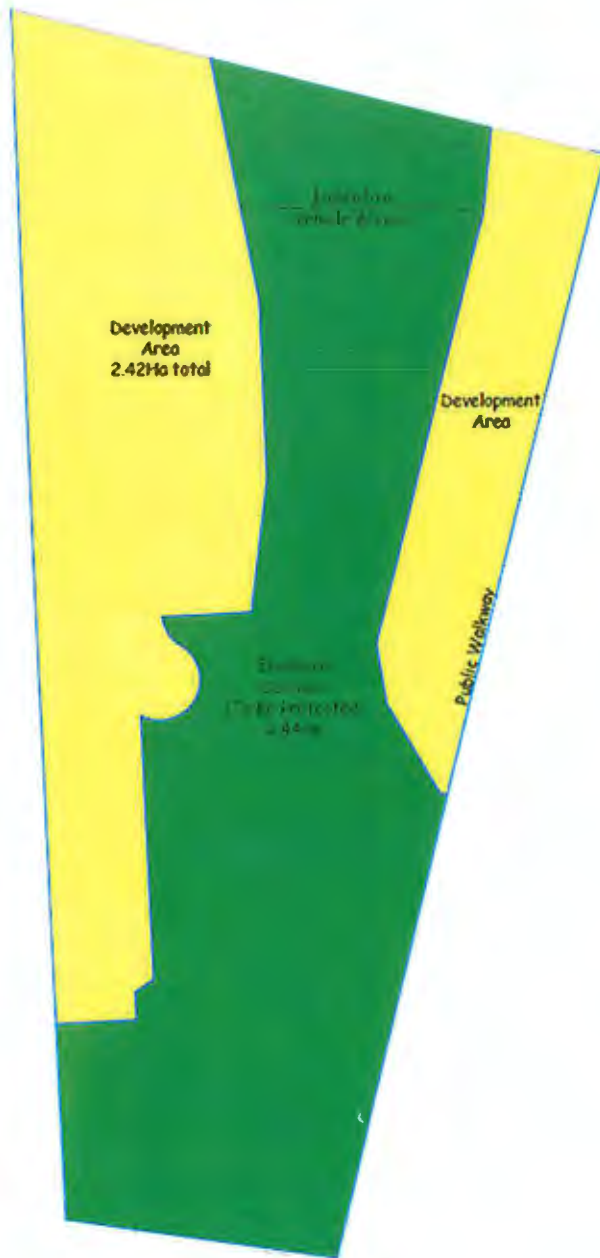
General Residential Zone (GRZ)

PREC9-R3	Subdivision	
	<p>Activity Status: Restricted Discretionary</p> <p>Where:</p> <ol style="list-style-type: none"> 1. The subdivision is by way of a single application for resource consent (implementation of which may be staged). 2. Certification has been provided from Whangarei District Council that there is capacity within the public reticulated wastewater network to service the proposed development. 3. All allotments (excluding any allotment for the sole purpose of environmental protection and restoration, access, roads, utilities or reserves) are designed and located so that provision is made for connected to a public reticulated wastewater network. 4. Vehicle access to the site is provided from Tamure Place. 5. The ecological corridor to be protected shown on PREC9 Map 1 is legally protected in perpetuity and managed on an on-going basis in accordance with an Ecological Management Plan, except that one internal vehicle access route may be provided in general accordance with the indicative vehicle access shown on PREC9 Map 1. <p>Matters of discretion:</p> <ol style="list-style-type: none"> 1. Effects on the existing reticulated wastewater network. 2. The capacity of the existing reticulated wastewater network and whether the servicing needs of the proposal require upgrades to existing infrastructure. 3. The efficient provision of services to the land being subdivided and to nearby land that might be subdivided in the future. 4. The location and design of vehicle access to and within the site 5. Effects on ecological and biodiversity values within the site and surrounding area. <p>Notes:</p> <ol style="list-style-type: none"> 1. <i>Any application shall comply with information requirements PREC9-REQ1 and REQ2.</i> 2. <i>All relevant District Wide and overlay subdivision provisions apply in addition to PREC9-R3.</i> 3. <i>Acceptable means of compliance for the provision, design and construction of infrastructure is contained within the Whangārei District Council Engineering Standards.</i> 	<p>Activity Status when compliance not achieved: Non-Complying</p>



General Residential Zone (GRZ)

PREC9 Map 1 Lot 2 DP 350126 Ecological Corridor to be Protected



General Residential Zone (GRZ)

PREC9-REQ1	Information Requirement– Ecological and Restoration Plans
	<p>1. Any application under rule PREC9-R3 must include an ecological report prepared by a suitably qualified and experienced ecologist which shall address the following matters:</p> <ol style="list-style-type: none"> a. A planting plan for proposed revegetation planting which considers and identifies: <ol style="list-style-type: none"> i. The appropriateness and practicability of the proposed replanting: <ol style="list-style-type: none"> a) To be native vegetation which is sourced from the Waipu ecological district and to be appropriate for the soil, aspect, exposure and topography; b) To reflect the composition of former natural vegetation likely to have occupied the site and include appropriate native species that will enable natural processes of succession. ii. The ecological district of the site. iii. The characteristics of the soil (i.e. clay, silt, loam etc.). iv. Soil drainage. v. Topography of the area to be planted. vi. Aspect of the area to be planted. vii. Exposure of site to wind, frost, sunlight and salt spray. viii. Presence of plant and animal pests. ix. Any restrictions on planting, such as safety, existing access issues, and fire risk where adjacent to proposed residential activities. x. The purpose of the planting in relation to the surrounding environment (including buffering, corridors, linkages). xi. The location and extent of planting. xii. Site preparation for planting, including stock-proof fencing of planting areas, weed and animal pest control, including the removal or management of all invasive weed species. xiii. Site planting, including species to be planted, size and spacing of plants and where they are to be planted, requirements for replacement of pest plants with appropriate native species and measures to minimise reinvasion of pest plants. xiv. Maintenance plan of planting, including releasing plants, fertiliser, plant and animal pest control and mulching and replacement of plants which do not survive, and a management plan for animal and plant pest control. b. An assessment of the effects of the potential development on the environmental protection area, including but not limited to: <ol style="list-style-type: none"> i. Location and proximity of proposed allotments and building platforms to the environmental protection area; ii. Orientation of light, noise, reflective sources to minimise impact on resident fauna iii. Building platforms; iv. Access, in particular the vehicle access through the areas to be protected and any proposed crossing design over the stream (e.g. bridge, culvert, ford.);



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- v. Earthworks;
 - vi. Services, including stormwater, wastewater, water supply, telecommunications networks, and energy (electricity or gas) networks;
 - vii. Pets, farmed animals, pests, weeds, garden escapes and green waste dumping.
- c. A plan that specifies the protection measures proposed to ensure the existing and planted indigenous vegetation remain protected in perpetuity, that includes how all of the following matters will be implemented prior to the Council issuing section 224(c) certificate:
- i. The establishment of secure stock exclusion.
 - ii. The maintenance of plantings, and regular monitoring 6 monthly for the first 18 months and then annually to ensure 90% survivorship of planted species.
 - iii. The maintenance of plantings must ensure that all invasive plant pests are eradicated from the planting site both at the time of planting and on an on-going basis to ensure adequate growth.
 - iv. The maintenance of indigenous vegetation must ensure animal and plant pest control occurs.
 - v. A planting hygiene protocol to be imposed while all planting is being undertaken to ensure that plant diseases e.g. myrtle rust are not brought to the site.
- d. A fauna management plan that includes:
- i. A fish survey prepared within the 12 months prior to any works undertaken within the existing stream, ponds or dune lakes.
 - ii. The methods to rescue and relocate any fish identified in the survey in accordance with the Fish Recovery and Rescue Protocols (River Lake Ltd 2018) if works are to be undertaken in the stream or any pond.
 - iii. Identification of any indigenous taxa within the site and surrounding area that are listed as threatened or at risk in the NZ Threat classification system lists.
 - iv. An assessment of the effects of the potential development on any identified species in PREC9-REQ1.1(d)(iii) and the methods proposed to protect the species and monitoring on-going effects after subdivision.
- e. Any additional protection and on-going management methods including but not limited to methods of weed and pest management and measures to control cats, dogs, rabbits, rats, mustelids, possums and freshwater pests.

PREC9-REQ2	Information Requirement – Connection to Public Reticulated Wastewater Network
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1. Any application under rule PREC9-R3 must include an assessment detailing:
 - a. Provision made for connections to public reticulated wastewater network.
 - b. Confirmation from Council that sufficient capacity exists within the public reticulated wastewater network to service the proposed development.
 - c. Any upgrades and/or extensions to existing public reticulated wastewater infrastructure that are proposed or necessary.
 - d. Where insufficient capacity exists within the reticulated wastewater network:
 - i. Upgrades proposed by the developer that are necessary to increase network capacity to accommodate the development; or





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- ii. The proposed timing and staging of development to ensure that it is coordinated with any planned Long Term Plan upgrades identified by Council which will provide adequate capacity.
- e. Land and infrastructure to be vested in the Council.

