

**IN THE ENVIRONMENT COURT  
AT WELLINGTON**

**ENV-2022-WN**

**I Te Koti Taiao o Aotearoa  
Whanganui-a-tara Rohe**

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

**AND**

**IN THE MATTER** of an appeal under Clause 14(1),  
Schedule 1 of the Act in relation to the proposed  
Horowhenua District Plan

**BETWEEN** **The Prouse Trust Partnership and SJ & KM Prouse**

Appellants

**AND** **Horowhenua District Council**

Respondent

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**NOTICE OF APPEAL**

12 August 2022

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KM Prouse  
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Levin, 5510  
Wellington

Email: karen.stephen@xtra.co.nz

**TO:** The Registrar  
Environment Court  
Wellington

### **Notice of Appeal**

1. The Prouse Trust Partnership and SJ & KM Prouse (the **Appellants**) appeal against a decision of the Horowhenua District Council on Proposed Plan Change 4: Tara-Ika Growth Area.
2. The Appellants made a Submission 04/38 on Proposed Plan Change 4: Tara-Ika Growth Area.
3. The Appellants also made further Submissions FS04 /34, FS04/35, FS04/74 and FS04/75.
4. The Appellants are not trade competitors for the purposes of section 308D of the Resource Management Act 1991 (**Act**).
5. The Appellants are directly affected by Proposed Plan Change 4: Tara-Ika Growth Area as set out below.
6. We received notice of the Decision by Horowhenua District Council on 4 July 2022.

### **Background Statement /Context**

7. Lot 2 DP 86925 comprises 31.6 acres and it has been home to 5 generations of the Prouse family since 1891 when Ashleigh homestead and its surrounding heritage farming outbuildings were built. The setting, trees, gardens and surrounding curtilage are important to the cultural landscape of the Ashleigh Homestead. The property and heritage buildings are connected to the Early European settlement of Levin, to early pioneering settlement and history, and to the contribution of Prouse family ancestors to the establishment of the township.
8. The family has strong and deep connections to this history and our connections with this land, and there are many layers of family history, and early European history on this site. Ashleigh homestead is the second oldest house in Levin.

9. Although not listed under the Pouhere Taonga Act 2014, the Ashleigh homestead and outbuildings are an archaeological site due to their pre 1900 classification under the Pouhere Taonga Act and under section 6(f) RMA.
10. The family has undertaken a strong advocacy role for this heritage site both in this plan change process and in seeking to ensure the homestead and its curtilage setting remains, and is protected from the O2NL design and designation process. The interface of these two processes will have cumulative adverse effects including on cultural and heritage values, amenity and our ability to sustainably manage of our land and buildings in ways that enable us to provide for inter-generational social, economic and cultural well-being.

### **General reasons for the appeal**

#### **A. Chapter 6 Objectives, Policies and Chapter 15 A Rules together with Structure Plan 013**

##### **Reasons:**

11. The cumulative impacts on Lot 2 DP 86925 were not adequately considered by the commissioners.
12. Lot 2 DP 86925 is at the interface of the Tara-Ika Plan Change area and O2NL within both identified areas, and will experience cumulative significant adverse effects which include unreasonable constraints on future sustainable uses.
13. A series of submissions and requests from Waka Kotahi were made that we have made further submissions on. Subsequent or ongoing changes in Waka Kotahi's position occurred, in liaison with Horowhenua District Council, even after the public hearing. The full impact of these changes will not be known until the process for Waka Kotahi's Notice of Requirement for a designation has been completed.
14. The location and extent of the Otaki to North Levin Corridor overlay on the Structure Plan Map remain indicative only. It is unclear what land use constraints will ultimately be implemented by the overlay and the extent to which these will conflict with the residential activity areas/zones on the Structure Plan Map including those on Lot 2 DP 86925.

15. Waka Kotahi has yet to identify the noise mitigation measures and visual and amenity planting mitigation to be provided within its land or on other land within the Otaki to North Levin Corridor overlay. The resulting uncertainty for the Tara-lka Plan change area and Lot 2 DP 86925 are such that these appeals should not be heard until the NOR process for the O2NL expressway project designation is completed.
16. The proposed regime is not the most appropriate way to achieve the objectives of the Plan.

**Relief Sought:**

17. We seek deferral of this appeal until the NOR process for the O2NL expressway project designation is completed and/or the land use activities enabled within the expressway corridor is adequately clarified.
18. We seek changes to the Plan Change Objectives, Policies, Rules and Structure Plan to accurately reflect the outcomes of the Waka Kotahi NOR process for the O2NL expressway project designation.
19. We seek appropriate BPO noise mitigation outcomes for affected Plan Change areas including land to be zoned residential to be provided by Waka Kotahi within land owned by it in the O2NL Corridor.
20. We seek appropriate visual and amenity planting mitigation outcomes for affected Plan Change areas to be provided by Waka Kotahi within the O2NL Corridor.

**B. Redwood Grove Road Connection**

21. We are appealing the rejection of our submission 04/38.03 requesting the removal of the local road connection from Lot 2 DP 86925 from into Redwood Grove.

**Reasons:**

22. It is not logical or sensible to provide for and require a road connection into an already established Redwood Grove address. The Commissioners failed to take

into account the valid reasons given by Redwood Grove submitters and ourselves on this issue.

23. A road connection in this location is unnecessary, inappropriate and unreasonable.
24. The proposed road connection is not the most appropriate way to achieve the objectives of the Plan.
25. The proposed road network can be adequately designed and delivered by less onerous means.

**Relief Sought:**

26. The removal of the road connection into Redwood Grove from the collector road (or any substitute road) shown on Lot 2 DP 86925.

**C. Collector Road Decision**

27. The Structure Plan Map 013 includes an unnecessary Collector Road that bisects the whole of Lot 2 DP 86925 from north to south.

**Reasons:**

28. Any need for a Collector Road at this location cannot be reasonably determined until the location of the proposed Queen Street Overbridge across the proposed O2NL expressway and its connection into the Tara-lka road network is finally determined.
29. The adverse effects of a Collector Road at this location within close proximity to and parallel to the proposed O2NL expressway have not been adequately considered.
30. Those effects include road traffic effects and the visual impact of the proposed Queen Street Overbridge across the proposed O2NL expressway and the eventual connection with the proposed Tara-lka road network.
31. The proposed Tara-lka road network as shown on the Structure Plan Map is already adequately served by Collector Roads.

32. Any future road in this location is intended to be developed in conjunction with any residential subdivision of Lot 2 DP 86925 and, given the dimensions of Lot 2 DP 86925 and its proximity to the proposed O2NL expressway and any no-build overlay and/or market impact resulting from an expressway designation, the scale of any sustainable future residential development will not warrant a collector road function in this location.
33. Additionally, the impact to the heritage values of Lot 2 DP 86925 of a Collector Road and its connections will be significantly adverse and inappropriate.
34. For these reasons, any road in this location should be downgraded to a Local Road or removed from the Structure Plan Map altogether.
35. The proposed regime is not the most appropriate way to achieve the objectives of the Plan.
36. Development and management of roading assets can be adequately delivered by less onerous means.

**Relief Sought:**

37. For the above reasons, any road in this location should be downgraded to a Local Road or deleted from the Structure Plan Map altogether.
38. Any alternative local road should be designed and located to provide appropriate recognition of the heritage and history of Ashleigh Homestead, its outbuildings and its setting, with flexibility for staging and/or subdivision of a few lots off Queen Street East, that are not dependant on the whole road being consented and built.

**D. Specific objectives, policies and rules:**

39. We are appealing the rejection of our submission 04/38.06 on Policy 6A.2.3 & provisions, & Rule 15A 8.1.2(a) (xiii) and 15A 8.1.2(b) (ii) Structure Plan (Note - Rule 15A 8.1.2 has now become 15A.8.2.2).

**Rule 15A 8.2.2(b) (ii) Structure Plan**

40. A condition is to be imposed on the resource consent for any subdivision that creates additional allotments and involves a site/part of a site that contains a

roading asset as indicated by Structure Plan 013 requiring the roading asset to be constructed and vested with Council to the full extent indicated on the Structure Plan.

41. A condition will be imposed on the resource consent of any subdivision that creates additional allotments and involves a site/part of a site containing a park or reserve as shown on Structure Plan 013, requiring the site/part of site containing the reserve to be vested within Council

**Reasons:**

42. Operation of the 15A 8.2.2 (b) (ii) rule and its requirement to build the roading asset to the full extent indicated on the Structure Plan and to vest it with the Council will impose unreasonable and unnecessary costs on any landowners seeking to undertake a subdivision to create 1 or 2, or a few, extra lots/titles (a small-scale subdivision).
43. In the case of Lot 2 DP 86925 a subdivision to create a few lots at the northern (Queen Street East) end would necessitate unnecessary construction of a 580-metre-long road with no on-site utility or benefits. Operation of the proposed rule is potentially ultra vires.
44. Additionally, constraints on achieving consent for the construction of roading in relation to areas of alleged cultural or natural significance could operate to effectively sterilise any part of Lot 2 DP 86925 from future residential development.
45. Our concerns as to the staging of subdivision, fair apportionment of subdivision costs and that land for parks, reserves, wetlands would be acquired by stealth have not been addressed.
46. The proposed regime is ultra vires.
47. The proposed regime is not the most appropriate way to achieve the objectives of the Plan.
48. Development and management of roading assets can be adequately delivered by less onerous means.

**Relief Sought:**

49. That Rule 15A 8.2.2 be deleted or at least amended to operate as assessment criteria to the extent necessary to prevent unreasonable and inappropriate or ultra vires outcomes.

**Habitat for Culturally Significant Species.**

50. We are appealing the notation "Habitat for culturally significant species" that was added to the proposed Structure Plan as to an overlay area on Lot 2 DP 86925 after submissions closed.

**Reasons:**

51. The 11<sup>th</sup> hour imposition of this overlay and notation and have impacted on us in ways that were not evident or foreseeable in the notified version, and on which basis we made our original submissions.
52. The ecological survey report which provided the basis for the overlay in respect of fauna (skink) and flora (kawakawa) was undertaken for the O2NL expressway project and only considered locations proximate to the O2NL corridor. The field survey did not include the wider plan change area or existing reserves within, or in the immediate vicinity of, the plan change area.
53. The ecological survey located just a single skink in the overlay area itself raising doubt as to the justification for rules constraining activities there or elsewhere on the site or resulting in unreasonable and unsustainable costs as a direct consequence.
54. Within and at the edges of the Lot 2 DP 86925 overlay area are a significant number of aged and unstable exotic trees that must have been obvious to the Commissioners. Regardless, the Decision has unreasonably rejected our concerns about health and safety conditions for the site of the proposed overlay and its surrounds.
55. Kawakawa is widespread in the Horowhenua District. Skink habitat may not be so common. It is inappropriate and unreasonable that concerns for alleged skink habitat introduces constraints on the safe and sustainable management of aged or unhealthy exotic trees, when skink habitat occurs in other nearby locations.



56. The proposed overlay is supported by the following late policy and rule additions:

**Policy 6A.1.10**

*Require ecological areas, transport corridors, stormwater reserves and open space reserves to be designed and managed in a way that protects and enhances habitat for Muaūpoko taonga.*

**Subdivision rules 15A.8.2.2, 15A.8.1.2 (Refer to Rule 15A.3.1(a))**

(a) *Matters of Discretion*

...

(xi) *Effects on significant sites and features, including natural/cultural archaeological and historical sites.*

(xii) *Effects on habitats of culturally significant species identified on Structure Planned the proposed methods to avoid, remedy or mitigate these effects.*

57. Which give rise to potential issues that could be unreasonably difficult to navigate and/or untenable in the context of a consenting process for viable residential subdivision.

58. The proposed overlay is not the most appropriate way to achieve the objectives of the Plan.

59. Management of habitat for culturally significant species can be adequately dealt with by less restrictive means for example, by way of conditions on any relevant consent applications including as to relocation.

**Relief sought:**

60. The removal of the overlay and notation from the Structure Plan 013, and the related policy and rules.

**Further or alternative relief sought:**

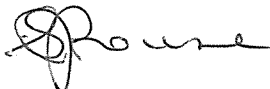
61. We seek such further, other, alternative, or amended relief as may give better effect to the matters raised in or touching on this Notice of Appeal and our submissions and further submissions.

**62. Attached Documents:**

We **attach** a copy of our submission and further submissions to this Notice of Appeal.

We seek the leave of the Court to dispense with attaching to this Notice of Appeal a copy of the Decision and to dispense with attaching the list of names and addresses of persons to be served with a copy of this notice.

Dated this 12<sup>th</sup> day of August 2022

 K.M. Prouse,

Signature of Appellants

**Address for Service for the Appellants:**

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Levin, 5510

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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:

- 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) 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).

*Advice*

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