BEFORE THE ENVIRONMENT COURT **ENV-2026-AKL-**
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU

IN THE MATTER	of an appeal under clause 14 of schedule 1 of the Resource Management Act 1991
BETWEEN	**Neil Construction Limited** Appellant
AND	**Auckland Council** Respondent

NOTICE OF APPEAL

DATED 29 APRIL 2026

Solicitor	**Counsel**
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NOTICE OF APPEAL

Clause 14(1) of Schedule 1, Resource Management Act 1991

To The Registrar
Environment Court
Auckland

Introduction

1 Neil Construction Limited (**NCL**) appeals against a decision of Auckland Council to decline Plan Change 109 (Private): Whenuapai Green.

2 NCL requested the change to the Auckland Unitary Plan under clause 21 of schedule 1 of the Resource Management Act 1991 (**RMA**).

3 NCL is not a trade competitor of the purposes of section 308D of the RMA.

4 NCL received notice of the decision on Friday, 13 March 2026.

5 The decision was made by independent commissioners acting with delegated authority from Auckland Council.

6 NCL is appealing is the entirety of the decision to decline the plan change.

Reasons for appeal

7 The reasons for the appeal are as follows:

(a) The plan change achieves the purpose of sustainable management in Part 2 of the RMA.

(b) The plan change is the most appropriate way to achieve the purpose of the RMA under sections 32 and 32AA of the RMA.

(c) The potential adverse effects of the plan change are appropriately managed by the proposed plan change provisions together with the existing provisions in the Auckland Unitary Plan (**AUP**).

(d) For the further reasons outlined in paragraphs 9-13.

Further reasons for appeal

Background

8 The purpose of the plan change is to allow the development of 430 new homes by rezoning 98-100 and 102 Totara Road, Whenuapai from Future Urban to Mixed Housing Urban (**MHU**). The plan change also seeks to apply new precinct provisions to the land. The land is contiguous with an existing residential area to the south, the Whenuapai 2 Precinct.

Water and Wastewater

9 NCL appeals the Commissioners' findings in the decision in relation to the capacity of Watercare Services Limited's (**Watercare**) bulk water and wastewater network to service the plan change including:

(a) At paragraphs 50 and 59, the finding that infrastructure be in place before a plan change can be approved, when at law the development of dwellings and infrastructure can be integrated and completed simultaneously.

(b) At paragraph 50, the finding that NCL accepted there would be no capacity in the wastewater network to service the plan change in the short to medium term or for at least 10 years, when NCL has never accepted this position.

(c) At paragraphs 51 and 120, the finding that expert witnesses needed to reach a consensus on the planning provisions for bulk water network capacity, when a consensus of expert views might be preferable but is never required to support a decision to approve a private plan change, and in any event is not required in this particular case because at paragraph 51, the Commissioners found there would be sufficient capacity in the North Harbour 1 watermain (**NH1**) to service the plan change.

(d) At paragraph 52, the finding it was not sufficiently clear whether NH1 could service the plan change, which is contrary to:

(i) the finding in paragraph 51 (above);

(ii) NCL's expert evidence; and

(iii) the joint witness statement relating to bulk water infrastructure.

(e) At paragraphs 52 and 118, the finding a prudent network provider would ensure there was capacity in the wider network to meet situations that could potentially arise on a day-to-day basis, when:

(i) the Commissioners had found there was and would be sufficient bulk water network capacity to service the plan change;

(ii) the responsibilities of a prudent network provider are not relevant under the RMA;

(iii) NCL presented unchallenged expert evidence the "situations" would not arise – for both water and wastewater; and

(iv) Watercare is bound to allocate connections to its networks on a first-in-first-served basis but can refuse connections if a network has reached capacity – meaning that decisions on connections cannot consider the sequencing of land release in the Future Development Strategy (**FDS**).

(f) At paragraph 52, the finding NCL's expert evidence on growth rates in Red Hills was not relevant or reliable, when that expert evidence was unchallenged and specifically related to the allocation of capacity in Watercare's bulk water and wastewater networks – being the same networks that would service the plan change if approved.

(g) At paragraphs 52, 53, 54, 57 and 118, the finding Watercare has responsibilities to ensure there is capacity to service live-zone land

and thereby the potential of the plan change to cause significant adverse effects, when that is not a finding relevant to the Commissioners' responsibilities under the RMA. In any event, there would be no risk to Watercare's networks because Watercare is entitled to deny connections when a network has reached capacity.

(h) At paragraph 52, the finding that a provision requiring buildings to have water and wastewater connections prior to completion of the buildings ("pre-completion trigger") is not an efficient mechanism, when NCL has proposed that provision and is prepared to accept the risk of Watercare refusing to allow connections to its networks.

(i) At paragraphs 55 and 56, the reliance on principles 3 and 5 of the FDS when:

(i) empirically, there will be sufficient water and wastewater network capacity to support the plan change; and

(ii) the decision fails to weigh principles 3 and 5 against other provisions of the FDS and provisions of the National Policy Statement on Urban Development (**NPS-UD**) that require a responsive planning approach to out-of-sequence development.

(j) At paragraph 57, the finding that the plan change could lead to dwellings being constructed but not completed or occupied, when that is not a relevant effect under the RMA, a commercial impossibility, and in any event a risk that sits with NCL and nobody else.

(k) At paragraph 57, the finding that disposing of wastewater via tanker is an example of a concern, when that has never been proposed by NCL as an alternative means of disposing of wastewater for the plan change.

(l) At paragraph 58, the finding the plan change could *"create an adverse precedent that would effectively undermine the network['s] ability to deliver water and wastewater infrastructure in a planned strategic manner"*, when that is not a matter relevant to the Commissioners' determination under the RMA.

(m) At the unnumbered paragraph preceding paragraph 88, the finding that Mr Colegrave's expert evidence was of *"limited value"*, when:

(i) his conclusions were that anticipated growth rates around the plan change area including at Red Hills would never be realised, those conclusions:

(I) meaning there would be sufficient water and wastewater capacity to support the plan change;

(II) being unchallenged by any other witness (expert or non-expert), and there being no other information before the Commissioners on this matter; and

(III) being poorly or misunderstood by the Commissioners in terms of their relevance to the question of whether there is sufficient bulk network capacity to support the plan change; and

(ii) there was no "counter factual position" (as referred to in the decision) because of the strength of Mr Colegrave's evidence in 9(m)(i) above, and because Watercare has the power to refuse connections in the event network capacity is reached.

11 The further reasons for NCL's appeal include:

(a) There is sufficient water and wastewater bulk network capacity to support the build out of the plan change because:

(i) Mr Scheirlinck for Watercare produced a capacity graph for NH1 in conferencing confirming there would be sufficient capacity to support connecting the plan change's dwellings to the bulk water network from 2031. There are, therefore, no technical reasons to decline the plan change as a result of the unavailability of bulk water network capacity;

(ii) the plan change (if approved) will be serviced by the Slaughterhouse Creek Wastewater Pumpstation (**WWPS**). Watercare proposes to use the WWPS to service Red Hills in the future. Watercare stated in evidence that the WWPS could not service the plan change because its capacity was pre-allocated to future development within Red Hills. Red Hills' future demand was based on the Auckland Growth Scenario (**AGS**). It was Mr Colegrave's unchallenged expert evidence the AGS's growth rates in Red Hills over the next five years were impossible to achieve. Mr Colegrave's evidence was that the difference between the AGS's growth rate and the highest probable growth rate for even a single year would result in sufficient wastewater capacity to support the full build out of the plan change;

(iii) Watercare accepted in expert conferencing there were technical solutions that would enable the WWPS to service the plan change. Those solutions included utilising an existing in-ground pipeline into the WWPS, and keeping the Redhills Wastewater Pump Station open until wider network improvements had been made in Whenuapai; and

(iv) if there is network capacity, then Watercare has a responsibility to accept connections to its networks on a first-in-first-served basis, regardless of when land is sequenced for release under the FDS.

(b) Even if there was insufficient capacity to enable the full build out of the plan change area, then:

(i) adverse effects on the bulk water and wastewater networks would not occur because Watercare has the power (and responsibility) to refuse connections if the networks have reached capacity;

(ii) Watercare being pressured to make connections to live-zoned land is not an effect under the RMA;

(iii) the risk of dwellings standing vacant pending network connections is a financial impossibility. No right-minded developer would construct dwellings absent Watercare's confirmation that connections to its networks were available;

(iv) there are other technical options available to service the water and wastewater needs of the plan change area such that even if there was limited capacity in the bulk networks it would be open to NCL to find a solution; and

(v) there being no adverse effects, the risk sits with NCL alone, and NCL has decided to take that risk.

(c) The pre-completion trigger is the most appropriate precinct provision to address this risk because:

(i) it allows dwellings to be constructed at the same time as infrastructure is being upgraded. It is efficient because it reduces the delay in constructing dwellings; and

(ii) there is nothing in the AUP or the NPS-UD requiring infrastructure be provided prior to development. It can occur simultaneously. The AUP and the NPS-UD override the infrastructure prerequisites in the FDS.

(d) The NPS-UD requires local authorities to take a responsive approach to plan changes.

Noise

12 NCL appeals the Commissioners' findings in relation to noise effects including:

(a) At paragraphs 69, 118 and 120, the finding there were potential unacceptable health and significant amenity effects for future residents and users of land in the plan change area in both indoor and outdoor areas, when:

(i) the majority of the acousticians agreed in expert conferencing that indoor noise had been adequately addressed or could be adequately addressed through the methodology provided by Mr Jacob (NCL's acoustician). Only Mr Styles (for Council as submitter) supported the Commissioners' finding in respect of indoor noise. Mr Jacob's evidence should have been preferred over Mr Styles' because it was more thoroughly researched and better withstood technical scrutiny. In any case, NCL had proposed optionality allowing the Commissioners to address indoor noise by increasing the noise attenuation standards for building design, which the Commissioners failed to engage with in the decision;

(ii) NCL had proposed measures to appropriately address outdoor noise in private open spaces by including an acoustic fencing standard in the proposed precinct provisions;

(iii) NCL has shown an indicative public open space on the precinct plan so that it was well away from the source of noise; and

(iv) NCL's expert evidence that anticipated noise levels were otherwise at an acceptable level should have been preferred.

(b) At paragraph 69, the finding that the plan change area was not well suited to residential use, when the only party raising this issue was Council in its regulatory capacity. That proposition was based on the expert evidence of Mr Runcie, whose approach to the plan change was largely discredited by the other acousticians.

Other matters

13 NCL appeals the following, other findings of the Commissioners:

(a) At paragraph 83, the finding that planting guidelines should form part of the precinct provisions, when that is inconsistent with the finding that changes to the minimum width of the riparian margin can be left to be determined at subdivision stage.

(b) At paragraph 87, the finding that "avoid" replace "require" in Policy 3, when both are directive verbs;

(c) At the paragraph preceding paragraph 88, the finding that the economic benefits of the plan change were not explained by Mr Colegrave, when those benefits are clear on the facts and do not require elaboration, and in any case this finding being inconsistent with the finding in paragraph 50 that the plan change would *"boost residential land and housing supply, increasing choice and fostering competition in the land market"*.

(d) At paragraph 124, the findings that the plan change did not give effect to the NPS-UD, AUP (Regional Policy Statement), FDS and Part 2 of the RMA, which is opposed by NCL for all the reasons above.

Relief

14 NCL seeks the plan change be approved.

Documents

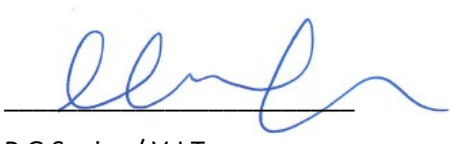
15 NCL attaches the following documents to this notice:

(a) a copy of the relevant decision;

(b) a copy of the proposed precinct provisions being necessary for an adequate understanding of the appeal; and

(c) a list of the names and addresses of persons to be served with a copy of this notice.

Date: 29 April 2026



P G Senior / V J Toan

Counsel for Neil Construction Limited

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 form 33) 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 Act.

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).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not have attached a copy of the decision appealed or the proposed plan change provisions. 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.

ATTACHMENT A

Decision being appealed

ATTACHMENT B

Documents relevant to understanding of appeal

ATTACHMENT C

List of names and addresses of persons served with copy of notice of appeal

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