

**IN THE ENVIRONMENT COURT**

	<b>ENV No.</b>
<b>IN THE MATTER</b>	of an appeal pursuant to clause 14(1) of Schedule 1 to the Resource Management Act 1991
<b>BETWEEN</b>	<b>JAMES MCDONNELL LIMITED</b>
	<b>Appellant</b>
<b>AND</b>	<b>HOROWHENUA DISTRICT COUNCIL</b>
	<b>Respondent</b>

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**NOTICE OF APPEAL TO THE ENVIRONMENT COURT IN RESPECT OF DECISION ON PROPOSED PLAN CHANGE 4 TO THE HOROWHENUA DISTRICT PLAN 2015**

**15 August 2022**

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 **Simpson Grierson**  
Barristers & Solicitors

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**To:** The Registrar  
Environment Court  
Wellington

1. James McDonnell Limited (**JML**) appeals the decision of Horowhenua District Council on Proposed Plan Change 4: Tara-Ika Growth Area to the Horowhenua District Plan 2015 (**PPC4**).
2. Brendan McDonnell made a submission on PPC4 on behalf of JML and, in conjunction with Roger Truebridge, made a further submission.
3. JML is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).
4. JML received notice of the decision on 4 July 2022.
5. The decision was made by an Independent Hearing Panel appointed by the Horowhenua District Council under section 34A of the RMA.
6. The parts of the decision that JML is appealing are the aspects relating to:
  - (a) Policy 6A.1.2.
  - (b) Open Space zoning in the Central Open Space Area.
  - (c) Tara-Ika Structure Plan, including:
    - (i) Open Space zoning in the Central Open Space Area;
    - (ii) Education Overlay;
    - (iii) Location of Secondary Reserves;
    - (iv) How primary and secondary features are depicted.
  - (d) Planning Map 30, including in particular the Open Space zoning depicted to the north of the Central Open Space Zone.
  - (e) The subdivision rules that relate to the Structure Plan, including:
    - (i) Rule 15A.8.2.2;
    - (ii) Rule 15A.8.3.4;
    - (iii) Rule 15A.8.4.1; and
    - (iv) Rule 15A.8.5.1.

7. The general reasons for JML's appeal are that the aspects of the decision to which the appeal relates:
- (a) Will not promote sustainable management and are contrary to Part 2 of the RMA.
  - (b) Do not represent the most appropriate way to achieve the purpose of the RMA and the objectives and policies of the Horowhenua District Plan 2015 (**Plan**).
  - (c) Will not achieve integrated management of the Tara-Ika area, as is required under sections 74(1)(a) and 31(1)(a) of the RMA.
  - (d) Will not provide for the efficient development of housing capacity for the Tara-Ika area, as is required under sections 74(1)(a) and 31(1)(aa) of the RMA.
  - (e) Compromise the extent to which, and the timeliness with which, the Plan gives effect to the National Policy Statement on Urban Development 2020 (**NPS-UD**) as required under sections 75(3)(a) and 74(1)(ea) of the RMA.
  - (f) Fail to account for how the Structure Plan will be used at the different stages of the consent process.
8. More specifically and in addition to the reasons outlined above, JML considers that:
- (a) The reference in Policy 6A.1.2 to the Central Open Space Area being located directly opposite the Commercial Area is unclear and creates unnecessary uncertainty.
  - (b) Detailed planning and engineering design for significant infrastructure will only become apparent once subdivision has begun, including for roads, stormwater and reserves. That detailed planning and design is likely to lead to development that differs from the land's zoning, which in turn is likely to lead to increased resource consenting challenges (for example in relation to development on any residential lots with an Open Space zoning).
  - (c) The above challenges are likely to necessitate further plan changes to correct the zoning in this area either before it could be further developed or to subsequently reconcile the zoning with the land use.
  - (d) This unnecessarily restricts development capacity in the Tara-Ika area, particularly with regard to housing.
  - (e) It also risks inconsistent development of the Tara-Ika area, with multiple plan changes to correct the zoning required.

- (f) By requiring subdivision consents to include conditions that require compliance with the Structure Plan, the decision incorrectly assumes that the Structure Plan must be strictly adhered to in every subdivision. It imposes unnecessary rigidity and does not appropriately reflect the status of the Structure Plan or the practical realities outlined in paragraph (b) above.
- (g) The Plan currently shows schools with an underlying Residential zoning, but the education overlay in PPC4 is currently zoned Open Space. The approach in PPC4 ought to be consistent with that taken in the Plan.
- (h) The decision concluded that Secondary Reserves should have an underlying Residential zoning. However, this is not depicted on Planning Map 30.

9. JML seeks the following relief:

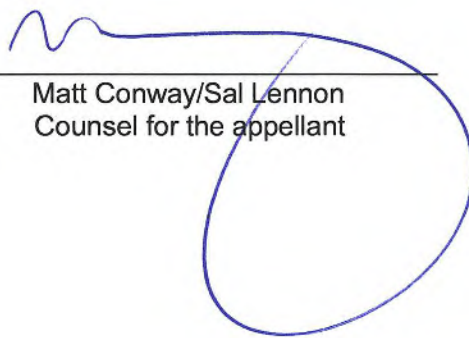
- (a) That Policy 6A.1.2 be amended to delete the reference to the Central Open Space Area being opposite to the Commercial Area.
- (b) That the Open Space zoning in the Central Open Space Area depicted on Planning Map 30 and the Structure Plan, be removed.
- (c) That the same Open Space zoning in the Central Open Space Area be replaced by Residential zoning.
- (d) That the Structure Plan be amended to clearly show where the Secondary Reserves are located.
- (e) That the Structure Plan be amended to clearly show which features are primary features and which are secondary features, including but not limited to the Central Open Space Area.
- (f) That Planning Map 30 be amended so that all Secondary Reserves have underlying Residential zoning.
- (g) That references to the Structure Plan be removed from the conditions in the subdivision rules, including:
  - (i) Rule 15A.8.2.2;
  - (ii) Rule 15A.8.3.4;
  - (iii) Rule 15A.8.4.1; and
  - (iv) Rule 15A.8.5.1.

- (h) That references to the Structure Plan be replaced by references to the subdivision consent in the conditions in the subdivision rules, including:
  - (i) Rule 15A.8.2.2;
  - (ii) Rule 15A.8.3.4;
  - (iii) Rule 15A.8.4.1; and
  - (iv) Rule 15A.8.5.1.
- (i) Such further, alternative or consequential relief as the Court sees fit to respond to the matters raised in this appeal.
- (j) Costs.

10. The following documents are attached to this notice:

- (a) a copy of JML's submission and further submission (with a copy of the submission opposed or supported by JML's further submission);
- (b) a copy of the relevant decision; and
- (c) a list of names and addresses of persons to be served with a copy of this notice.

DATED at *Wellington* this *15<sup>th</sup>* day of *August* 2022

  
Matt Conway/Sal Lennon  
Counsel for the appellant

**Address for service of appellant:**

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## **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-

- (a) 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
- (b) 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 Act for a waiver of the above timing or service requirements (see Form 38).

### *Advice*

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