

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2024] NZEnvC 018

IN THE MATTER OF

an appeal under clause 14 of Schedule 1
to the Resource Management Act 1991

BETWEEN

HUGHES DEVELOPMENTS
LIMITED

(ENV-2022-AKL-071)

Appellant

AND

WAIKATO DISTRICT COUNCIL

Respondent

Court: Environment Judge S M Tepania sitting alone under s 279 of the
Act

Last case event: 23 November 2023

Date of Decision: 19 February 2024

Date of Issue: 19 February 2024

DETERMINATION OF THE ENVIRONMENT COURT

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

- (1) the planning maps are amended in accordance with **Appendix A:**
Amended zoning map for the Property to show 2339A Buckland Road
as General Residential Zone (**GRZ**); and



(2) the appeal is resolved in its entirety.

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

REASONS

Introduction

[1] This appeal is against part of the decisions of the Waikato District Council in respect of the Proposed Waikato District Plan (**PDP**). Specifically, the Appellant appealed the zoning decision relating to its land at Tuakau.

Original Submission and PDP Decision

[2] The Appellant owns 35.062 hectares of land at 2339A Buckland Road, Tuakau, legally described as Part Lot 1 DP 22667, and DP 25719 & Lot 1 DP 29843 (**the Property**). The Property is located northwest of the Tuakau Urban Centre. The Property is zoned Rural Zone in the Operative Waikato District Plan (Franklin Section).

[3] When the PDP was notified, the Property was proposed to be included within the General Residential Zone (**GRZ**). The rezoning was considered appropriate as it would be a natural extension to the existing Tuakau urban area and reflected the Tuakau Structure Plan (2014) which identified the Property as residential in the Stage 1 development period (2016-2026). The registered owner of the Property at the time the PDP was notified, TA Reynolds Limited (**TAR**), made a submission seeking that the boundaries of the planning maps be amended after discussions with the relevant landowners.

[4] The s 42A report for the Tuakau Zoning hearing recommended that the boundaries of the proposed residential zoning of the Property be retained on the basis that this was consistent with Stage 1 of the Tuakau Structure Plan (December 2014) which recognised the appropriateness of the Property for future development.

[5] In the decisions version of the PDP, the Independent Hearings Panel (**IHP**) rejected the s 42A report author's recommendation to retain the residential zoning of the Property and instead accepted Horticulture New Zealand's submission which sought that land containing high class soils around the Tuakau area remain Rural Zone. The reasoning for this, as set out in the Decision, included the following:

- (a) the soils in Area 9A (which the Property was located within) are "high-class" for the purposes of primary production; and
- (b) it is not appropriate to zone land which contains high class soils for residential development, and to find otherwise would be inconsistent with the Waikato Regional Policy statement.

[6] The Property was therefore zoned General Rural Zone (**GRUZ**) in the decisions version of the PDP.

Appeal

[7] Hughes Developments Ltd purchased the property from TAR in October 2020 and thus inherited TAR's standing as a submitter.

[8] The Appellant's appeal seeks the IHP's decision be overturned, and the Property be rezoned GRZ, consistent with the zoning in the notified version of the PDP.

Agreement reached

[9] Following discussions between the parties and the provision of further information including: an economic assessment, engineering infrastructure assessment, traffic assessment and planning and legal memoranda; the parties to the appeal have now agreed that it would be appropriate to live zone the Property to GRZ, to reflect the zoning identified in the notified version of the PDP. The parties filed a draft consent order reflecting this agreement.

Is the National Policy Statement for Highly Productive Land (NPS-HPL) applicable?

[10] On 12 September 2022, the National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**) was notified, and its provisions came into force on 17 October 2022.

[11] The NPS-HPL includes an overarching objective to protect highly productive land for use in land based primary production in New Zealand, both now and for future generations.

[12] Having considered the parties' draft consent order, the parties were requested to address whether the provisions of the NPS-HPL are relevant to their agreement to zone the land GRZ.

[13] The parties have submitted that the NPS-HPL does not apply to the Property and is not relevant to this appeal. I accept the parties' position that the NPS-HPL is not relevant.

Reasoning

[14] Clause 3.5 of the NPS-HPL addresses the timeframes in which highly productive land must be identified in regional policy statements and district plans. The transitional definition at clause 3.5(7) encompasses land that, at the commencement date of the NPS-HPL:

- (a) is:
 - (i) zoned general rural or rural production; and
 - (ii) LUC 1, 2 or 3 land; but
- (b) is not:
 - (i) identified for future urban development; or
 - (ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

[15] The parties agree that the Property meets the criteria set out in clause 3.5(7)(a). However, clause 3.5(7)(b) sets out where the NPS-HPL does not apply. In this case the parties submit that the Property is excluded by clause 3.5(7)(b)(i) because it was

identified for future urban development.

[16] Under the NPS-HPL, land will be “identified for future urban development” where it is:

- (a) identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or
- (b) identified in a strategic planning document as an area suitable for commencing urban development over the next 10 years at a level of detail that makes the boundaries of that area identifiable in practice. “Strategic planning document” is any non-statutory growth plan or strategy adopted by local authority resolution.

[17] In this case the Property is exempt in accordance with clause 3.5(7)(b)(i) because the Property is identified in the Tuakau Structure Plan as land suitable for commencing residential development within the next 10 years. The Tuakau Structure Plan is a non-statutory growth plan and accompanying strategic report which was adopted through resolution by WDC in December 2014. The Property has also been identified for future development in the longer term in growth strategies including Future Proof 2022 (0-30 years).

[18] In relation to clause 3.5(7)(b)(ii), the Court has confirmed that a “Council-initiated notified plan change” includes a notified proposed district plan.¹ This means that where a notified plan proposes to rezone a Property from its existing rural zoning under an operative district plan to an urban zoning, it will be subject to the exemption in clause 3.5(7)(b)(ii).

[19] In this case the Property is exempt from the NPS-HPL under clause 3.5(7)(b)(ii) in accordance with *Balmoral* as it was rezoned from the Rural zone in the ODP to GRZ in the notified PDP.

¹ *Balmoral Developments (Outram) Limited v Dunedin City Council* [2023] NZEnvC 59 at [58], [62]–[64].

Section 32AA evaluation

[20] Section 32AA of the Act requires a further evaluation for any changes to the proposal since the initial section 32 evaluation report and the decision.

[21] The Appellant's planner has prepared a comprehensive planning evaluation addressing the relevant statutory tests, including a detailed section 32AA assessment (the Planning Evaluation). In summary, the Planning Evaluation concludes that:

- (a) The live zoning of the Property will give effect to Plan Change 1 ('PC1') of the WRPS, which seeks to adopt a Future Proof land use pattern, as the net density of the proposed development (25 dwellings per hectare) would meet the target densities outlined in PC1. It would also give effect to provisions in the WRPS (including provisions UFD-O1, UFD-P1, UFD-M1, UFD-P2, ECO-O1 and ECO-P2) which seek to develop the built environment in an integrated, sustainable and planned manner enabling positive wellbeing outcomes.
- (b) The live zoning of the Property gives effect to the objectives and policies of NPS-UD, especially Objective 2, Objective 3(a), Objective 6(b), Objective 6(c), Policy 1 and Policy 2.
- (c) The details of the future development of the Property will be subject to subdivision consents and will have to meet other safeguards in the decisions version of the PDP or be assessed through the resource consent process where it departs from those standards.
- (d) The Property is not "highly productive land" under the NPS-HPL and is therefore exempt from its provisions.
- (e) The live zoning of the Property is consistent with Council's strategic direction as the Property was identified for development in Waikato 2070 as 30+ year development, and in Future Proof 2022 as land suitable for redevelopment in the long-term (0-30 years).
- (f) Given that the Property will be developed earlier than anticipated, an out

of sequence assessment was undertaken which has shown that the benefits of the development outweigh the costs as follows:

- (i) due to its location the development will be a natural extension to the urban area of Tuakau and an opportunity to become an essential part of a well functioning urban area;
 - (ii) it will provide housing choice and increase market competition which will in turn reduce prices;
 - (iii) it will protect natural features such as the existing stream and wetland and deliver environmental enhancements;
 - (iv) the development offers an opportunity to provide additional amenities due to its size;
 - (v) the development will provide opportunities to increase connectivity and accessibility; and
 - (vi) it will attract private investment not just to deliver the development itself but also resulting in spill over investments by employing local people and using local services.
- (g) The live zoning of the Property aligns with Tai Tumu Tai Pari Tai Ao - Waikato-Tainui Environmental Plan as it includes the enhancement and protection of riparian margins and the wetland system.
- (h) In terms of section 32AA, the rezoning of the Property is the most appropriate to achieve the PDP's objectives. In particular, the rezoning will provide for the consolidation of Tuakau's urban area which will maintain a compact urban form. It will also enable a variety of housing types that are well integrated with the provision of infrastructure.

Determination

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

- (a) the notice of appeal dated 1 March 2022;
- (b) the Joint Memorandum of the parties dated 7 November 2023; and
- (c) the Joint Memorandum of the parties of 23 November 2023.

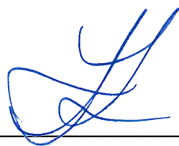
[23] The Court is making this order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order; and
- (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.

Order

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

- (a) the planning maps are amended in accordance with **Appendix A** to this order to include the rezoning of the Property;
- (b) the appeal is otherwise dismissed; and
- (c) there is no order as to costs.



S M Tepania
Environment Judge



Appendix A: Amended zoning map for the Property

