

**IN THE MATTER**

of the Resource Management Act  
1991 ('the Act')

**AND**

**IN THE MATTER**

of an appeal pursuant to clause  
14 of the First Schedule to the Act

**BETWEEN**

**D & N HURST**

(ENV-2011-AKL-000081)

Appellant

**AND**

**TAURANGA CITY COUNCIL**

Respondent

**BEFORE THE ENVIRONMENT COURT**

Environment Judge J A Smith sitting alone under section 279 of the Act

**IN CHAMBERS** at Auckland

**CONSENT ORDER**

**Introduction**

1. The Court has read and considered the appeal and the memorandum of the parties dated 27 October 2011.
2. This appeal relates to land that is divided by the territorial boundary between Tauranga City and the Western Bay of Plenty District (**WBOPD**). The appeal seeks that the portion of land within Tauranga City be zoned Rural Residential under the proposed Tauranga City Plan. The appeal is related to an appeal by the appellant against the proposed WBOPD Plan which sought Rural Residential zoning of the portion of land within the WBOPD (*ENV-2010-AKL-000085: D & N Hurst v Western Bay of Plenty District Council*).
3. The appeal against the proposed WBOPD Plan was resolved by consent order, issued by this Court on 29 August 2011. The Tauranga City Council was a section 274 party to the WBOPD appeal and was involved in discussions to resolve that appeal. The parties to the appeal against the proposed Tauranga City Plan have



agreed it is appropriate to resolve the appeal against the proposed Tauranga City Plan by including similar provisions in the Tauranga City Plan, which will ensure consistency across territorial boundaries.

4. The New Zealand Transport Agency and the Western Bay of Plenty District Council have given notice of an intention to become parties under section 274 and have signed the memorandum setting out the relief sought.

5. No other person has given notice of an intention to become a party under section 274.

6. The Court is making this order under section 279(1)(b) of the Act; such order being by consent, rather than representing a decision or determination on the merits pursuant to section 279. The Court understands for present purposes that:

(a) All parties to the proceedings have executed the memorandum requesting this order;

(b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

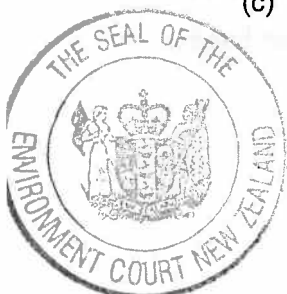
7. Therefore, the Court orders, by consent, that the proposed Tauranga City Plan be amended as follows (with additions shown in underlining and deletions shown in ~~strikethrough~~):

(a) Amend planning map L71 as attached at **Annexure A** to show the land between Tara Road and the designation for the proposed Tauranga Eastern Motorway as Rural Residential Zone.

(b) Amend planning map UG5 as attached at **Annexure B** to show the Tara Road Urban Growth Plan Area.

(c) Add a new definition to Chapter 3:

**Tara Road Urban Growth Plan Area**



Means the land within the Tauranga City Council territory that is located south of Tara Road and north of the designation for the Tauranga Eastern Link, as shown on Urban Growth Plan UG5 and zoned Rural Residential on planning map L71.

- (d) Add a new paragraph to *Section 15A – Purpose of the Rural Residential Zone* as follows:

The Tara Road Urban Growth Plan Area provides for rural residential living on the urban fringe of Tauranga and has specific requirements to avoid reverse sensitivity, geotechnical, and stormwater effects on the strategically important infrastructure of the Tauranga Eastern Link and Tara Road. In particular rural residential development in this locality should not commence until the Tauranga Eastern Link is operational in order to avoid the potential for reverse sensitivity.

- (e) Add a new sentence to *15A.1.1 Objective – Rural Residential Living Opportunities* as follows:

In the Tara Road Urban Growth Plan Area rural residential subdivision and development avoids the potential for incompatibilities (including reverse sensitivity effects) between activities within the Zone and between the Zone and its surrounding environment.

- (f) Add a new paragraph d) to *15A.1.1.1 Policy – Rural Residential Living Opportunities* as follows:

d) Recognising in the Tara Road Urban Growth Plan Area that rural residential subdivision and development should be designed, located and constructed in a way that avoids adverse geotechnical, reverse sensitivity, and stormwater effects on the Tauranga Eastern Link and Tara Road.

- (g) Add a new paragraph c) to *12C.1.1.1 Policy – Subdivision on the Rural Residential Zone* as follows:

c) Recognise in the Tara Road Urban Growth Plan Area that rural residential subdivision should be designed, located and constructed in a way that avoids adverse geotechnical, reverse sensitivity, and stormwater effects on the Tauranga Eastern Link and Tara Road.

- (h) Add to the table at *Rule 12C.3.1.1 Minimum Allotment Size* an additional line as follows:

<u>Minimum Frontage, Tara Road Urban Growth Plan Area:</u>	<u>4.0 metres</u>
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- (i) Insert a new Rule 12C.3.1.7 *Controlled Activity – Standards and Terms* (with consequential changes to the numbering of subsequent rules) as follows:

12C.3.1.7 Tara Road Urban Growth Plan Area

- a) The land to be subdivided shall only be accessed from Tara Road via the Doncaster Road roundabout and shall be in accordance with the Urban Growth Plan UG5 as it applies to the Rural Residential zone within Tauranga City.
- b) Subdivision shall be designed and constructed so that external noise levels do not exceed 64 dBA  $L_{eq,24hr}$  (see (c) below). The acoustic mitigation adjacent to the Tauranga Eastern Link and/or Tara Road required to achieve this standard shall be addressed at the time of subdivision under this Rule or land use under Rule 15A.4.1.b) (whichever comes first). Written evidence that this standard will be achieved shall be provided to the Council from a suitably qualified acoustic consultant as part of the application for subdivision. The evidence shall be based on predictions of road-traffic noise in accordance with Section 5.3 of NZS 6806:2010, using terrain data at 1m ground contour intervals including the final earthworks for the Tauranga Eastern Link.

Note: Land use development in the Tara Road Urban Growth Plan Area is to be considered under Rule 15A.4.1. b).

- c) The design parameters for noise measurement for b) above are as follows:

(i) Tara Road

- Design year – 2026
- Flow rate (AADT) – Tara Road 26,100 vpd, Parton Road 6,000 vpd
- Speed – 100 kph
- Road surface – Open graded porous asphalt
- Percentage of heavy vehicles – 7%

(ii) Tauranga Eastern Link

- Design year – 2026
- Flow rate (AADT) – 28,000 with the Papamoa East Interchange
- Design speed – 100kph
- Road surface – Chip seal
- Percentage of heavy vehicles – 16%

- d) At the time of subdivision, a landscape plan detailing planting species and spacing shall be provided to screen the Rural-Residential Zone from the Tauranga Eastern Link and to provide an amenity buffer with Tara Road. The landscape plan shall detail the planting along the 10m Amenity Planting Strip adjoining Tara Road, within the Landscape Swale, on the acoustic bund adjoining the Tauranga Eastern Link



and/or Tara Road (if proposed), and between any acoustic barrier and the Tauranga Eastern Link and/or Tara Road (if proposed).

- e) The acoustic mitigation (e.g. bund; barrier) and landscaping shall be designed so that it does not have any adverse geotechnical effect on the Tauranga Eastern Link and/or Tara Road (including all infrastructure within the road reserve). Prior to the establishment of any acoustic mitigation or landscaping required by clauses b) and d) of this rule, a geotechnical assessment by a suitably qualified geotechnical engineer shall be prepared in consultation with the NZ Transport Agency or Tauranga City Council (as relevant) and submitted to Council to confirm that the acoustic mitigation and landscaping has no adverse geotechnical effect on Tauranga Eastern Link or Tara Road (including all infrastructure within the road reserve).
- f) The acoustic mitigation required by b) above (e.g. bund or barrier) and the landscape mitigation required by d) above shall be vested in Council at the time of subdivision or prior to resource consent for a dwelling being issued, whichever occurs first.
- g) Any subdivision shall be in accordance with an approved stormwater management plan for the entire Tara Road Urban Growth Plan Area. For the avoidance of doubt, this means an integrated management approach is required with the Rural Residential zoned land directly east, within the Western Bay of Plenty District.
- h) Subdivision shall not be commenced until the Tauranga Eastern Link is operational. Operational means that TEL construction is complete and public vehicles are able to use the full length of TEL including both lanes in each direction.
- i) Subdivision associated with the Tauranga Eastern Link shall be exempt from this rule.

Note: Water supply is to be provided privately, unless prior arrangements have been made with the Council to reticulate the whole of the Tara Road Urban Growth Plan Area with a public reticulation system.

- (j) Insert new controlled activity matters of control at Rule 12C.3.2.9 as follows:

12C.3.2.9 Tara Road Urban Growth Plan Area

- (a) Noise mitigation  
 (b) Landscaping  
 (c) Geotechnical effects  
 (d) Access to Tara Road  
 (e) Stormwater management  
 (f) Compliance with the Urban Growth Plan UG5.

- (k) Insert a new non-complying activity Rule 12C.6 c) as follows:



c) Subdivision in the Tara Road Urban Growth Plan Area that does not comply with Rule 12C.3.1.7.

(l) Add a new third column to Table 15A.1 with the heading "Tara Road Urban Growth Plan Area" and insert identical activity classifications to those which apply in the Rural Residential Zone except that permitted activity status shall be substituted with controlled activity status.

(m) Insert a new controlled activity Rule 15A.4 (with consequential changes to the numbering of subsequent rules) as follows:

15A.4 Controlled Activity Rules

The following are Controlled Activities:

a) All those activities listed in Table 15A.1 as Controlled Activities.

(n) Insert a new Rule 15A.4.1 *Controlled Activity – Standards and Terms* as follows:

15A.4.1 Controlled Activity Standards and Terms: Tara Road Urban Growth Plan Area

a) The land to be developed shall only be accessed from Tara Road via the Doncaster Road roundabout and shall be in accordance with the Urban Growth Plan UG5 as it applies to the zone within Tauranga City.

b) Dwellings shall be designed and constructed so that internal noise levels do not exceed 35 dBA  $L_{eq,24hr}$  in bedrooms and 40 dBA  $L_{eq,24hr}$  in other habitable rooms. Written evidence that this standard will be achieved through the design of the building shall be provided to the Council from a suitably qualified acoustic consultant at the time an application for resource consent to build is lodged with the Council under this rule. Where a building is required to have its windows closed to achieve the required noise standard, the building shall be designed and constructed to provide for an alternative means of internal ventilation.

c) Development shall be designed and constructed so that external noise levels do not exceed 64 dBA  $L_{eq,24hr}$  (see (d) below). The acoustic mitigation adjacent to the Tauranga Eastern Link and/or Tara Road required to achieve this standard shall be addressed at the time of development under this Rule or subdivision under Rule 12C.3.1.7b) (whichever comes first). Written evidence that this standard will be achieved shall be provided to the Council from a suitably qualified acoustic consultant as part of the application for development. The evidence shall be based on predictions of road-traffic noise in accordance with Section 5.3 of NZS 6806:2010, using terrain data at



1m ground contour intervals including the final earthworks for the Tauranga Eastern Link.

d) The design parameters for noise measurement for b) and c) above are as follows:

(i) Tara Road

- Design year – 2026
- Flow rate (AADT) – Tara Road 26,100 vpd, Parton Road 6,000 vpd
- Speed – 100 kph
- Road surface – Open graded porous asphalt
- Percentage of heavy vehicles – 7%

(ii) Tauranga Eastern Link

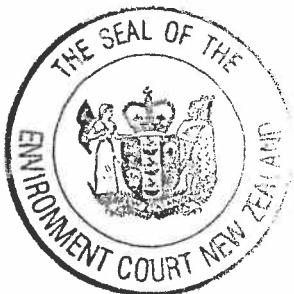
- Design year – 2026
- Flow rate (AADT) – 28,000 with the Papamoa East Interchange
- Design speed – 100kph
- Road surface – Chip seal
- Percentage of heavy vehicles – 16%

e) At the time of development, a landscape plan detailing planting species and spacing shall be provided to screen the Rural-Residential Zone from the Tauranga Eastern Link and to provide an amenity buffer with Tara Road. The landscape plan shall detail the planting along the 10m Amenity Planting Strip adjoining Tara Road, within the Landscape Swale, on the acoustic bund adjoining the Tauranga Eastern Link and/or Tara Road (if proposed), and between any acoustic barrier and the Tauranga Eastern Link and/or Tara Road (if proposed).

f) The acoustic mitigation (e.g. bund; barrier) and landscaping shall be designed so that it does not have any adverse geotechnical effect on the Tauranga Eastern Link and/or Tara Road (including all infrastructure within the road reserve). Prior to the establishment of any acoustic mitigation or landscaping required by clauses c) and e) of this rule a geotechnical assessment by a suitably qualified geotechnical engineer shall be prepared in consultation with the NZ Transport Agency or Tauranga City Council (as relevant) and submitted to Council to confirm that the acoustic mitigation and landscaping has no adverse geotechnical effect on Tauranga Eastern Link or Tara Road (including all infrastructure within the road reserve).

g) The acoustic mitigation required by c) above (e.g. bund or barrier) and the landscape mitigation required by e) above shall be vested in Council at the time of subdivision as required by Rule 12C.3.1.7f) or prior to resource consent for a dwelling being issued, whichever occurs first.

h) Any development shall be in accordance with an approved stormwater management plan for the entire Tara Road Urban Growth Plan Area. For the avoidance of doubt, this means an integrated management



approach is required with the Rural Residential zoned land directly east, within the Western Bay of Plenty District.

- i) Development shall not be commenced until the Tauranga Eastern Link is operational. Operational means that TEL construction is complete and public vehicles are able to use the full length of TEL including both lanes in each direction.
- j) Development associated with the Tauranga Eastern Link shall be exempt from this rule.
- k) For the avoidance of doubt, development shall also comply with Permitted Activity Rules 15A.3, except where they are inconsistent with this Rule, in which case this Rule shall prevail.

Note: Water supply is to be provided privately, unless prior arrangements have been made with the Council to reticulate the whole of the Tara Road Urban Growth Plan Area with a public reticulation system.

- (o) Add new controlled activity matters of control Rule 15A.4.2 as follows:

15A.4.2 Controlled Activity – Matters of Control and Conditions: Tara Road Urban Growth Plan Area

The Council reserves control over the following matters:

- a) Noise mitigation
- b) Landscaping
- c) Geotechnical effects
- d) Access to Tara Road
- e) Stormwater management
- f) Compliance with the Urban Growth Plan UG5

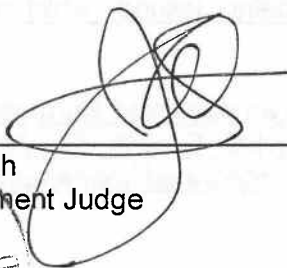
- (p) Insert a new non-complying activity Rule 15A.6 as follows:

g) Any activity that does not meet Rule 15A.4.1 Controlled Activities in the Tara Road Urban Growth Plan Area

8. There shall be no order for costs.

9. The appeal is otherwise dismissed.

**DATED** this 1<sup>ST</sup> day of November 2011



THE SEAL OF  
Smith  
Environment Judge



**Annexure A**





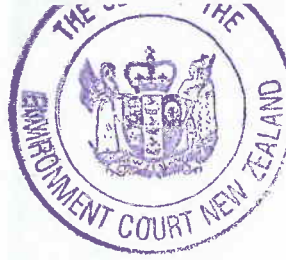
**Annexure B**





# City Plan

## Urban Growth Plan



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**NOTE:**

- The landscaped swale and noise buffer, as relevant to the development proposal, is to be designed and constructed in accordance with:
  - Rule 12C.3.1.7 for subdivision; or
  - Rule 15A.4.1 for landuse.
- The only permitted access to the 'Rural Residential' zoned land on the southern side of Tara Road within the jurisdictional boundary of the Tauranga City Council is via the proposed road into the subdivision/development area at the Doncaster Road/Tara Road roundabout as shown on the Urban Growth Plan. No other vehicle access from Tara Road into this zoned land shall be permitted.

**KEY**

- Indicative Local Road
- Road Access
- Landscaped Swale and Noise Buffer
- 10m Amenity Planting Strip

