

**From:** Julian Dawson <[Julian@rmalawyer.co.nz](mailto:Julian@rmalawyer.co.nz)>  
**Sent:** Monday, 12 July 2021, 6:50 pm  
**To:** Rolph, Liz  
**Cc:** Toni Dando; Edwin Dando; Luke Hinchey; Rebecca Tompkins; Christian Brown  
**Subject:** RE: ENV-2021-AKL-070 Dando Family Trust v Waka Kotahi NZ Transport Agency

Dear Liz,

I am instructed that my clients now wish to withdraw this appeal.

Mr Hinchey advises that there is no issue as to costs from Waka Kotahi.

Could you please advise whether the Court requires anything further.

Thank you kindly for your assistance.

Kind Regards,

**Julian  
Dawson**  
BARRISTER

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BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA

ENV – 2021 – AKL-

AT AUCKLAND

UNDER

The Resource Management Act 1991

IN THE MATTER OF

of an appeal under section 174 of the  
Act

BETWEEN

**Dando Family Trust**  
*Appellant*

AND

**WAKA KOTAHI  
NZ TRANSPORT AGENCY**  
*Respondent*

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NOTICE OF APPEAL

Dated: 30 June 2021

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**Julian  
Dawson**  
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**NOTICE OF APPEAL TO THE ENVIRONMENT COURT****TO:THE REGISTRAR****ENVIRONMENT COURT AUCKLAND**

**DANDO FAMILY TRUST** appeals against a decision of the Respondent to accept in part (**“the Decision”**) the Auckland Council’s recommendation (**“the Recommendation”**) in respect of the Notice of Requirement for a designation for the construction, operation and maintenance of Ara Tuhono – Warkworth to Wellsford new State Highway project between Warkworth and Te Hana (**“NOR”**).

1. The Appellant made a submission on the NOR.
2. The Appellant received notice of the Decision on 10 June 2021.
3. The Decision was made by the Respondent.
4. The Appellant appeals the following parts of the Decision:
  - (i) The location and extent of the Designation adjacent to their property at 39 Phillips Road, Warkworth (**“the Dando Property”**);
  - (ii) The failure to include the Dando Property within the Designation and/or
  - (iii) The failure to avoid, remedy or mitigate the significant adverse effects on the Dando Property caused by noise and vibration during the construction and operation of the motorway project;
  - (iv) The omission of the Dando Property from the list of Identified PPFs in Condition 89 identified as a highly sensitive receiver.
5. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**“the Act”**).
6. The reasons for the Appeal are:
  - (i) The NOR will generate significant adverse effects on the environment and on the Dando Property;
  - (ii) The NOR will not promote the sustainable management of natural and physical resources;
  - (iii) The Respondent has failed to consider the significant adverse effects on the

- Dando Property and the Dando Family or to assess any alternatives in design of the NOR that may avoid, remedy or mitigate those significant adverse effects;
- (iv) The Respondent has failed to consider any conditions in the NOR, or other measures, to avoid, remedy or mitigate the significant adverse effects of noise and vibration during construction and operation of the motorway project on the Dando Property and the Dando Family;
  - (v) The Respondent has failed to consider any conditions in the NOR, or other measures, to avoid, remedy or mitigate the significant adverse effects on the amenity of the Dando Property and the Dando Family;
  - (vi) The Decision fails to adequately internalise the significant adverse effects of the NOR on the Dando Property and the Dando Family;
  - (vii) Not being able to avoid, remedy or mitigate the significant adverse effects on the Dando Property and the Dando Family, the Decision fails to include the Dando Property within the Designation;
  - (viii) The NOR and the extent of significant adverse effects is not reasonably necessary to achieve the Respondent's objectives.

7. In particular:

- 7.1 The Dando Family are a family of five; Edwin and Toni and their three children aged between 10 and 14 years. The Dando Property is their permanent home and Toni Dando works full time in a highly demanding, specialised job requiring absolute concentration;
- 7.2 The Dando Family are all Christchurch Earthquake survivors. Because of that have a heightened and demonstrable sensitivity, and adverse reaction, to both noise and vibration;
- 7.3 The Dando Property is virtually on the Designation boundary, but not within it.

*Noise and Vibration*

- 7.4 Conditions 26 – 27 of the Decision impose noise and vibration limits during Construction. However even with compliance at these levels, the adverse effects on the Dando Property and Family will be significant, adverse, and sustained. To them, the property will become uninhabitable.
- 7.5 Furthermore, there is substantial uncertainty as to the construction methodology and traffic management, which may cause further significant adverse effect on the Dando Family. The Construction Noise and Vibration, Noise Mitigation, Traffic Management and Enabling Works Management Plans

are yet to be prepared. Therefore, the specifics of the construction works, construction traffic and noise mitigation are not yet known.

- 7.6 It is highly likely that Phillips Road will be used to accommodate significant construction traffic and the Phillips Road area will be used as a construction yard. This will cause further serious adverse impact on the Dando Family.
- 7.7 The Decision does not contain any mechanism to address the significant adverse effects caused by Construction Noise and Vibration (including from Construction Traffic) on the Dando Property and the Dando Family.
- 7.8 Conditions 28 – 42 are inadequate.
- 7.9 Operational Noise and Vibration give rise to a similar concern, and significant adverse effect on the Dando Family. The Operational Noise limits in conditions 89 -100 are inadequate.
- 7.10 Despite its proximity and sensitivity, The Dando Property is not identified as a PPF in Condition 89 requiring structural, building modification and/or further noise mitigation.

*Amenity and Quiet Enjoyment*

- 7.11 A quiet tranquil living environment is necessary for the Dando Family. Particular sensitivity to noise and vibration means that unexpected events give rise to serious, and significant effect on them. The Decision does not address that circumstance. However, those effects are such that the project renders the property uninhabitable for them because they will experience significant and adverse effects that are unacceptable.
  - 7.12 Anxiety over possible construction time, traffic and management causes the Dando Family further adverse impact.
8. The Appellant seeks the following relief:
- (i) Amend the Designation boundary to include the Dando Property;
  - (ii) Amend Condition 89 by including the Dando Property in Table 2 such that the dwelling can continue to occupied by the Dando Family;
  - (iii) Amend the conditions of the Decision so as to:
    - (a) Provide certainty as to the construction method, location, traffic and use of Phillips Road;

- (b) Otherwise avoid, remedy or mitigate the adverse effects on the Dando Property and Family during the enabling works, construction and operation of the motorway project caused by noise and vibration.
- (iv) Such further or other orders, relief, or consequential amendments that are necessary or appropriate to respond to the grounds of appeal; and
- (v) Costs of and incidental to the Appeal.

9. The following documents are **attached** to this Appeal:

- (i) A copy of the Appellant's submission on the NOR (**Attachment 1**).
- (ii) A copy of the Recommendation (**Attachment 2**).
- (iii) A copy of the Decision (**Attachment 3**).
- (iv) A list of the names and addresses of those who have been served with a copy of this Appeal (**Attachment 4**).

A handwritten signature in blue ink, appearing to read 'J.C. Dawson'.

**Dated** 30<sup>th</sup> June 2021

J .C Dawson – Barrister for and on behalf of the Dando Family Trust

**Address for Service:**

Mr Julian Dawson - Barrister

**Phone:** 0274 200223

**Email:** julian@rmalawyer.co.nz

## Advice to recipients of copy of Notice of Appeal

### *How to become a party to proceedings*

If you wish 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.

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).

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.

### *Advice*

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

ATTACHMENT 1  
COPY OF APPELLANT'S SUBMISSION



ATTACHMENT 2  
COPY OF THE RECOMMENDATION

ATTACHMENT 3  
COPY OF THE DECISION

## ATTACHMENT 4

### LIST OF PERSONS TO BE SERVED WITH A COPY OF THIS APPEAL

Waka Kotahi – New Zealand Transport Agency

Auckland Council

Submitters on Notice of Requirement as per table below:

Submitter Name	Address for Service
M H Creemers	marco.c@samson.co.nz
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Spark Attn: Graeme McCarrison CC: Chris Horne	chris@incite.co.nz
Andrew David Miller	millerstheyounger@gmail.com
Royal Forest and Bird Protection Society of New Zealand Inc. (Forest & Bird) Attn: William Jennings	w.jennings@forestandbird.org.nz
Transpower New Zealand Limited Attn: Kate Searle	jenna.mcfarlane@transpower.co.nz
David Mason and Dianne McCallum Attn: Karen Pegrume (Better Living Landscapes Ltd)	karen@bll.nz
Warkworth Area Liaison Group Attn: Roger Williams	ropeworth@gmail.com
Amanda and Erdem Oguz	amanda.oguz@gmail.com

<p>The Friends of Streamlands  Attn:</p> <ul style="list-style-type: none"> <li>•Amanda Oguz</li> <li>•Erdem Oguz</li> <li>•Toni Dando</li> <li>•Edwin Dando</li> <li>•David Mason</li> <li>•Dianne McCallum</li> <li>•Dean Yarndley</li> <li>•Pauline Yarndley</li> <li>•Denise Civil</li> <li>•Ian Civil</li> <li>•Dianne Civil</li> <li>•Tom Hollings</li> </ul>	<p>amanda.oguz@gmail.com</p>
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<p>Silver Hill Trust - Greg and Ingrid McCracken  Attn: Burnette O'Connor</p>	<p>burnette@thepc.co.nz</p>
<p>One Warkworth  Attn: David Stott</p>	<p>davestott@xtra.co.nz</p>
<p>Wendy Patricia Court</p>	<p>courtwp@hotmail.com</p>
<p>Auckland Transport  Attn: Katherine Dorofaeff</p>	<p>katherine.dorofaeff@at.govt.nz</p>
<p>Puriri Springs Trust  Attn: Denise Civil</p>	<p>icivil@xtra.co.nz</p>
<p>Southway  Attn: Denise Civil</p>	<p>icivil@xtra.co.nz</p>
<p>Sunnyheight Nurseries Ltd  Attn: Terra Nova Planning Ltd (Shane Hartley)</p>	<p>shanehartley@tnp.co.nz</p>
<p>Federated Farmers of New Zealand Incorporated  Attn: Richard Gardner</p>	<p>rgardner@fedfarm.org.nz</p>
<p>Katrina Todd  Attn: B Tree</p>	<p>bianca.tree@minterellison.co.nz</p>
<p>Lou Sanson - Director-General of Conservation  Attn: Graeme Silver &amp; Michelle Hooper</p>	<p>gsilver@doc.govt.nz</p>

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