

Before the Environment Court

ENV-2016-AKL-000

In the Matter of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) and the Resource Management Act 1991 (**RMA**)

And

In the Matter of an appeal under section 156(3) of the LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on the proposed Auckland Unitary Plan (**Proposed Plan**)

And

In the Matter of Proposed Plan Hearing Topic 081 Rezoning and Precincts General and Geographical Areas

Between Wallace Group Limited

Appellant

And Auckland Council

Respondent

Notice of Appeal

Dated 16 September 2016

Jeremy Brabant
Barrister
Level 2, Broker House, 14 Vulcan Lane
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Auckland City
Email: richard@brabant.co.nz

To: the Registrar
Environment Court
Auckland

1. Wallace Group Ltd (“WGL”) appeals against part of a decision of the Auckland Council (**Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).
2. WGL has the right to appeal the Council’s decision –
 - (a) under section 156(3) of the LGATPA, because the Council accepted a recommendation of the Hearings Panel that is beyond the scope of the submissions made on the Proposed Plan. The Council’s decision resulted in a rezoning of land at 55 Takanini School Road, Takanini (“Site”) being included in the Proposed Plan – specifically the rezoning of the northern part of the Site to Residential – Mixed Housing Suburban Zone (“MHS”). WGL will be unduly prejudiced by the rezoning.
3. WGL provides further details of the reasons for its appeal below.
4. WGL is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
5. WGL received notice of the decision on 19 August 2016.
6. The part of the decision that WGL is appealing is:
 - (a) A rezoning of the northern part of the Site to MHS;
 - (b) The commentary in Annexure 3 to the Topic 081 Hearings Panel Report states:

The Panel does not agree with Council regarding the submissions from Takanini Centre Limited. It considers the removal of the Business – Light Industry Zone from the northern half of the site at 55 Takanini School Road and **rezoning the entire site to Residential – Mixed**

Housing Suburban Zone as sought better meets the purpose of the precinct and otherwise avoids split zoning [my emphasis]

7. The reasons for the appeal are as follows:
- (a) WGL owns property at 296 Porchester Road, Takanini. The abutting Site is owned by Takanini Central Ltd ("TCL"). The southern portion of 296 Porchester Road abuts the northern portion of the Site.
 - (b) The notified PAUP zoned 296 Porchester Road as Light Industry, and that zoning has been confirmed in the Decisions Version of the Unitary Plan.
 - (c) The notified PAUP zoned the Site as Light Industry to the north and Single House to the south (a split zoning). The operative zoning for the Site was split between industrial to the north and residential to the south.
 - (d) The TCL submission on the PAUP opposed the notified zoning for the Site. The relief sought:
 - (i) Retained a split zoning;
 - (ii) On the southern portion, sought residential zoning to be intensified to MHS;
 - (iii) On the northern portion, sought a broader range of activity outcomes than provided for by Light Industry. The removal of the Light Industry zone was not sought – rather additional development outcomes by way of amendments to the overlying sub precinct rules were requested.
 - (e) WGL's further submission with respect to the northern portion, opposed the particular proposed site-specific activity standard changes sought by TCL, but did not oppose Light Industry;

- (f) There was no other submission directly addressing the zoning of the northern portion of the Site;
- (g) No submission sought rezoning of the entire Site to Residential – Mixed Housing Suburban Zone.
- (h) Therefore, the scope for the Panel’s recommendations for the zoning of the northern portion of the Site, which lay between the provisions of the Unitary Plan as notified by the Council and the relief sought in the submissions on the Unitary Plan, was limited to:
 - (i) Light Industry or
 - (ii) Light Industry with additional development outcomes by way of amendments to overlying sub precinct rules.

Evidence

- (i) For completeness, evidence put to the Hearings Panel is summarised below. However, scope for the Hearing Panel’s recommendations cannot be enlarged by evidence.
- (j) In pre-exchanged evidence:
 - (i) Council amended its position with respect to the notified zoning for the Site and its primary evidence supported proposed Single House across the entire Site – this did not reflect the PAUP zoning as notified or any submission lodged;
 - (ii) TCL primary evidence supported Light Industry for the northern portion of the Site;
 - (iii) WGL rebuttal evidence opposed any site-specific activity standard changes, but did not oppose Light Industry for the northern portion of the Site;

- (iv) Council rebuttal evidence was unclear as to which zone it supported for the northern portion of the Site.
- (k) In supplementary evidence presented to the Hearings Panel on the day of TCL's appearance, TCL changed its position and supported a MHS zoning across the entire site even though it had not requested that zone in a submission.

Hearing Panel's Recommendation

- (l) Commentary in Annexure 3 to the Topic 081 Hearings Panel Report states:

The Panel does not agree with Council regarding the submissions from Takanini Centre Limited. It considers the removal of the Business – Light Industry Zone from the northern half of the site at 55 Takanini School Road and **rezoning the entire site to Residential – Mixed Housing Suburban Zone as sought better meets the purpose of the precinct and otherwise avoids split zoning** [my emphasis]

- (m) It is unclear whether the Panels use of the term “as sought” reflected an understanding by the Panel that submissions lodged sought a MHS zoning outcome for the northern half of the site. If so, that understanding was wrong.
- (n) In the alternative the Panels use of the term “as sought” must be a reference to evidence put before the Panel on the day of hearing. If so, that evidence did not create scope for the subsequent recommendation of the Panel.
- (o) The Panel Recommendation with respect to the zoning of the northern portion of the Site:
 - (i) is potentially founded on a mistaken understanding of submissions lodged;
 - (ii) in any event is out of scope; and
 - (iii) is not accompanied by identification that the recommendation is out of scope.

- (p) The Panel report does not contain a s32AA evaluation of the matters set out in s32 (1) to (4) in respect of this re-zoning decision. Those provisions require a specific evaluation that was not done in respect of the re-zoning the subject of this appeal.

Council Decision

- (q) The Council Decision accepted the Hearing Panel's Recommendation for the zoning of the Site. The Council Decision is out of scope.
- (r) The Council Decision does not contain a section 32 AA evaluation.
- (s) In respect of the northern portion of the Site, and its physical interface with the abutting WGL property at 296 Porchester Road, the Council decision does not have proper regard to the potential for reverse sensitivity effects, and does not provide adequate separation between incompatible land uses. This is particularly pertinent where, as detailed below, a significant interface mitigation burden falls upon the abutting WGL property if the MHS zoning is imposed.
- (t) Given the surrounding and abutting zonings, a Light Industrial zoning for the northern portion of the Site is the better and more appropriate zone. If some form of Residential zoning were to apply to the northern portion of the Site, then management and mitigation of interface effects and potential reverse sensitivity issues should be managed or mitigated on the Site to avoid adverse impacts on the development and use of the WGL land.

Undue prejudice

- (u) Rezoning of the northern portion of the Site to MHS adversely impacts upon development at 296 Porchester Road, Takanini because:

- (i) zoning the northern portion of the Site MHS, immediately abutting the Light Industry zone on 296 Porchester Road, triggers specific plan rules which impact upon 296 Porchester Road;
- (ii) Rule H17.6.0 Activities within 30m of a residential zone – activity status of identified activities located within 30 m of a residential zone changes from permitted to restricted discretionary;
- (iii) Rule H17.6.2. Height in relation to boundary – rule does not apply as between industrial zoned sites;
- (iv) Rule H17.6.4. Yards – buildings must be set back from a rear or side boundary where it adjoins a residential zone and additional planting obligations apply;
- (v) Rule H17.6.5. Storage and screening – screening obligations for outdoor storage or rubbish collection areas that directly face and are visible from a residential zone adjoining a boundary with an industrial zone.

8. WGL seeks the following relief:

- (a) That the appeal be allowed, and Council's decision to rezone the northern part of 55 Takanini School Road, Takanini as MHS be cancelled;
- (b) That the land the subject of the appeal (the northern part of 55 Takanini School Road, Takanini) be zoned Light Industry;
- (c) Consequential relief;
- (d) Costs

9. An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz.
Waivers and directions have been made by the Environment Court

in relation to the usual requirements of the RMA as to service of this notice on other persons.

10. I **attach** the following documents to this notice:
- (a) A copy of the relevant part of the decision (**Attachment A**);
 - (b) A copy of the notified and decisions version zoning maps for 55 Takanini School Road, Takanini (**Attachment B**).
11. I am lodging the following related proceedings concerning the Proposed Plan in the High Court:
- (a) An appeal on behalf of WGL with respect to Council's decision to rezone the northern part of 55 Takanini School Road, Takanini as MHS, on the basis that the Council erred in law, because the zoning is out of scope and the Panel failed to identify that the recommendation is out of scope in accordance with section 144(8)(a) of the LGATPA.

Signature: **Wallace Group Limited** by their authorised agent:



Jeremy Brabant

Date: 16 September 2016

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

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 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to unitaryplan.ecappeals@justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unitaryplan@aucklandcouncil.govt.nz) and the appellant.

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 RMA.

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 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

Advice

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

Attachment "A"

A copy of the relevant part of the decision

438 Takanini Precinct

1. Summary of recommendations

The Panel supports a precinct and a number of the changes proposed by Council and/or by submitters.

This precinct was heard in Topic 081.

2. Precinct description

The Takanini Precinct applies to some 290 hectares of land. The precinct is divided into four sub-precincts (A, B, C and D) in four non-contiguous areas, which seek to encourage the subdivision and development of this land in a comprehensive manner to achieve a quality built and well-connected environment.

The precinct contains development controls in response to known geotechnical limitations.

The sub-precincts are as follows.

Sub-precinct A applies to some 53.5 hectares of land between the Papakura Stream, Takanini School Road, Manuroa Road and Porchester Road. This land is currently undeveloped. The underlying zones within the sub-precinct are:

- i. Open Space - Informal Recreation Zone;
- ii. Business - Light Industry Zone;
- iii. Residential - Single House Zone; and
- iv. Residential - Mixed Housing Suburban Zone.

Sub-precinct B applies to some 4.5 hectares of land with frontage to Porchester Road. This land is currently undeveloped. The underlying zone is Business - Local Centre Zone.

Sub-precinct C applies to some 184 hectares of land throughout the wider precinct, and covers the largest land area of the four sub-precincts. The underlying zone is Residential - Mixed Housing Suburban Zone.

Sub-precinct D applies to an area of land between Papakura-Clevedon and Old Wairoa Roads. Development at a low density is encouraged in this sub-precinct to assist in maintaining the elements of amenity and open space character. Sub-precinct D contains development controls in response to the known geotechnical limitations in the area, and provides for a landscape buffer between development along Papakura-Clevedon Road and the adjacent rural zone. The underlying zone is Residential - Single House Zone.

The purpose of the precinct is to encourage the subdivision and development of the land in a comprehensive manner to achieve a quality built and well-connected environment.

In addition to Council, submitters heard included New Zealand Defence Force; Takanini Central Limited; TONEA Properties New Zealand Limited; Transpower New Zealand Limited; and Wallace Group Limited, seeking both amendments to the precinct provisions and for rezonings within the precinct.

Much of this precinct is subject to a plan variation request under the Housing Accords and Special Housing Areas Act 2013 that had not been determined by the close of hearings.

3. Key issues

Council agreed with:

- i. amendments sought by NZDF in Sub-precinct C (previously D as notified) to reflect the Papakura Military Camp provisions elsewhere in the Unitary Plan;
- ii. the reinstatement of the fence provision in Sub-precinct C for Transpower New Zealand Limited;
- iii. a small zoning boundary change at 296 Porchester Road to the east of Sub-precinct A as sought by Wallace Group Limited; and
- iv. the removal of 147 Airfield Road owned by the Roman Catholic Bishop of the Diocese of Auckland from the precinct.

Council did not support:

- i. the modifications sought by Takanini Central Limited as these were considered unnecessary as the proposed zones and existing resource consent provide the opportunity for what is sought at 55 Takanini School Road; and
- ii. TONEA Properties New Zealand Limited's request to extend the Business - Town Centre zone over 30 Walters Road.

The Panel does not agree with Council regarding the submissions from Takanini Centre Limited. It considers the removal of the Business – Light Industry Zone from the northern half of the site at 55 Takanini School Road and rezoning the entire site to Residential - Mixed Housing Suburban Zone as sought better meets the purpose of the precinct and otherwise avoids split zoning.

The Panel does not agree with Council regarding the submission from TONEA Properties New Zealand Limited to extend the Business - Town Centre Zone to 30 Walters Road and recommends that be rezoned to Business - Town Centre Zone.

In his planning evidence of 4 February 2016 Mr Vaughan Smith presented three relief options:

- i. Option 1 - status quo (Business - Mixed Use Zone with precinct);
- ii. Option 2 - Business - Town Centre Zone with no precinct; and
- iii. Option 3 - Business - Town Centre Zone with precinct.

Mr Smith advised that Takanini Village Stage 1 (being 12,800m² gross floor area, occupying 2.9ha of the 5.4ha site) was completed in 2014, and Stage 2 is proposed). Further evidence on this was provided by Mr Nick Rae (urban design), Mr Bryce Hall (traffic) and Mr Timothy Heath (retail economics).

Council opposed this proposal on the following principle grounds:

- i. it relies upon a rail station at Glenora Road (which is not presently preferred by Auckland Transport);
- ii. the Court had determined through decision on Plan Change 12 in 2011 a mixed use Business - Mixed Use Zone status for the land as being a suitable transition to residential from the existing town centre; and
- iii. no retail economic modelling had been undertaken as of July 2015.

While the Panel acknowledges the advice from Auckland Transport that the Takanini station review was favouring a location at Tironui Road over Glenora Road, that decision has not yet been finalised. In any event either station location would be no further from this land than it would be for the rest of the land zoned Business - Town Centre Zone – and TONEA Properties New Zealand Limited's evidence was not dependent on station location.

The retail economic concern was addressed by Mr Heath's evidence (dated 10 February 2016), in which he concluded that rezoning to Business - Town Centre Zone and developing the remainder of the site was likely to produce positive net economic benefits. That analysis was not contested.

The Panel's starting position on the matter of whether to rezone to Business - Town Centre Zone is the higher order strategic policy direction of the Plan, which clearly identifies Takanini as a growth area over the medium term. As such, and in view of the evidence presented by TONEA Properties New Zealand Limited, the Panel finds there to be good planning reason for upzoning this land to Business - Town Centre Zone at this time – and heard no compelling evidence to the contrary. The Panel accepts that the ground has changed, even since 2011, sufficient to justify this rezoning. As to whether precinct provisions should apply, the Panel heard no compelling evidence on the point. As over half the land has only recently been developed, the Panel reasonably expects that stage two would be developed sympathetically. It therefore sees little need for precinct provisions rather than underlying zone and Auckland-wide provisions.

The main differences between the Takanini Precinct as finally proposed and the relevant overlays, zone, and Auckland-wide rules are:

- i. inclusion of specific objectives and policies;
- ii. Sub-precinct A, C and D provisions more restrictive reflecting site-specific constraints; and
- iii. Sub-precinct B local centre provisions more enabling.

Provisions are generally more restrictive than those provided for by the underlying zones.

In summary, the Council's position in relation to the Takanini Precinct is set out in the planning evidence in chief and rebuttal of Ms Joy La Nauze and Council's closing remarks

The Panel agreed with Council, except for the matter of 30 Walters Road and 55 Takanini and 55 Takanini School Road.

With respect to 30 Walters Road, the Panel agreed with that submitter (TONEA Properties New Zealand Limited) that rezoning this land from Business - Mixed Use Zone to Business -

Town Centre Zone would likely assist and strengthen the development of the overall centre, and was suitably proximate to key roading and rail access.

With respect to 55 Takanini School Road, the Panel agreed with the submitter to rezone the land Residential - Mixed Housing Suburban Zone, given its general proximity to major arterial roads, the rail-line and employment centre.

4. Panel recommendations and reasons

The Panel supports the precinct and the changes generally proposed by Council and in response to the submitters, with the exception of the rezoning of 30 Walters Road to town centre and its removal from the precinct, for the reasons set out in section 1.3 above.

5. Reference documents

Auckland Council

[081f Ak Cncl - South - Precincts \(Takanini\) - \(J LaNauze\) - Planning - Evidence Report \(3 February 2016\)](#)

[081f Ak Cncl – South – Rezoning - Precincts \(Takanini\) - \(J LaNauze\) - Planning – REBUTTAL \(1 March 2016\)](#)

[081 Ak Cncl - Precincts - CLOSING REMARKS – Volume 1 – Specific Precincts - Attachments A-F - Updated - 19 May 2016 \(19 May 2016\) \(page 325\)](#)

[081 Ak Cncl - Precincts - CLOSING REMARKS – Volume 2 – Revised Precinct Provisions and Maps – Attachments A-E - Updated - 26 May 2016 \(26 May 2016\) \(page 1394\)](#)

Submitters

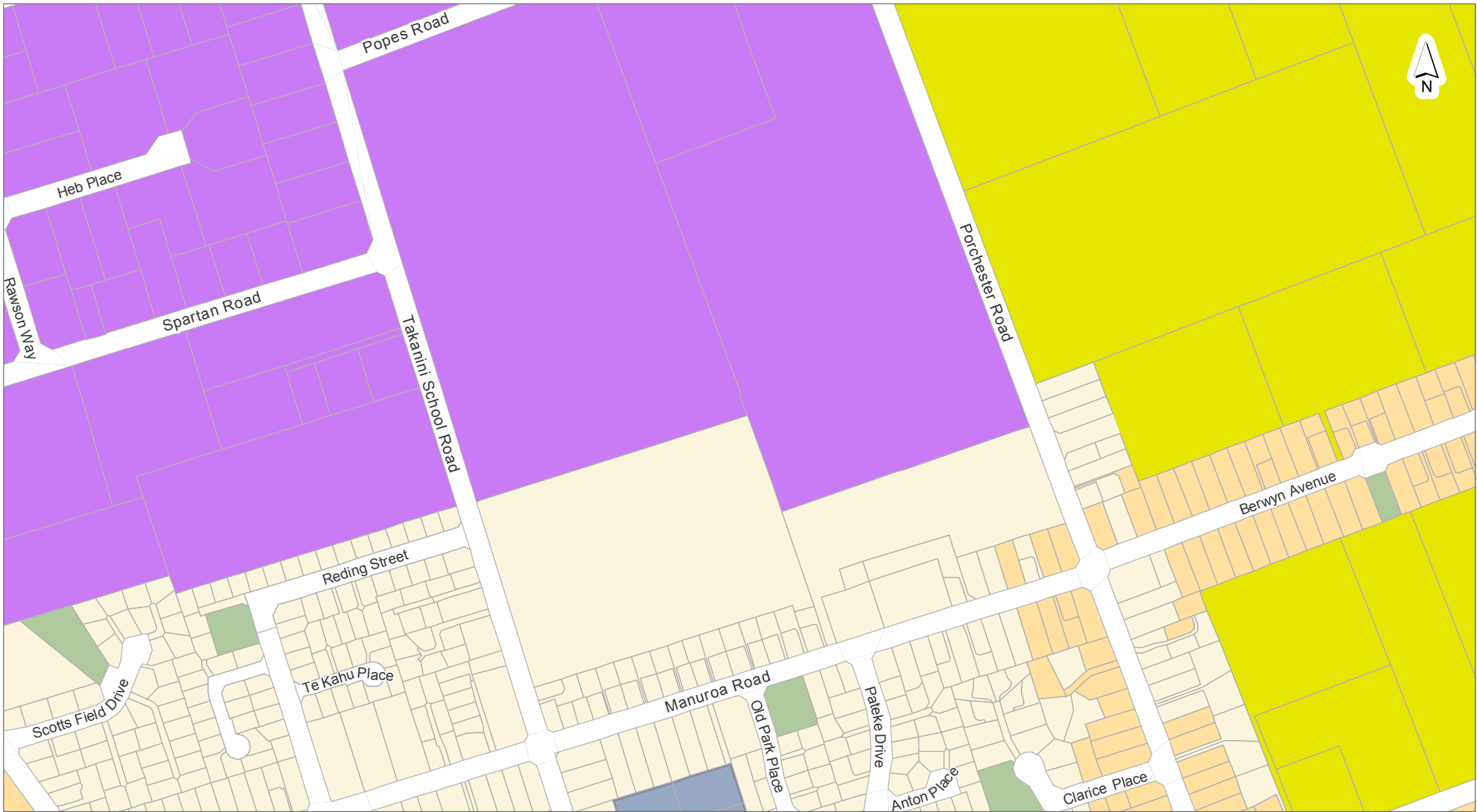
[081 TONEA Properties \(New Zealand\) Ltd \(T Heath\) - Retail Economic \(16 February 2016\)](#)

[081 TONEA Properties \(New Zealand\) Ltd \(N Rae\) - Urban Design \(14 February 2016\)](#)

[081 TONEA Properties \(New Zealand\) Ltd \(B Hall\) - Traffic \(16 February 2016\)](#)

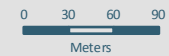
Attachment "B"

A copy of the notified and decisions version zoning maps for 55 Takanini School Road, Takanini



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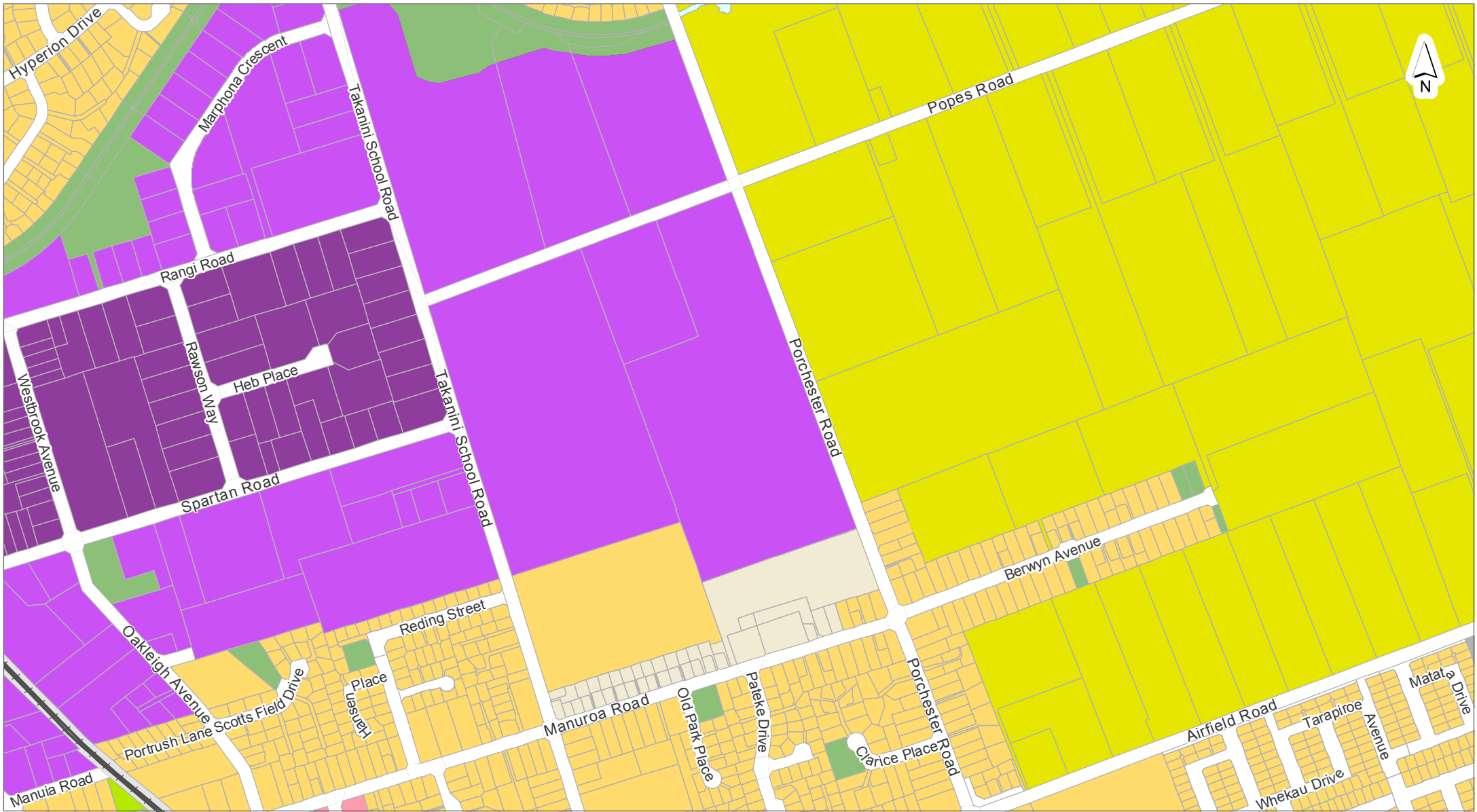
Notified PAUP



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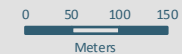
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Decisions Version



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