

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV –

IN THE MATTER of an appeal under clauses 29(6) and
14(1) of Schedule 1 of the Resource
Management Act 1991

AND

IN THE MATTER of Private Plan Change 25:
Warkworth North, to the Auckland
Unitary Plan - Operative in Part

BETWEEN **MIDDLE HILL LIMITED AS
TRUSTEE OF THE TYNE TRUST**

Appellant

AND **AUCKLAND COUNCIL**

Respondent

AND TO **TURNSTONE CAPITAL LIMITED**

Requester

**To: The Registrar
Environment Court – Auckland**

**NOTICE OF APPEAL TO THE ENVIRONMENT COURT AGAINST
THE DECISION ON PRIVATE PLAN CHANGE 25
TO THE AUCKLAND UNITARY PLAN**

12 May 2020

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DECISION APPEALED

1. Middle Hill Limited, as trustee for the Tyne Trust (**Appellant**), appeals against a decision of the Respondent, the Auckland Council, on the following matter (the **Decision**):

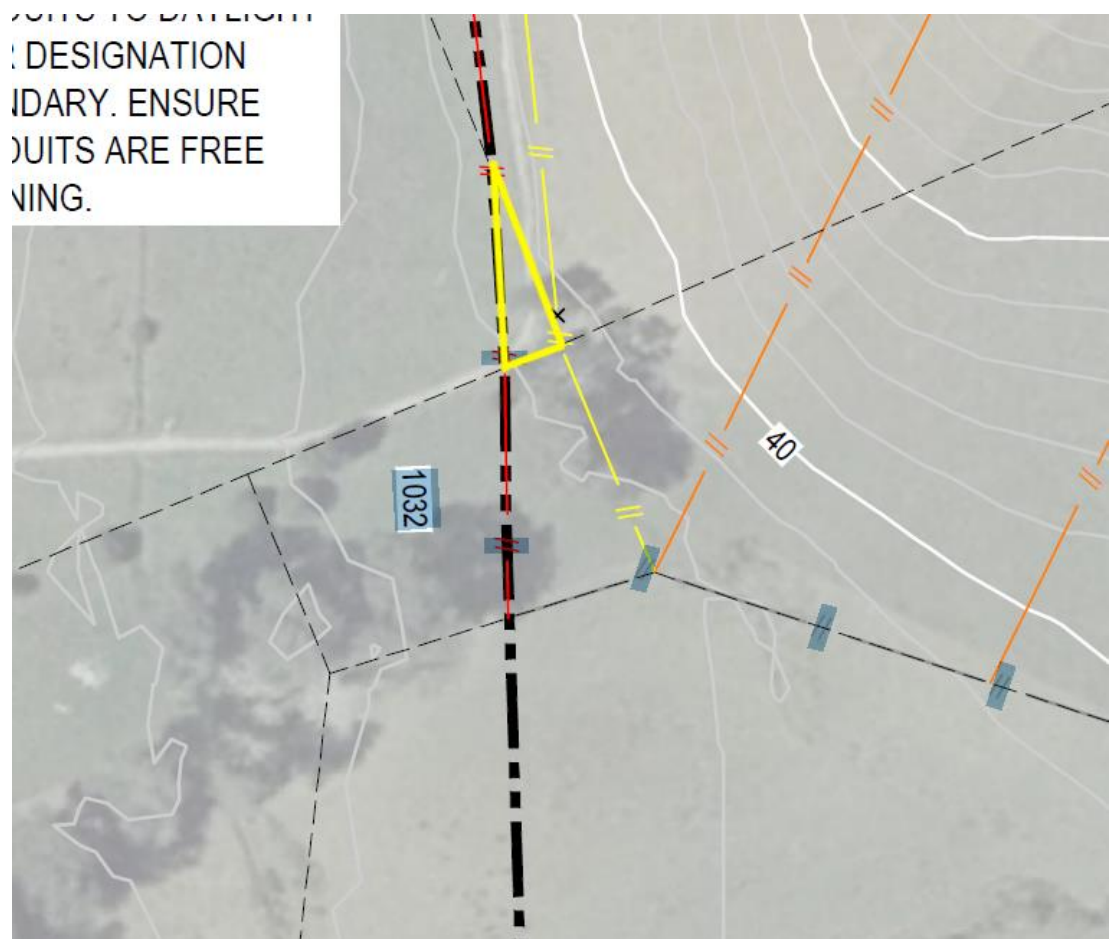
Private Plan Change 25 to the Auckland Unitary Plan – Operative in Part for Warkworth North, under Clause 21 of the 1st Schedule of the Act (**Plan Change**).

2. The Appellant made a submission on the Plan Change (Submitter number 13).
3. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**Act**).
4. The Appellant received notice of the Decision on 27 March 2020.
5. The Decision was made by commissioners appointed by the Respondent.

PROVISIONS BEING APPEALED AND RELIEF

6. The Appellant is appealing parts of the Decision as summarised below;
 - a) Warkworth North - Zoning Plan 1 for the Appellants land, including, but not limited to, retaining a Future Urban Zone (**FUZ**) rather than live zoning to the Business Mixed Use Zone (**BMUZ**) as sought by the Appellant in the Hearing.
 - b) Warkworth North - Zoning Plan 1 for the Appellants land and the demarcation between the Mixed Housing Suburban (**MHS**) and Mixed Housing Urban (**MHU**) zones.
 - c) Warkworth North – Zoning Plan 1 – the extension of the relevant adjoining zones being sought (including BMU), over the land between the Appellants land (see map below), and the final boundary of the designation land owned by the New Zealand Transport Agency (**NZTA**). This land is currently outside the Plan Change boundary and is land in which the Appellant has an interest under s 40 of the Public Works Act 1981.
 - d) Warkworth North – Precinct Plan 2 – Multi Modal Connections and Open Space, including the extensions of the “Collector Road” and the “Other Road” to service the land referred to in (c) above.

- e) In the alternative, if found necessary to achieve “integrated management”, or to enable the construction of the Western Link Road (**WLR**) and/or the “Other Road” (Precinct Plan 2), an appropriate live zone(s) is sought for the land that is FUZ, between the Appellants land and the indicative WLR (refer to the second map below, and Plan 1 and Precinct Plan 2 in Appendix 3 of the Decision).
- f) For the avoidance of doubt, there is no appeal regarding the zoning and precinct plans for the area covered by Sub-Precinct A (refer to Precinct Plan 1).
- g) Subject to the relief sought in (c) above, the boundary of the Decision on the Plan Change has excluded a small triangle of land, that was in the notified version, and this parcel should be zoned MHS. The land is shown below, and is on the western boundary, and can be identified by comparing Appendix 3 – Plan 1 Zoning Maps & Precinct Plan 1, with the now deleted notified plan in Appendix 4, of the Decision:

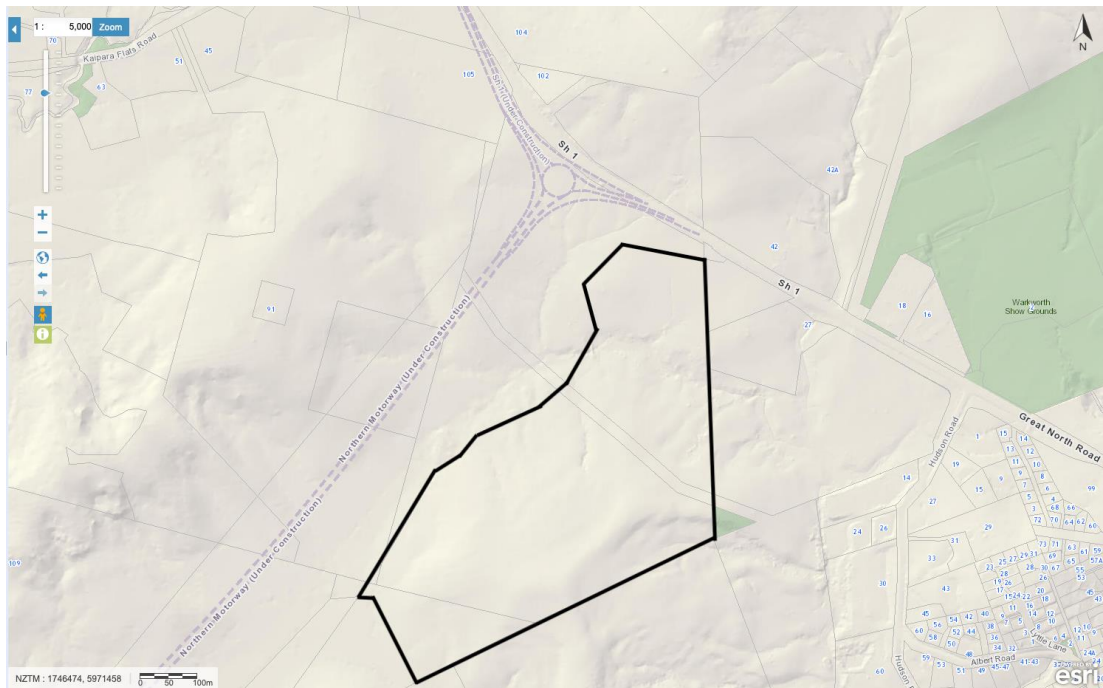


- h) The objectives, policies and rules to the extent that they restrict the development of the Appellants land until the WLR is planned and constructed.

- i) The Activity Table, including activities A4 and A5 in particular, for the Warkworth North Precinct that, with other provisions in the Plan Change, restrict the ability of the Appellant to develop the live zoned residential land (MHS and MHU) on its property (Plan 1). The activity status appears to be non-complying without the WLR.
- j) I552.6.1 - Standard for the WLR, including the "Note".
- k) I552.6.5 - Standard for Staging that restricts the ability of the Appellant to develop its MHS and MHU land (and FUZ land), including (2) that does not allow occupation, and the construction of the WLR simultaneously from each end, without connecting the WLR in the middle.
- l) I552.8.2 - Assessment Criteria for transport infrastructure (1).
- m) All of the provisions that seek to ensure that construction of the WLR and other roads, concurrently with development, need to ensure that the roads are formed and constructed to the legal boundary of neighbouring properties.
- n) Other provisions for which amendment is required to implement the relief sought above, and for the reasons outlined below.

THE LAND AFFECTED

7. The Appellants land affected by the Plan Change is 25.8 ha at No 63 State Highway 1. Therefore the Appellants land is over 25% of the Plan Change area.
8. A small part of the land has been in the Civil family for several generations (since the 1880's) and the majority of the land pertinent to this appeal was purchased in 1958. The affected land is located in Precinct - Warkworth North (Precinct Plan 2). The plan below shows the Appellants land to the East of the new motorway.



9. The Appellant also has an interest in land between the parcel shown above and the final motorway designation and seeks relief regarding that land as set out in 6(c) above.

REASONS FOR APPEAL

10. The reasons for the appeal include, but are not limited to, the following:
- a) The Decision on the Plan Change does not:
 - i. meet the purpose and principles in Part 2 of Act;
 - ii. allow the Respondent to achieve its functions as a unitary authority under sections 30 and 31 of the Act, and in particular;
 - a. ensure (“shall”) that there is sufficient development capacity for housing and business land to meet demand (s 31(1)(aa)); nor
 - b. integrate landuse and infrastructure with objectives, policies and methods (s 30(1)(gb)). By retaining the FUZ land the Decision compromises the planning and the construction of the WLR and the “Other Road”. The WLR is a critical linkage in the strategic transport network that is provided for in the objective and policies of the Plan Change.

- c. Therefore the FUZ zoning is inconsistent with the higher order statutory planning instruments and does not achieve the integrated management of natural and physical resources.
 - d. The Decision did recognise that the FUZ could impede the building of the entire WLR (par 89), but did not put sufficient emphasis on this constraint, and did not reconcile this finding with the requirements that are intended to ensure the WLR is constructed in a timely manner.
- iii. satisfy the s 32 and s 32AA requirements of the Act, and in particular, the need to assess the benefits and costs of the FUZ zoning, regarding opportunities for economic growth and employment, that will be reduced as a consequence (s 32(2)(a));
 - iv. satisfy the matters that must be considered for a Plan Change (s 74);
 - v. “give effect” to the higher order statutory planning instruments as is required (s 75(s)) and as explained further below;
 - vi. meet the requirements of Schedule 1 of the Act;
 - vii. take into account that the Respondent has discretion to approve with conditions, or decline, the subsequent landuse and subdivision consents that must be obtained before any development can proceed. The consent application information requirements, in the Auckland Unitary Plan – Operative in Part (**AUP**), would satisfy any gaps (denied) that the Decision identified that led to the BMUZ sought by the Appellant being rejected;
 - viii. avoid, remedy and mitigate, significant adverse environmental effects, and in particular, the adverse effects on social and economic wellbeing from a shortage of housing choices and job opportunities, and the negative effects of traffic congestion;
 - ix. place sufficient weight on the expert evidence provided by the Appellant in the Hearings, and put too much weight on the evidence of some of the Respondents witnesses;
 - x. recognise the significant urban design and amenity contribution that development of the Appellants land can make, being the Northern

“gateway” to Warkworth. The BMUZ has better design controls than alternative zoning options; and

- xi. demonstrate sound resource management practice.
- b) In particular, and without limiting the generality of the above, the Decision does not:
- i. give effect to the National Policy Statement – Urban Development Capacity (**NPS – UDC**) and in particular;
 - a. ensure that there is sufficient urban development capacity that is zoned, serviced and commercially viable; and
 - b. ensure that there will be an adequate number of developers, that can produce serviced lots, to avoid market distortions due to a lack of competition (NPS-UDC section 3.23.1).
 - ii. give effect to the relevant objectives and policies of the AUP – Regional Policy Statement (**RPS**) and in particular;
 - a. Chapter B2 and Objectives B2.2.2(3) (sufficient development capacity) and (5) (integrated development and infrastructure);
 - b. Objective B2.4.1(6) which has a minimum target for sufficient feasible development capacity. Urban development has to be “avoided” on FUZ zoned land (AUP H18.2(4), but the Appellants land is supposed to be developed from 2022 according to the Respondents Future Urban Land Supply Strategy;
 - c. Policy B2.2.2(1) that requires the provision of at least 7 years of live zoned land considering any constraints on subdivision and development. The Appellants witnesses have provided evidence that there is as little as 2-3 years vacant capacity left in Warkworth without the Plan Change;
 - d. Policy B2.2.2(7) which enables rezoning of FUZ land to accommodate growth. The BMUZ sought by the Appellant is a more intensive and flexible zoning, than the Light Industry Zone (**LIZ**) in the notified version of the Plan Change. BMUZ will best achieve the overall strategic direction in the AUP, of a quality compact urban form (a), and provide a range of housing types and employment choices (b), that is integrated with infrastructure (c).

- e. At paragraphs 85 – 87 of the Decision it is properly acknowledged that the Appellants land is suitable for live zoning to some form of business use, potentially with “bespoke” provisions, and that this is likely to occur sooner rather than later. It appears from the Decision that the Panel considered there was insufficient information about future demand and the mix of activities that would take place if the Appellants land was zoned BMUZ (par 83). The Appellant maintains that sufficient evidence was provided on the Plan Change for its land to be zoned BMUZ as part of this process, rather than remain FUZ. The FUZ prevents any subdivision or urban development, for the foreseeable future.
- f. Chapter B3 – Infrastructure, because the FUZ zone will prevent access being formed to the Appellants landlocked site (Policy B3.3.2(2)). It will also prevent the practical completion of the strategic WLR for its entire length (Policy B3.3.2(4)(a) & (5)(a)). To this extent, and if deemed necessary, the Appellant’s alternative relief requests an appropriate live zone(s) of the land between it and the WLR, as outlined in 6(e) above.
- g. The Decision and the FUZ does not recognise the significant investment in public infrastructure in Warkworth, including water and wastewater by Watercare, and that development is necessary to recoup that public investment.
- h. Furthermore, the FUZ will undermine the funding potentially available for the construction of the WLR to collector road standard, in the Precinct - Warkworth North, and therefore is contrary to RPS Policy B3.3.2(5)(a). Funding would typically be achieved through vesting and construction as land is developed, and with developer agreements between land owners, the Respondent, its CCO’s, and the New Zealand Transport Agency. This funding mechanism has been provided for in the “Note” in Standard I552.6.1, but its legal planning status (under the Act) and the extent of its application, is currently unclear.
- i. The central and local government infrastructure response to Covid 19 is providing new funding sources to bring forward the planning and construction of infrastructure, such as the WLR. Therefore, the previous timeframe estimates for the completion of the

strategic roading network for Warkworth could change in the near future and be accelerated.

- j. The consenting/designation process for major infrastructure, such as the WLR, is currently being changed with reforms to the Act. Therefore, planning and construction of the WLR could be significantly shortened from previous forecasts, and approval costs reduced.
- iii. ensure consistency with the relevant objectives and policies of the AUP – District Plan section (**District Plan**) including Chapter E27 – Transport.
- iv. achieve internal planning consistency because the FUZ zoning is incongruent with the Plan Change objectives and policies; including I552.2(1)(a) & (2) and Policy I552.3(2), (7), (8) & (10)(a). These objectives and policies are all intended to ensure the construction of the WLR along its entire length, to at least to collector road standard in the first instance, while being future proofed to an arterial standard.
- v. allow the Appellant to achieve the Plan Change objectives and policies intended to ensure the completion of the WLR in a timely manner on its land. This is because of the restrictive activity status (non-complying) for residential development in the MHS and MHU zones, and imposition of the FUZ zone, that provides only for rural activities, and prevents urban development.
- vi. enable people to provide for their social and economic wellbeing and for their health and safety, by limiting live zoned development opportunities on the Appellants land;
- vii. adequately avoid, remedy or mitigate, the potential adverse effects of traffic congestion by inhibiting the construction of the WLR with the FUZ;
- viii. provide the Appellants with the means to obtain legal and physical egress in the foreseeable future. It's land has become landlocked as a result of severance due to compulsory acquisition to construct the motorway connection to Warkworth. This is a circumstance that was beyond the control of the Appellant;
- ix. enable the construction of the "Other Road", that is necessary for roading access to the Appellants land, nor the "Collector Road", that is required to service multiple titles in the Precinct – Warkworth North (the

indicative road alignments are in Precinct Plan 2 and refer to par 161 and 173 of the Decision);

- x. enable the construction of pedestrian and cycling linkages (Precinct Plan 2 and refer to par 162 of the Decision); and
- xi. extend the roading network to service the land that will become available to the Appellant that is surplus to the requirements of NZTA.

RELIEF SOUGHT

11. The Appellant seeks the following relief:

- a) That the Decision be overturned, in part, in accordance with the grounds outlined in this appeal.
- b) That the Plan Change be amended, insofar as it does not provide the Appellant with the objectives and policies, activity status, standards and zoning relief sought in its submission, in its legal submissions and evidence presented in the Hearing, and in this appeal.
- c) The Plan Change provisions identified in 6. above are amended.
- d) Costs of and incidental to this appeal.

DOCUMENTS ATTACHED

12. The following documents are attached to this notice:

- a) The Appellants original submission and further submission on the Plan Change (**Appendix A**);
- b) The Decision of the First Respondent (**Appendix B**);
- c) A list of names and addresses of persons to be served with a copy of this notice (**Appendix C**).

DATED this 12th day of May 2020



Peter Fuller
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Advice to recipients of copy of notice of appeal

How to become a party to proceedings

You may be a party to the appeal if;

- (a) within 15 working days after the period for lodging a notice of appeal ends you 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, you 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 requirements (see form 38).

How to obtain copies of documents relating to the appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

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

APPENDIX A – APPELLANTS ORIGINAL AND FURTHER SUBMISSIONS

APPENDIX B – DECISION
(The Plan Change provisions are in Appendix 2)

APPENDIX C – LIST OF PARTIES TO BE SERVED**Respondent – Auckland Council**

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Submitters

Please see **attached** Excel Spreadsheet