

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2023] NZEnvC 136

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

BETWEEN

K QUIGLEY

S QUIGLEY

THE QUIGLEY FAMILY TRUST

(ENV-2022-AKL-000024)

Appellants

AND

WAIKATO DISTRICT COUNCIL

Respondent

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

Last case event: 2 June 2023

Date of Order: 3 July 2023

Date of Issue: 3 July 2023

CONSENT ORDER

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

S and K Quigley and The Quigley Family Trust v Waikato District Council



- (1) the Subdivision (SUB) and Rural Lifestyle Zone (RLZ) chapters in the Proposed Waikato District Plan at Part 2: district-wide matters and Part 3: area-specific matters respectively be amended to include the additional provisions set out in Appendix A: Clean change version of the agreed changes to the SUB and RLZ chapters;
- (2) the planning maps are amended in accordance with Appendix B: Amended zoning map for the Property to show 233 Wilton Collieries Road identified as RLZ and subject to the Glen Massey Precinct;
- (3) an additional appendix 'APP15 – Glen Massey Precinct' be included in the Proposed Waikato District Plan in Part 4; Schedules and Appendices (after APP14) in accordance with Appendix C: New Appendix APP15 – Glen Massey Precinct; and
- (4) the appeal is resolved in its entirety. Topic 1.4: Zoning – Rest of District remains extant so far as it relates to other appeals.

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

REASONS

Introduction

[1] This consent order relates to an appeal by Stuart and Katrina Quigley and the Quigley Family Trust (**Appellants**) against parts of the decisions of the Waikato District Council (**Respondent**) in respect of the Proposed Waikato District Plan (**PDP**). Specifically, the Appellants have appealed the zoning decision relating to their land at Glen Massey.

[2] The appeal has been assigned to Topic 1.4: Zoning – Rest of District. The consent order resolves the appeal in its entirety. However, other unrelated appeals under Topic 1.4 remain unresolved.

Background

[3] The Appellants own 29.0021 hectares of land at 233 Wilton Collieries Road, Glen Massey, legally described as Lot 20 DP 431591 (**the Property**). The Property is approximately 400m to the south of Glen Massey Village.

Original Submissions and PDP Decision

[4] When the PDP was notified, the land in the Glen Massey Village was shown as a mixture of Country Living and Village zones. The Property was shown as remaining Rural.

[5] The Quigleys made submissions seeking that the Property be zoned either Country Living Zone or Village Zone.

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

Appeal

[7] The Appellants' appeal seeks that it be rezoned either Country Living Zone or Village Zone. The National Planning Standards, which came into force after notification of the PDP, have led to the renaming of these zones as Rural Lifestyle Zone (**RLZ**), Settlement Zone (**SETZ**) and Large Lot Residential Zone (**LLRZ**), respectively.

[8] Precision Built Ltd (**Precision**) has given notice of an intention to become a party to this appeal under s274 of the Act. Precision's sole director is Mr Johnathan Quigley, son of Stuart and Katrina Quigley and beneficiary of the Quigley Family Trust. Precision supports the relief sought by the appeal.

Agreement reached

[9] Following discussions between the parties and the provision of a landscape assessment and traffic assessment, the parties to the appeal have reached an agreement to rezone the Property to RLZ and apply a precinct over the Property to guide development within the precinct. This agreement resolves the appeal in its entirety.

- [10] The agreement consists of the following changes to the PDP:
- (a) amend the planning maps to rezone the Property from GRUZ to RLZ and to apply an overlay over the Property known as PREC33 – Glen Massey Precinct;
 - (b) insert a new Glen Massey Precinct Plan into Part 4 of the PDP (as APP15 – Glen Massey Precinct);
 - (c) insert a new objective (RLZ-O2), policy (RLZ-P11), and land use rule (RLZ-R37) into the RLZ chapter to provide for development in accordance with PREC33 – Glen Massey Precinct; and
 - (d) insert a new subdivision rule SUB-R152 into the SUB chapter to provide for subdivision in accordance with PREC33 – Glen Massey Precinct being a restricted discretionary activity.

Section 32AA evaluation

[11] 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. The parties prepared a section 32AA evaluation to assess the appropriateness of the agreement outlined above. This analysis is set out in the paragraphs below.

[12] In summary, the parties consider that the agreed changes are the most appropriate way to give effect to both the purpose of the Act, and to the objectives of the PDP. The other options considered were retaining the rural zoning of the Property, or rezoning the Property to RLZ with no precinct overlay and plan. The consideration of these options is embedded in the following evaluation.

Effectiveness and Efficiency

[13] The proposed precinct and associated provisions respond to the potential environmental, economic, social and cultural effects anticipated from the development of rural-residential land use. In particular the specific requirements for native planting, onsite generation of power and onsite management of three waters infrastructure (as incorporated into the proposed provisions), is an efficient and

effective way to respond to the potential effects of the proposal. The precinct-specific objective does not reduce the effectiveness and efficiency of the existing RLZ provisions, which will also apply.

Cost/Benefit

[14] While the rezoning of the Property to RLZ will remove 29ha of rural land from primary production, it is noted that the Property is LUC 6 and thus not considered to be highly productive for rural purposes. The rezoning will reduce development pressure on surrounding rural areas, reduce the likelihood of fragmentation of rural land elsewhere and provide for development close to the existing Glen Massey Village. This will strengthen the sense of place of Glen Massey by enabling low-density residential development around an existing rural settlement. This could enhance cohesion, stability, character, services and facilities in the community. The proposed policy and methods for the precinct will also have additional benefits as they address other potential effects of RLZ at the Property while limiting density and providing for self-sufficient development and native planting.

Risk of acting or not acting

[15] The additional information prepared as part of the parties direct discussions means that the information now available is sufficient to provide an informed assessment of the planning alternatives and costs and benefits.

Consideration

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

- (a) the notice of appeal dated 28 February 2022; and
- (b) the Joint Memorandum of the parties dated 2 June 2023.

[17] 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; 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.

[18] The Court is satisfied that the changes sought are within the scope of the Appellants' submission and appeal.

Order

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

- (a) the Subdivision (SUB) and Rural Lifestyle Zone (RLZ) chapters in the Proposed Waikato District Plan at Part 2: district-wide matters and Part 3: area-specific matters respectively are amended to include the additional provisions set out in **Appendix A**;
- (b) the planning maps be amended in accordance with **Appendix B** to this order to include the rezoning of the Property and the introduction of a new overlay titled "Glen Massey Precinct";
- (c) an additional appendix 'APP15 – Glen Massey Precinct' be included in the Proposed District Plan in accordance with **Appendix C**;
- (d) the appeal is otherwise dismissed; and
- (e) there is no order as to costs.



S M Tepania
Environment Judge



Appendix A

Part 2: District-wide matters / Subdivision / SUB – Subdivision

New standard: SUB-R152

RLZ – Rural lifestyle zone

SUB-R152	General Subdivision within PREC33 – Glen Massey Precinct	
<p>PREC33 – Glen Massey Precinct</p>	<p>(1) Activity status: RDIS</p> <p>Activity specific standards:</p> <p>(a) Subdivision within PREC33 – Glen Massey Precinct that complies with all of the following standards:</p> <p style="margin-left: 20px;">(i) The number of lots (other than any access allotment or utility allotment), whether in a single or multiple applications, does not exceed a total of 25.</p> <p style="margin-left: 20px;">(ii) All proposed lots have a net site area (excluding access legs) of at least 5000m².</p> <p style="margin-left: 20px;">(iii) The proposal shall include native planting along the riparian margins of the ephemeral stream, within steep gully areas, and between lots.</p> <p style="margin-left: 20px;">(iv) Certification by a geotechnical engineer that the site is geotechnically stable and suitable for the onsite management of three waters and other supporting infrastructure (for example right of ways / access).</p> <p>(b) Rule AINF-R16 (1)(a)(i)-(iv) does not apply. Subdivision within PREC33 – Glen Massey Precinct in the RLZ – Rural lifestyle zone shall not provide connections to public or reticulated wastewater, water supply, stormwater, or electricity supply.</p> <p>(c) Rule SUB-R61 does not apply.</p> <p>Council’s discretion is restricted to the following matters:</p> <p>(a) Consistency with the Glen Massey Precinct Plan (APP15 – Glen Massey Precinct Plan);</p> <p>(b) Adverse effects on amenity values;</p> <p>(c) The provision of infrastructure, including water supply for firefighting where practicable and servicing of the site;</p>	<p>(2) Activity status: NC</p> <p>Where:</p> <p>(a) Subdivision that does not comply with Rules SUB-R152(1)(a) and (b).</p>

	<ul style="list-style-type: none"> (d) The positioning of any solar panels to integrate into the design of buildings or, if standalone, visually screened from positions beyond the site; (e) Design of earthworks to integrate with existing natural site contours; (f) Standard of design and construction of the rights of way and accesses onto Wilton Collieries Road; (g) Provision of native planting, management plans for weed and pest control and their implementation, ownership and ongoing management of: <ul style="list-style-type: none"> (i) the gully areas and any riparian areas; (ii) landscape screening between lots and; (iii) any existing pockets of native vegetation; (h) Measures to minimise reverse sensitivity effects, including on adjoining GRUZ – General rural zone land; (i) Measures to mitigate effects of the subdivision on the transport network; and (j) Geotechnical suitability of the site for residential development. 	
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Part 3: Area-specific matters / Zones / Rural zones / RLZ – Rural Lifestyle Zone

New objective RLZ-O2:

RLZ-O2 Glen Massey Precinct

- (1) The Glen Massey precinct creates 25 self-sufficient rural lifestyle properties, that can enable residents to grow, farm, manage three waters services and generate renewable energy supply all on-site.

New policy RLZ-P11:

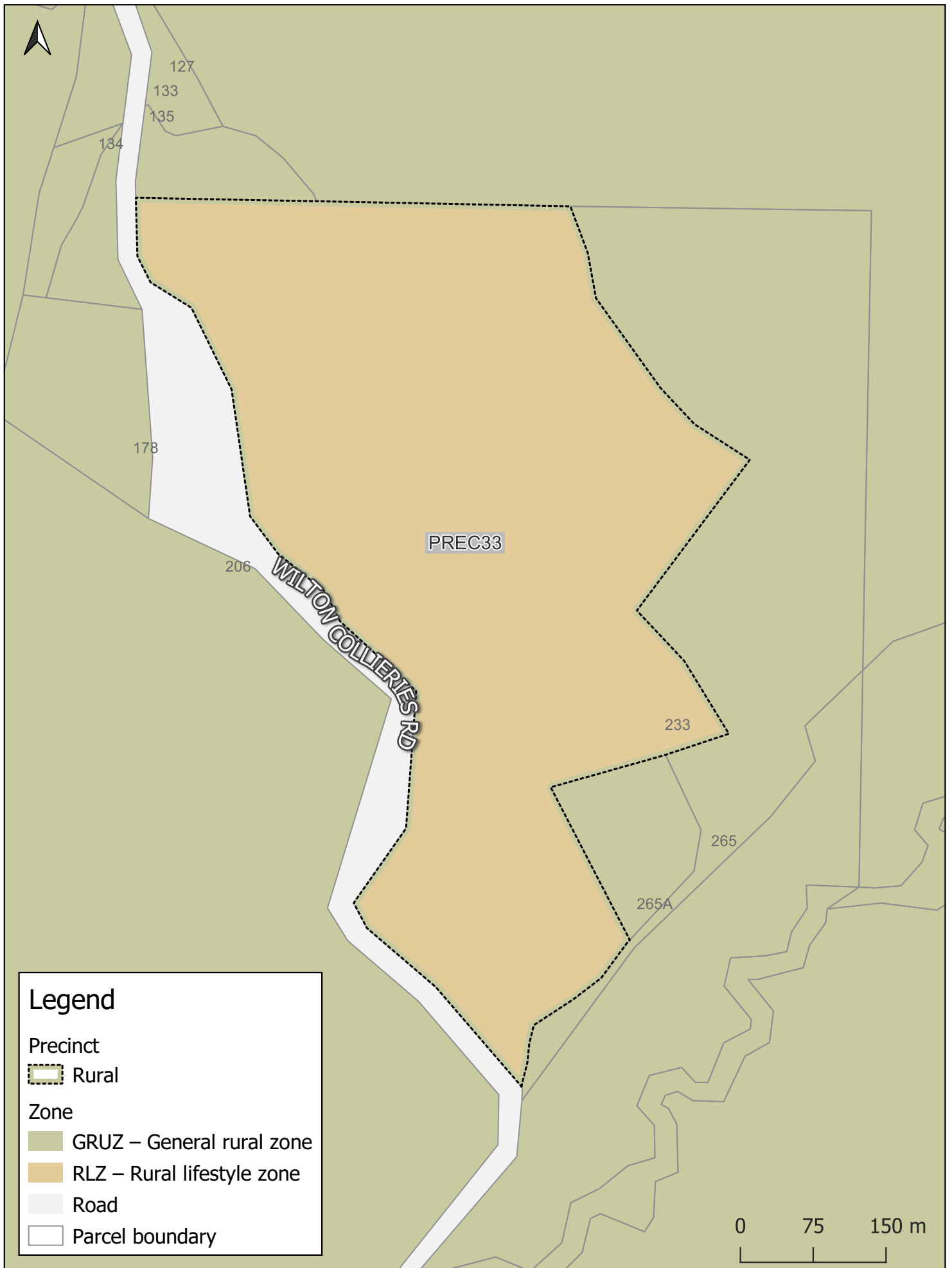
RLZ-P11 Glen Massey Precinct

- (1) Develop and manage the precinct in general accordance with the precinct plan (APP15 – Glen Massey Precinct Plan).
- (2) Any building or development within the Glen Massey Precinct is to have power supply from off-grid renewable energy sources as the primary source of power.
- (3) Within the Precinct, the installation of a fossil-fuel powered off-grid power supply is to be for emergency back-up supply only.
- (4) Manage the adverse effects of the Glen Massey precinct development by:
- (a) Minimising adverse effects on the landscape values of the surrounding rural environment including through native planting and pest management; and
 - (b) Providing for the safe and efficient operation of the transport network.

New standard: RLZ-R37

Land use - activities

RLZ-R37	Use of Renewable Energy within the Glen Massey Precinct
<p>(1) Activity status: PER</p> <p>Activity specific standards:</p> <p>(a) Development of a site within the PREC33 – Glen Massey Precinct is to be supported by off-grid renewable energy power generation and supply (such as solar or wind energy).</p>	<p>(2) Activity status where compliance not achieved: NC</p>



Appendix C

Part 4: Schedules and appendices / APP15 – Glen Massey precinct plan

APP15 – Glen Massey precinct plan

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