

BEFORE THE ENVIRONMENT COURT

ENV-2020-AKL-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under Clause 14(1) of the First
Schedule, Resource management Act 1991

BETWEEN JB and RM Keith Trustees Limited

Appellant

AND

Whangarei District Council

Respondent

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

TO: The Registrar
Environment Court
AUCKLAND

1. JK and RM Keith Trustees Limited (**KTL**) appeals against a decision of the Whangarei District Council (**Council**) on the following plan change Plan Change 88i Living Zones as part of the Council's Urban and Services Plan Change Package including Plan Changes 88A, 88B, 88C, 88D, 88F, 88G, 88H, 88I and 115 and specifically the decision to rezone Lot 2 DP 350126 Tamure Place Ruakaka from Future Urban Zone to Rural Production Zone (**Decision**).
2. KTL made a submission on that plan change on its behalf and also on behalf of Victory Square Holdings Limited (**VSL**).

3. Neither KTL nor VSL are trade competitors for the purposes of s308D of the Resource Management Act 1991.
4. KTL and VSL received notice of the Decision on 2 June 2020.
5. The Decision was made by the Council.
6. The Decision KTL and VSL are appealing is:
 - (a) The decision to rezone Lot 2 DP 350126 Tamure Place Ruakaka (**Land**) from operative Rural Production with Future Living Environment (**RPFLEO**) Overlay to proposed Rural Production zone (**RPZ**) and not Medium Density Residential Zone (**MDRZ**) as requested by the appellant in their submission (No: 59:222) to PC88I (**Submission**).
7. The reasons for the appeal are that the Council wrongly rejected the relief sought in the Submission as follows:
 - (a) The Council wrongly considered that a large portion of the Land is subject to an identified natural protection area. It is acknowledged that the site is subject to a covenanted land area for conservation purposes; see Certificate of Title documentation attached. However, this covenanted area only applies to a limited area at the southeast corner of the site being 4777m² and thus 9.8% of the site only. Hence it would not prevent the balance area of the site being rezoned and developed for residential development consistent with the requested MDRZ;
 - (b) The Council wrongly considered that there is no identified access to the Land whereas in fact that Land can be accessed via a twenty (20) metre wide utility easement which connects it directly to Tamure Place and which, is wide enough to provide a full width public road and all necessary services to the site from Tamure Place;
 - (c) The Council wrongly considered that the Land cannot be adequately serviced by reticulated water, wastewater and stormwater, whereas in fact, adequate water and wastewater services are available to the Land Further, appropriately treated and controlled stormwater could be discharged into a purpose designed on site wetland system

which could be integrated into any residential development and linked to similar and existing wetland networks adjoining the southern and northern boundaries of the site:

- (d) The Council wrongly considered that the Land is flood susceptible, occupied by archaeological sites and dominated by Class 3 – Arable Cropping Soils as per the New Zealand Land Use Inventory (NZLRI 27.6.2018) classification system. Whereas in fact the Land is dominated (34888m² or 71.7%) by mid to lower level Class 6 land identified as suitable for ‘Pastoral Grazing’ with a lesser area (of 13782m² or 28.3%) of the site, adjoining the sites western boundary identified as lower to mid quality Class 3 land identified as suitable for ‘Arable cropping and is not identified as susceptible to flood as per the Northland Regional Councils current Natural Hazards map series for the Ruakaka/Marsden Point Area. Further, while land to the west of the site and adjoining the Ruakaka estuary shows a significant number of identified archaeological sites none are present on the Land;
- (e) The Council wrongly placed undue reliance on the urban land supply directions set in the National Policy Statement – Urban Development Capacity and found that adequate future residential land supply capacity existed;
- (f) The Council wrongly overlooked that the Land will now be surrounded by land now subject to a Proposed MDRZ. Proposing to zone the Land, which is small (4.86 hectares) RPZ is not only inconsistent with the proposed surrounding residential land uses but also risks having any potential rural uses limited by reverse sensitivity issues, this will severely limit any sustainable economic use of the Land for rural production purposes. The Land is better suited for zoning as Medium Density Residential, and master planned to restore, extend and link its covenanted wetland / ecological feature into similar environments adjoining its northern, southern and south-eastern boundaries. It is noted that similar wetland environments abut the Land to its north and south with the majority of the eastern boundary adjoining Department of Conservation estate;

- (g) The Council wrongly applied a RPZ to the Land even though it is small (4.86 hectares) by rural production standards and does not adjoin or link to any other RPZ land being surrounded by proposed residential land, conservation estate and the Ruakaka Racecourse which is zoned Ruakaka Equine Environment. Additionally, any Rural Production activities will be at odds with the future sustainability and enhancement of the wetland / natural environment feature currently subject to protective covenant on the Land. Rezoning the Land to Medium Density Residential would enable sufficient capital input to facilitate the repair, enhancement, and linkage of this environmental feature. This would not only be a better environmental outcome per se for the covenanted environmental feature but it would also contribute amenity to any future residential development on the Land and evolving wider surrounding MDZ residential environment – as signalled by Councils strategic planning documents and now proposed MDZ plan changes; and
- (h) The relief sought by KTL and VSL would better promote the sustainable purpose of the Resource Management Act 1991.

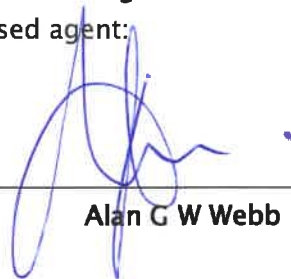
8. KTL and VSL seek the following relief:

- (a) That the Land be rezoned Medium Density Residential Such other of further relief the Court in its discretion decides to order; and
- (b) Costs.

9. KTL and VSL **attach** the following documents to this notice:

- (a) a copy of KTL's submission;
- (b) a copy of the Decision; and
- (c) a list of names and addresses of persons to be served with a copy of this appeal.

Signature: JB & RM Keith Trustees Limited and Victory Square Holdings Limited by their authorised agent:



Alan G W Webb

Date: 14 July 2020

Address for service: Mr Alan Webb
Quay Chambers
Level 7, 2 Commerce Street
PO Box 106215
AUCKLAND CITY 1143

Telephone: (09) 3775070

Facsimile: (09) 3775071

Email: webb@quaychambers.co.nz

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*

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.

* Delete if these documents are attached to copies of the notice of appeal served on other persons.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

A

SUBMISSION

Form 5 - Submission on a change proposed to the District Plan



Forum North, Private Bag 9023
Whangarei 0148, New Zealand
P +64 9 430 4200
F +64 9 438 7632
E mailroom@wdc.govt.nz
www.wdc.govt.nz

District Plan Changes: Urban and Services

All correspondence to the District Plan Department
Submissions must be received by: 03 July 2019

Full name
Please print clearly

JB + RM KEITH TRUSTEES LTD

Postal address

c/ Cato Bolam Consultants
PO Box 1919, Whangarei 0140

Telephone no

09 438 1884

Email

katrina.r@catabolam.co.nz

~~I could~~ I ~~could~~ not **gain an advantage in trade competition through this submission

I ~~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

+ Delete the entire paragraph if you could not gain an advantage in trade competition through this submission

** Select one

The specific provisions of the Plan Change that my submission relates to are

Plan Change 88I + 148 - zoning of
Lot 2 DP 350126 Rural Production
when should be Medium Density
Residential

I support/oppose/seek amendment to the specific provision listed above. (delete what's not applicable)

My submission is

See attached

My reasons are (attach additional pages if required)

SEE attached

State the decision you wish Council to make to ensure the issues you raise can be dealt with
(i.e. give precise details of what you would like included or deleted from the plan)

See attached

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

Note to person making submission - If you are making a submission to the Environmental Protection Authority, you should use form 16B. If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6 (4) of Part 1 of Schedule of the Resource Management Act 1991.

Please note that your submission (or part of your submission) may be struck out if the authority is satisfied that at least 1 of the following applies to the submission (or part of the submission):

- it is frivolous or vexatious;
- it discloses no reasonable or relevant case;
- it would be an abuse of the hearing process to allow the submission (or the part) to be taken further;
- it contains offensive language;
- it is supported only by material that purports to be independent expert evidence, but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.

Privacy Note - Clause 6 of Schedule 1 to the Resource Management Act 1991 (the Act) requires that submissions on a proposed Plan Change be made in the prescribed form (Form 5 Resource Management (Forms, Fees, and Procedure) Regulations 2003). Personal information including the name of the submitter and contact details must be supplied. Besides our staff, we share this information with other submitters and the public in order to facilitate the Plan Change process. Providing some information is optional, however, if you choose not to enter information required by the form, your submission may be considered invalid.

You have the right to ask for a copy of any personal information we hold about you, and to ask for it to be corrected if you think it is wrong. If you'd like to ask for a copy of your information, or to have it corrected, please contact us at mailroom@wdc.govt.nz, or 09 430 4200, or Whangarei District Council, Private Bag 9023, Whangarei 0148.

FORM 5 SUBMISSION ON A CHANGE PROPOSED TO THE DISTRICT PLAN

DRAFT URBAN AND SERVICES PLAN CHANGE 88I and 148, TAMURE PLACE, RUAKAKA

Attn: District Plan Department
Whangarei District Council
Private Bag 9023
Whangarei 0148

Submitter Details

Full Name of Submitter

JB & RM Keith Trustees Ltd

Address for service of the Submitter

c/- Katrina Roos
Senior Planner
Cato Bolam Consultants
PO Box 1919
Whangarei 0140

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

Scope of submission

This is a submission in opposition to 88I and 148 of the Draft Urban and Services Plan Change. The specific provisions that this submission relates to are:

The rezoning of land identified as Lot 2 DP 350126 currently zoned as Future Urban, as Rural Production.

Introduction

JB & RM Keith Trustees Ltd, also trading as the Whitesands Peninsular Limited Partnership, are the owners of two titles of undeveloped residential land accessed via Tamure Place in Ruakaka. The land consists of the following Records of Title:

- Lot 1 DP 350126
- Section 18 Block XI Ruakaka SD

Lot 2 DP 350126 is the neighbouring property which is owned by Victory Square Group Holdings Ltd. The trustees are submitting on behalf of the owners of Lot 2 DP 350126.

In the Operative District Plan, the titles are zoned Future Urban, and are located within the Coastal overlay. In the Draft Plan Change, Lot 2 DP 350126 is proposed to be zoned Rural Production as per Map 46. Lot 1 DP 350126 and Section 18 Block XI Ruakaka SD are proposed to be zoned Medium Density Residential. Lot 1 DP 350126 has a resource consent for a residential subdivision SD0740202.01 which has not yet been given effect to.

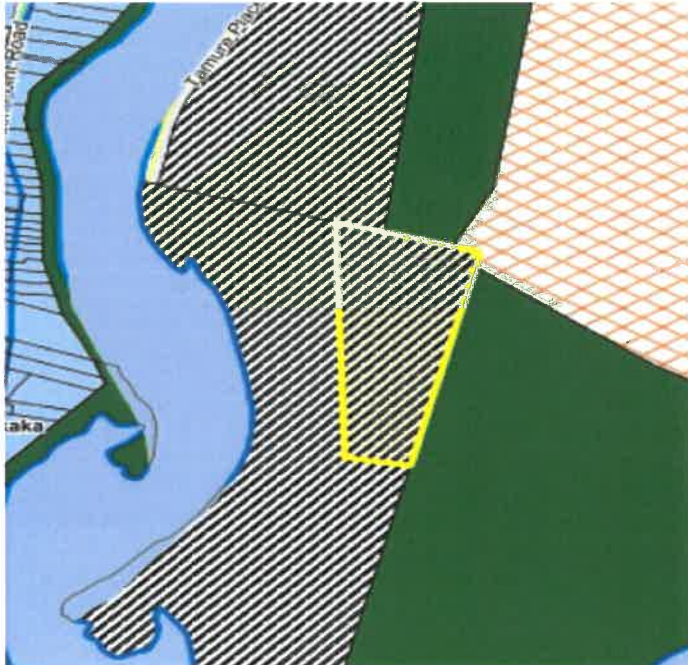


Figure 1: Current Zoning of Tamure Place

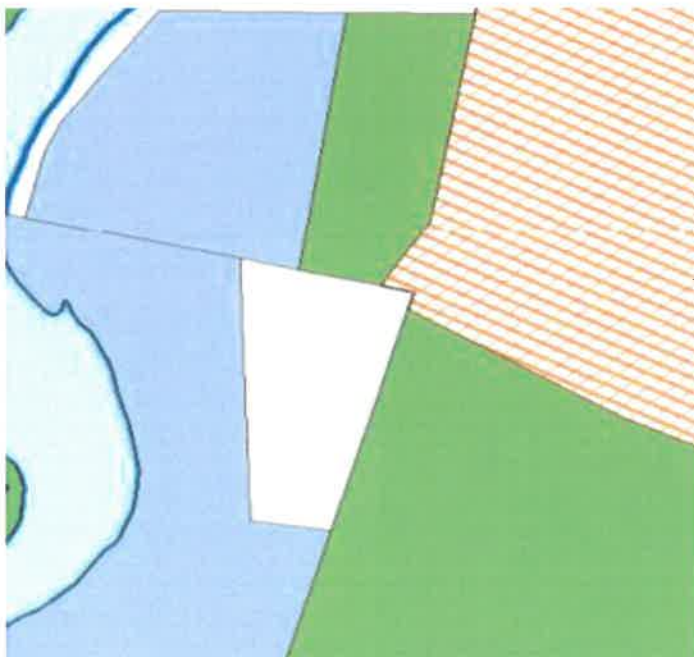


Figure 2: Proposed Zoning of Tamure Place

Background and Context

Lot 2 DP 350126 is zoned Future Urban but is currently in use as a horse training facility due to its proximity to Ruakaka Racecourse. Located between the trustees' Future Urban sites and the racecourse, which is zoned Ruakaka Equine Environment, it is an isolated site with no physical connection to other land zoned Rural Production. The site is not subject to natural hazards in the Northland Regional Council hazard maps aside from the Tsunami Evacuation Zone which effects all of Ruakaka. The site comprises sandy soils consistent with the surrounding area, and does not contain significant indigenous vegetation or sites of cultural or spiritual significance to Iwi, or any other features or notations which would hinder its future residential use.

Proposed Rezoning of Land Medium Density Residential

It is proposed that Lot 2 DP 350126 is zoned Medium Density Residential together with the sites owned by the trustees. It is our view that the zoning of this title as Rural Production is an oversight of Council. The proposed zoning is inconsistent with the current zoning of the site as Future Urban and inconsistent with the existing and proposed zoning of the adjoining sites, which are intended for residential purposes. The area is intended for residential expansion in both the Operative District Plan and the Draft Plan Change.

The existing use for horse training is temporary in nature and not an essential rural production activity. The adjoining Ruakaka Equine Environment, which is to be retained following the Plan Change, has sufficient capacity and flexibility in anticipated land uses to accommodate horse training facilities, so zoning of the land Medium Density would not result in a shortage of land for equine services. In addition, the proposed rezoning would provide additional housing capacity for Ruakaka.

Section 32 Evaluation Report

We have reviewed the Section 32 report for the Living chapters, which includes Medium Density Residential. The site Lot 2 DP 350126 is not mentioned in the report, and no reasons are given for zoning the land as Rural Production. As explained above, zoning of the land as Rural Production services no purpose as the site is isolated and not currently in use for rural production activities. It appears that the zoning of the land may be an oversight of Council which is easily remedied as suggested in this submission.

The rezoning of the land as Medium Density Residential as sought by this submission would be consistent with the residential zoning criteria of Tables 4 and 5 of the Section 32 report for the Living chapters, specifically:

- Lot 2 DP 350126 is contiguous with Living Zones on the fringe of Ruakaka (note, point 25 of the Section 32 report includes Ruakaka in PC 88I).
- It is not significantly hazard-prone as per the northland Regional Council Hazard Maps.
- It does not comprise Outstanding Natural Landscapes or Features or contain indigenous vegetation.
- It would not materially increase reverse sensitivity effects, being located next to sites zoned for residential and mixed-use purposes.
- Does not comprise highly versatile soils, being of poor sandy soils consistent with the surrounding area.

It is therefore concluded that the rezoning of the land as Medium Density Residential would be consistent with the criteria used for identifying residential land in the Section 32 report.

Summary of Amendments Sought

- Rezone the land identified in this submission (Lot 2 DP 350126) as Medium Density Residential.

Decisions for Council to Make

- Adopt rezoning of the land identified in this submission (Lot 2 DP 350126) as Medium Density Residential.

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

B

DECISION

Extra ordinary business

The resolution to accept Item 5.7 – COVID19 Response – Te Tai Tokerau Worker Redeployment Package as extra ordinary business was taken after the moments silence (refer Item 5.7 for resolution)

2. Declarations of Interest

Item 5.3 – 2020-21 Annual Operating Fund (Tranche 1)

Item 6.1 – Whangarei Art Museum request for change to funding model.

3. Apologies

There were no apologies.

4. Confirmation of Minutes of Previous Meeting of the Whangarei District Council

4.1 Minutes Whangarei District Council Meeting held 14 May 2020

Moved By Cr Vince Cocurullo

Seconded By Cr Shelley Deeming

That the open minutes of the Whangarei District Council meeting held on 14 May 2020, having been circulated, be taken as read and now confirmed and adopted as a true and correct record of proceedings of that meeting.

Carried

5. Decision Reports

5.1 Drinking - Water Quality Policy

Moved By Cr Greg Martin

Seconded By Cr Anna Murphy

That Whangarei District Council approve and adopt the Drinking-Water Quality Policy.

Carried

5.2 Urban and Services Plan Change Package - Decision

Moved By Cr Greg Innes

Seconded By Cr Shelley Deeming

That the Council:

1. Adopt the report and recommendation of the Hearing Commissioners for The Urban and Services Plan Changes (PC82A & B, 88A – J, 109, 115, 136, 143, 144, 145, 147, and 148) in terms

of Clause 10 of Part 1 of Schedule 1 of the Resource Management Act 1991.

2. Approve the notification of Council's decision be given in terms of Clause 10 and 11 of Part 1 of Schedule 1 of the Resource Management Act 1991.

**Carried
Unanimous**

5.3 2020-21 Annual Operating Fund (Tranche 1)

Moved By Cr Gavin Benney

Seconded By Cr Tricia Cutforth

That the Council approves grants from the 2020-21 Annual Operating Fund for Tranche 1, as follows:

1. Approves general Annual Operating grants, totalling \$1,304,880 as follows:

a. Citizens Advice Bureau Whangarei	\$70,000
b. Creative Northland	\$208,000
c. Mangakahia Sports Ground Society Inc	\$28,600
d. Multicultural Whangarei	\$6,000
e. Northland Craft Trust	\$51,195
f. Sistema Whangarei	\$20,575
g. Tai Tokerau Emergency Housing Trust	\$15,000
h. Volunteering Northland	\$17,900
i. Whangarei Art Museum	\$398,970
j. Whangarei Museum and Heritage Trust	\$434,210
k. Whangarei Quarry Gardens Trust	\$39,085
l. Whangarei Youth Space Trust	\$15,345.
2. Approves an inflation increase of 2.2% for all applicants totalling \$28,707 and allocates one-off additional grants totalling \$63,000 to:

i. Citizens Advice Bureau Whangarei for rent subsidy	\$8,000
ii. Northland Craft Trust for e-commerce implementation	\$15,000
Whangarei Museum and Heritage Trust for ICT upgrade	\$40,000.
3. Approves indicative levels of funding for the 2021-22 Annual Operating Fund at current 2020-21 funding levels as per Recommendation 1.

Carried

C

LIST OF NAMES AND ADDRESSES OF PERSONS TO BE SERVED

Lynda and Ross O'Riley

Northport Ltd

Craig Johnston and David and Robin Ford

The Ruakaka Economic Development Group

C&7 K Pyle

Marsden Maritime Holdings Limited

J Keith and Lakeside Business Park

The Ruakaka Parish Residents and ratepayers Association Inc

Margaret Hicks