

BEFORE THE ENVIRONMENT COURT

Decision No. [2012] NZEnvC 192

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-000204)

Appellant

AND WAIKATO DISTRICT COUNCIL

Respondent

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

Site Visit: 16 March 2012

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

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

Mr L F Muldownie 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

FINAL DECISION OF THE ENVIRONMENT COURT



A. That Variation 13 as amended in Annexure 1 attached hereto is confirmed. This includes changes to be incorporated into Variation 13 as soon as practicable. These are as follows:

1. **At Amendment 13.5.3, Schedule 21A: Te Kauwhata Structure Plan Living Zone Rules is to be replaced with a new Schedule 21A as set out in Appendix 1 attached to this order.**
2. **That after Schedule 21A: Te Kauwhata Structure Plan Living Zone Rules, insert new Schedule 21B: Te Kauwhata West Living Zone Rules, as set out in Appendix 2 attached to this order.**
3. **That in the Schedule of Amendments to the District Plan at 13.12 Appendix P: Meaning of Words, after 13.12.4 add a new definition for "Neighbourhood block" at P53d as set out in Appendix 3 attached.**
4. **At Amendment 13.9.1 - Amendments to Appendix A: Traffic Rules, A21 and A23 are to be amended as set out in Appendix 4 attached to this order.**
5. **At Amendments 13.11.1, Appendix Of: Urban Design Guide:**
 - a. **Immediately before Appendix Of, insert Appendix Og, Urban Design Guide Te Kauwhata West Living Zone as set out in Appendix 5 attached to this order;**
 - b. **At Appendix Of: Urban Design Guide, amend the title to read "Appendix Oga: Urban Design Guide Living Zone, Living Zone (New Residential), and Living Zone (Ecological)"; and**
 - c. **As a consequential change, re-label the rules throughout Appendix Oga to refer to Oga.**
6. **In the separate planning map volume for the District Plan, existing Maps 4 Lake Waikare Policy, 4 Lake Waikare Zones, 25A Te Kauwhata West Policy, 25A Te Kauwhata West Zones, 26 Te Kauwhata Policy and 26 Te Kauwhata Zones are to be replaced**



with the relevant maps set out in Appendix 6 attached to this order.

B. The other amendments sought by the appellants are rejected. There is no order as to costs.



REASONS FOR DECISION

Introduction

[1] The Court's Decision of May 2012 was subject to directions to finalise and circulate Structure Plans and provisions showing roading, stormwater and reserves and other concessions made at the time.

[2] The changes that have now been agreed include the following:

[a] The boundary adjoining the Country Living Zone:

[i] A 30m wide boundary width adjoining the Country Living Zone has been imposed, illustrated on the Subdivision Plan.

[b] Six metre (6m) front and rear setbacks are required as follows:

[i] Six metres from the road boundary for lots between 600m² and 800m², and those 800m² or greater;

[ii] The allotments abutting the Living Zone are required to be at least 800m² in size to achieve the required width. Allotments greater than 800m² must have a 6m setback from the rear boundary.

[3] There has been a consequential need to increase the number of rear lots to achieve the extra width required, and *Rule 21B.20.1A* has been amended to allow an increase from 5% to 10% rear lots. This achieves a greater degree of flexibility and better design outcomes. To avoid potential conflict with traffic on the bypass route, Te Kauwhata Road, the Council is to reduce the number of roads with access from three to two. This is shown on *Structure Plan Rule 21B.30*. There has also been an amendment to the Subdivision Plan so that, where practicable, lots adjoining Te Kauwhata Road are accessed from slip-lanes, leaving the potential for only 15 lots to have direct access onto Te Kauwhata Road.



[4] A new Condition G has been added to *Rule A21.1* that all entrances onto district arterial routes adjacent to the Te Kauwhata West Living Zone be from slip-lanes. There is also an associated landscaping requirement.

[5] The Council submits that this represents a good urban design outcome, and this is agreed by the Court. This includes a restriction on high boarded fences along Te Kauwhata Road addressed in new Condition *C21B.9*.

[6] Street treatments are now addressed through things such as *Figure 4B2*, *Figure 4B3*, underground lighting and power is already provided for under *Utility Rule 21.14.1(c)(i)* in Chapter 1. However, service corridors are now shown in respect of the figures.

[7] Staging of the subdivision is now shown in the *Staged Subdivision Rule 21B.31*, as part of the Te Kauwhata West Living Provisions. There is an allowance for earthworks and installation of utility services to provide for efficiencies of scale (see *Rule 21B.28.1*). The Structure Plan now shows reserves, including the waterway area Roading Plan. There is a general view that the new Roading Plan will reduce potentials for rat-runs or race tracks, and limits access to Te Kauwhata Road and utilises slip-lanes.

[8] Stormwater and ponding are already addressed under Variation 13, but changes to *Rule B5.4* and the inclusion of the Te Kauwhata Catchment Management Plan in Appendix 13 do assist in clarifying this issue. The Structure Plan also shows wastewater and developments for power and telephone.

[9] *Rule 21B.27* is removed as there is no longer a need for a visual barrier between the road and the Country Living area. There have been some consequential changes to the Urban Design Guide, and particularly Appendix Oga.

[10] The Subdivision Plan has now been amended, with changes to the roads and slip-lanes. New lots are now provided around the central reserve to balance the larger lots on the boundary. There has been a consequential change to the Zone Policy Maps and the 4 Lake Waikare Policy Zone, 25A Te Kauwhata West Policy Zone, and 26 Te Kauwhata Policy Zone maps are to be replaced.



ISSUES NOT AGREED

[11] The appellants seek five significant changes. All are opposed by the Council, and the Section 274 parties. In addition, the Section 274 parties do not agree to any additional recreational areas, and state they are disappointed the matter was raised so late in the process.

30m wide lots on Travis Road

[12] This is not a matter that was raised at the hearing, but the appellants contend that larger sections and setbacks would provide a more balanced appearance, with similar setbacks applying on both sides of the narrow Travis Road. The Court refers to paragraph [75] of its Decision, where it notes:

[75] ... 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.

[13] As a result, we clearly conclude that the decision was conclusive on this point, namely that 30m wide sections were not required on Travis Road, or any other road. Furthermore, we note that the Court does discuss the low-lying wetlands which provide an adequate buffer between the sites in that area. Accordingly, we reject the appellant's contention in this regard.

Planting strip along the Country Living Te Kauwhata West boundary

[14] The potential for a 2m wide planting strip was raised by Mr Mansergh in his report and is now being sought by the appellants. The Court in fact adopted a different approach in this regard in requiring larger sections. It is explicit in such a conclusion that it intended that these sections could be seen from the Countryside Living area, and that it was not the Court's intention that they be screened. This was clearly adopted by the Court as an alternative to planting or other screening attempts. Accordingly, this amendment is also rejected.

Stormwater Runoff

[15] There was a real concern by residents that silt transported by peak flow events would carry over into the Whangamarino Wetland and have a detrimental impact on that wetland. In this regard it is the intention that all applications for consent be



notified. This significant change in status would undermine the entire purpose of the appeal and zoning. It was clear that developers of this land currently had power to subdivide into rural residential lots, and were concerned that too much constraint would mean the more efficient higher density development cannot be adopted. It is clearly the intention of the applicant and as explicit in their Appendix B Engineering Standards, that the system be able to deal with surface water in the catchment in which it falls, and avoid an increase in the peak flow rate off the land of the residential areas. Furthermore, our inspection would indicate that if there was some development of the low-lying and stormwater areas on the subject property (which is intended), this would have a significant effect in moderating the impact of flood levels on the adjacent wetland.

[16] The Court's view is that the question of how this issue should be addressed is already dealt with by the Plan provisions, and that the argument is not a substantive ground to re-establish the activity as a discretionary or notifiable application. Accordingly, this concern is rejected also.

Protection of Historical Roses

[17] This is an issue that was not raised in any way at the appeal stage. The roses are planted on private property, and there is limited control that the Council or other parties have in respect of them. This is a matter, however, that can be considered by the developer and/or landowner in due course, and may benefit from useful discussion and liaison between the residents group and the landowners in due course. The Court accepts that it is not an issue within the jurisdiction of this appeal and was not the subject of any evidence or determination by this Court.

Recreational Areas

[18] This is not an issue that was raised during the hearing, but the Court did indicate that it considered that there should be adequate connections so that the subdivision was walkable. The re-design of the subdivision appears to have addressed this issue in part. The Council argues that the issue about further reserves was raised on 5 July. The Court's perspective was that there was no evidence addressing the issue of recreational reserves. On the face of the evidence before the Court, i.e. the subdivision plans, reserves appeared to be relatively generous when waterways and other passive recreation areas were taken into account. This Court is certainly not



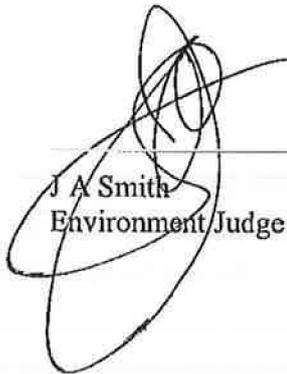
prepared to re-open the appeal at this point in time, having heard all the evidence. Accordingly, this ground is rejected also.

CONCLUSION

[19] The provisions now proposed and contained within the various documents annexed hereto are appropriate, and should be incorporated within the Variation in Plan forthwith. We note that no party has sought costs in this matter, and accordingly there is no order for costs.

SIGNED at AUCKLAND this 7th day of Sept 2012

For the Court



J A Smith
Environment Judge

