

IN THE ENVIRONMENT COURT  
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU

Decision [2024] NZEnvC 065

IN THE MATTER OF an appeal under clause 14 of the First  
Schedule of the Resource Management  
Act 1991

BETWEEN VAN DEN BRINK GROUP

(ENV-2022-AKL-000083)

Appellant

AND WAIKATO DISTRICT COUNCIL

Respondent

Court: Alternate Environment Judge L J Newhook sitting alone under s  
279 of the Act

Date of Order: 5 April 2024

Date of Issue: 5 April 2024

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**CONSENT ORDER**

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A: Under section 279(1)(b) of the Resource Management Act 1991, the  
Environment Court, by consent, orders that:

- (1) That rule GIZ-S3 in the General Industrial Zone (GIZ) chapter of the  
PDP decisions version be amended as set out in Appendix 1 to this  
order (additions marked as underlined and deletions as ~~struck through~~);



- (2) The planning maps be amended to include a new height specific control layer titled “Whangarata business park specific height control” as shown in Appendix 2 to this order;
- (3) The part of the appeal allocated to Topic 15 regarding GIZ-S3 is otherwise dismissed; and
- (4) The part of the appeal allocated to Topic 15 with respect to COMZ-S27 remains unresolved.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

## **REASONS**

### **Introduction**

[1] This consent determination relates to an appeal against the decisions of Waikato District Council on the Proposed Waikato District Plan (**PDP**) in relation to submissions by the Appellant seeking amendments to the height of buildings permitted within the Whangarata business park in the General Industrial Zone (**GIZ**) at Tuakau.

### **Background**

[2] The Appellant is the owner of several properties located within the Whangarata Business Park in Tuakau. The original submission by the Appellant opposed the proposed building height of 15m for most of the industrial zones in the notified version of the PDP, which was a reduction from the established building height of 18m as set out in the Operative Waikato District Plan (**ODP**). It was on this basis that the Appellant sought to increase the maximum building height to 18m across all of the Industrial Zone, referring specifically to Whangarata industrial zone where, in accordance with the standards in the ODP, a height of 18m had already started to develop/establish.

[3] On 17 January 2022, an Independent Hearing Panel (**IHP**) on behalf of the Respondent decided that the existing development potential of the Whangarata

business park should be maintained and therefore included a specific building height rule of 18m, which reflects the building height in the ODP.<sup>1</sup> However, the Whangarata business park structure plan was not carried over into the decisions version of the PDP with the IHP instead using existing local roads to describe the location of the Whangarata business park. Under GIZ-S3(1)(a)(ii), the maximum building height is 18m but only if located on Whangarata and Bollard Roads in Tuakau. This has resulted in an unintended outcome whereby a consistent height control may not be applied across the entire Whangarata business park and existing and future subdivisions within the Whangarata business park not located on either Whangarata or Bollard Roads are restricted to heights of 15m.

[4] The Appellant subsequently filed this appeal seeking, amongst other amendments, that GIZ-S3 in the GIZ chapter of the PDP decisions version be amended so that all land within the Whangarata business park in Tuakau has a maximum permitted building height of 18m, not just those properties that are located on Whangarata or Bollard Roads.

[5] This part of the appeal has been assigned to Topic 15: Land use provisions – other zones and this consent order partially resolves the Appellant’s interest in Topic 15. The part of the appeal regarding amendments to COMZ-S7, which is also allocated to Topic 15, is not resolved by this draft consent order.

[6] There are no parties to this appeal under section 274 of the Act.

### **Agreement reached between the parties**

[7] Following the filing of the appeal, the Appellant and Council have entered into direct discussions and have reached an agreement which will partially resolve the Appellant’s interest in Topic 15:

- (a) Amend GIZ-S3 in the GIZ chapter of the PDP decisions version as follows:

GIZ-S3 Building height  
Activity status: PER

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<sup>1</sup> Decision Report 21: Industrial Zones at [5.34].

Where:

- (a) A building measured from the natural ground level immediately below that part of the structure that does not exceed a height of:
  - (i) 15m; or
  - (ii) 18m if located within on Whangarata and Bollard Road in Tuakau the Whangarata business park in Tuakau as shown on the Whangarata business park specific height control map; or
- (b) As a consequence of resolving the primary issue on appeal, the parties have agreed to a consequential amendment to GIZ-S3(b)(ii), which also applies to the same area, to ensure consistency:
  - (b) Chimneys not exceeding 1m in width and finials measured from the natural ground level immediately below the structure shall not exceed that do not exceed a height of
    - (i) 17m; or
    - (ii) 20m if located on Whangarata and Bollard Road within the Whangarata business park in Tuakau as shown on the Whangarata business park specific height control map; or
    - (iii) 12m if located on Tregoweth Lane and within 50m of the GRZ – General residential zone in Huntly
- (c) Amend the planning maps to include a new building height specific control layer titled “Whangarata business park specific height control” which shows the area where building height up to 18m and chimneys up to 20m in height will be a permitted activity. The amendment to GIZ-S3(b)(ii) with regards to chimney height is consequential to the relief sought in the appeal as it relates to the same area. The planning maps follow the mandatory mapping standards specified in the National Planning Standards but building or chimney height does not fall within the mandatory mapping symbols. It is thus proposed to use an orange outline with a grid of orange dotted lines to depict the relevant areas where building height up to 18m and chimney height up to 20m will be a permitted activity. The changes made to the planning maps are shown in **Appendix 2** to this order.

[8] It is noted that the new control layer will identify all land within the Whangarata business park. This was considered more appropriate than reintroducing the Whangarata business park structure plan from the ODP.

**Section 32AA evaluation**

[9] Section 32AA of the Act requires a further evaluation of any changes to a proposed plan change since the initial section 32 evaluation report and the IHP's decision.

[10] The consent memorandum submitted in support of the draft consent order contained a s32AA evaluation. Based on that analysis, the parties consider that amending GIZ-S3 to extend the permitted building and chimney height across the whole Whangarata business park and introducing a new specific control map layer is the most appropriate way to achieve the objectives of the PDP.

**Consideration**

[11] In making this order the Court has now read and considered:

- (a) The notice of appeal dated 2 March 2022; and
- (b) The Joint Memorandum of the parties dated 14 March 2024.

[12] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. 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 the relevant requirements and objectives of the Act including, in particular, Part 2.

[13] The Court is satisfied that the changes sought are within the scope of the Appellant's submission and appeal.

**Order**

[14] The Court orders, by consent, that:

- (a) Rule GIZ-S3 in the General Industrial Zone (GIZ) chapter of the PDP decisions version be amended as set out in **Appendix 1** to this order (additions marked as underlined and deletions as ~~striketrough~~);
- (b) The planning maps be amended to include a new height specific control layer titled “Whangarata business park specific height control” as shown in **Appendix 2** to this order;
- (c) The part of the appeal allocated to Topic 15 regarding GIZ-S3 is otherwise dismissed;
- (d) The part of the appeal allocated to Topic 15 with respect to COMZ-S27 remains unresolved; and
- (e) There is no order as to costs.



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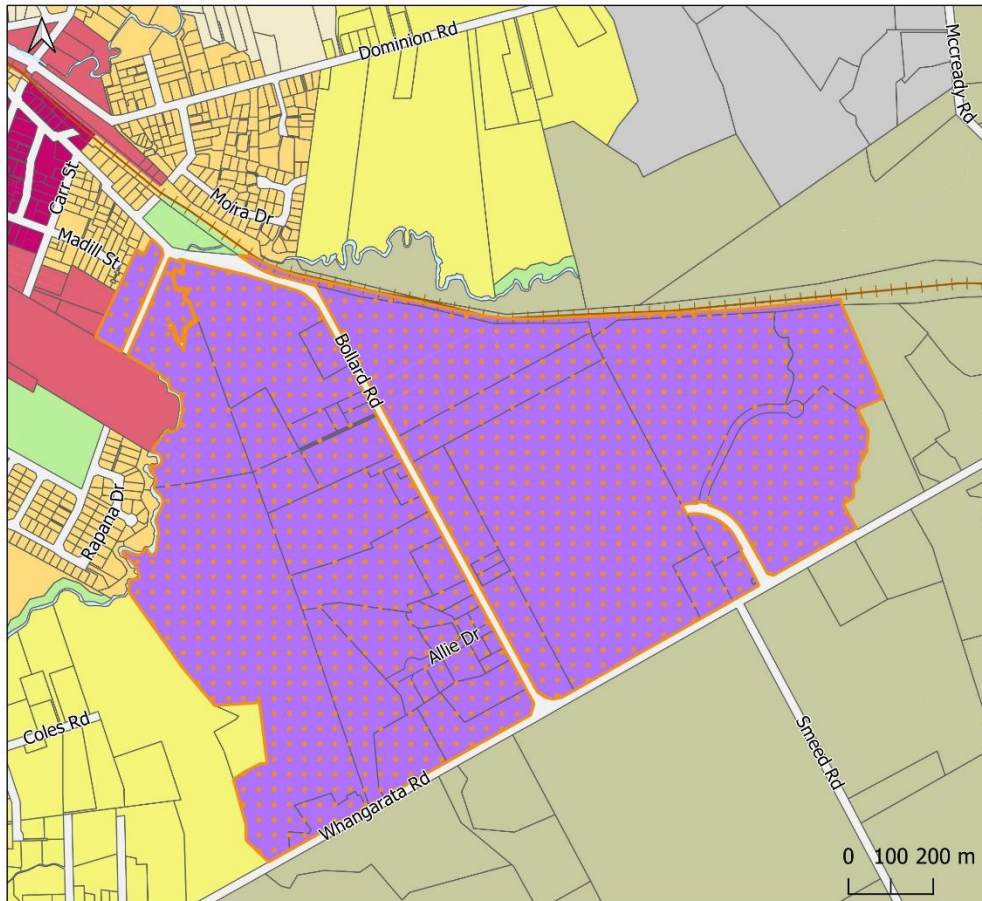
**L J Newhook**  
**Alternate Environment Judge**







**Appendix 1: Tracked change version of the agreed amendments to GIZ-S3 in the GIZ chapter of the PDP decisions version**

GIZ-S3	Building height
<p><b>(1)</b> Activity status: PER</p> <p>Where:</p> <p>(a) A building measured from the natural ground level immediately below that part of the structure that does not exceed a height of:</p> <p>(i) 15m; or</p> <p>(ii) 18m if located <i>within <del>on</del> Whangarata and Bollard Road in Tuakau the Whangarata business park in Tuakau as shown on the Whangarata business park specific height control map</i>;</p> <p>or</p> <p>(iii) 10m if located on Tregoweth Lane and within 50m of the GRZ – General residential zone in Huntly.</p> <p>(b) Chimneys not exceeding 1m in width and finials measured from the natural ground level immediately below the structure shall not exceed that do not exceed a height of</p> <p>(i) 17m; or</p> <p>(ii) 20m if located <i>within <del>on</del> Whangarata and Bollard Road in Tuakau the Whangarata business park in Tuakau as shown on the Whangarata business park specific height control map</i>;</p> <p>or</p> <p>(iii) 12m if located on Tregoweth Lane and within 50m of the GRZ – General residential zone in Huntly.</p>	<p><b>(2)</b> Activity status where compliance not achieved: RDIS</p> <p>Council’s discretion is restricted to the following matters:</p> <p>(a) Effects on the amenity of neighbouring properties.</p>

## Appendix 2: Amendments to the planning maps – Whangarata business park specific height control



### Legend

-  Whangarata business park specific height control
-  Rail centre line
-  Property boundary
-  Waterbody

### Zones (Decisions version)

-  GRUZ – General rural zone
-  LLRZ – Large lot residential zone
-  GRZ – General residential zone
-  MRZ – Medium density residential zone
-  COMZ – Commercial zone
-  TCZ – Town centre zone
-  GIZ – General industrial zone
-  OSZ – Open space zone
-  FUZ – Future urban zone
-  Road



### Whangarata business park specific height control

Waikato District Council  
Prepared 21 Nov 2023  
Cadastral Boundaries and addresses -  
Land Information New Zealand  
Projection: NZTM2000  
Ref: ME48261