

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2024] NZEnvC 310

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

BETWEEN SIMON UPTON
(ENV-2022-AKL-000030)
Appellant
AND WAIKATO DISTRICT COUNCIL
Respondent
AND MARK DE LAUTOUR
DEIDRE KIERNAN
PETER SEWELL
Section 274 Interested Parties

Court: Environment Judge S M Tepania sitting alone under s 279(1)(b)
of the Act

Last case event: 22 November 2024

Date of Order: 2 December 2024

Date of Issue: 2 December 2024

CONSENT DETERMINATION



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

- (1) the zoning maps of the Proposed Waikato District Plan (decisions version) be amended in accordance with **Appendix A** to this Order;
- (2) Part 1: Introduction and general provisions / How the plan works / General approach of the Proposed Waikato District Plan (decisions version) be amended in accordance with **Appendix B** to this Order; and
- (3) Simon Upton's appeal allocated to Topic 1.1: Zoning - Ngaaruawaahia Topic 13.1: Urban residential development – Urban form and development is otherwise dismissed.

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

REASONS

Background

[1] This is an appeal by Mr Upton against parts of the decisions by Waikato District Council in respect of the Proposed Waikato District Plan (**PDP**). The relief sought in the appeal has been assigned to Topic 1.1: Rezoning – Ngaaruawaahia and Topic 13.1: Urban residential development – Urban form and development.

[2] Amendments were made to the PDP to adopt the National Planning Standards (**NPS**) which came into force after notification of the PDP. This resulted in the Residential Zone being renamed as the General residential zone (**GRZ**) and the Rural Zone being renamed to the General rural zone (**GRUZ**) in the decisions version of the PDP. For ease of reference, the decisions version provisions and zones are referred to in this Order.

Mr Upton's submissions

[3] Mr Upton is the owner of the property at 86 Saalbrey Road. He made a submission opposing the notified zoning of the following properties:

- (a) 32 Saalbrey Road (in part);
- (b) 46 Jackson Street;
- (c) 29C Rangimarie Road; and
- (d) 86 Saalbrey Road (in part).

[4] Mr Upton's submission sought to amend the zoning of the submission area to provide a clear urban boundary and transition from GRZ to GRUZ, given the notified location of the zone boundary did not reflect the 2017 Ngaaruawaahia Structure Plan. In particular, he sought:

- (a) part of 32 Saalbrey Road to be zoned GRUZ;
- (b) 46 Jackson Street in its entirety to be zoned GRUZ;
- (c) 29C Rangimarie Road in its entirety to be zoned GRUZ; and
- (d) part of 86 Saalbrey Road to be zoned GRUZ.

[5] The Council also lodged a submission seeking to amend the notified GRZ/GRUZ boundary on the basis that the notified location of the GRZ/GRUZ boundary was a mapping error.

[6] Mr Upton made a further submission on the PDP opposing Mark de Lautour's submission which sought to retain the notified GRZ zoning of 46 Jackson Street (**de Lautour property**).

[7] The decisions version of the PDP accepted Mr Upton's submission in part, rezoning Mr Upton's property from GRZ to GRUZ, including the northern tip of the property (which was not opposed by Mr Upton), and accepting Mr de Lautour's submission in full, retaining the GRZ zoning across the de Lautour property.

Mr Upton's appeal

[8] Mr Upton appealed the decision on 28 February 2022, seeking the following relief:

- (a) part of 32 Saalbrey Road be rezoned from GRZ to GRUZ;
- (b) 46 Jackson Street from be rezoned GRZ to GRUZ;
- (c) 29C Rangimarie Road be rezoned from GRZ to GRUZ; and
- (d) the northern tip of 86 Saalbrey Road be rezoned from GRUZ to GRZ.

[9] Mark de Lautour and Diedre Kiernan (jointly), and Peter Sewell gave notice of an intention to become a party to the appeal under s 274 of the Act. Mr Sewell is the owner of 32 Saalbrey Road.

[10] On 22 August 2024, Mr Upton filed a memorandum with the Court seeking to amend the appeal to reduce the extent of the appeal area, including the removal of 32 Saalbrey Road.

[11] The amended appeal sought the following relief:

- (a) Rezoning the entirety of the de Lautour property from GRZ to GRUZ and the northern tip of Mr Upton's property from GRUZ to GRZ.
- (b) In the alternative:
 - (i) that the entirety of the de Lautour property be rezoned from GRZ to:
 - 1. Large lot residential zone; or
 - 2. another residential zone, that allows lower density development than GRZ; or
 - 3. a combination of lower density residential zones that better reflect the environmental setting of the site and avoid

reverse sensitivity effects on adjoining established lawful rural activity; and

- (ii) the northern tip of Mr Upton's property be rezoned from GRUZ to GRZ.
- (c) In the further alternative, that development controls be added to the PDP in respect of the de Lautour property to achieve the following:
- (i) an appropriate transition from residential to rural environments;
 - (ii) appropriate recognition of and response to the landform, landscape and natural features;
 - (iii) ensure compatibility of rural and urban development and activities; and
 - (iv) appropriate management of development near to watercourses and wetlands.

Agreement reached

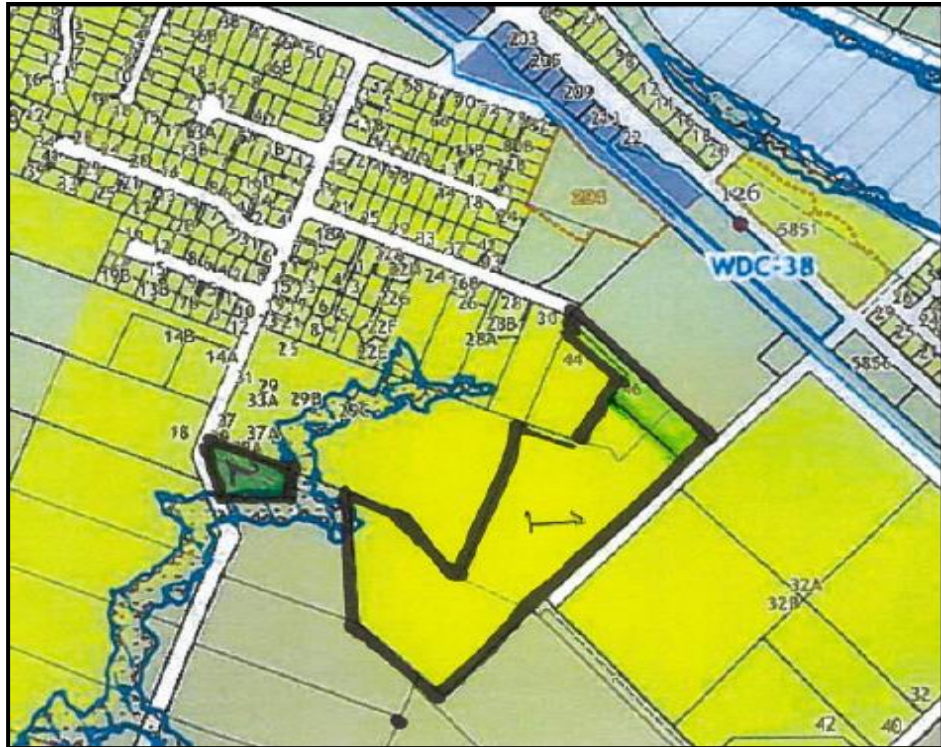
[12] Representatives for Mr Upton, the Council, together with Mr de Lautour and Ms Kiernan attended Court-assisted mediation on 27 August 2024. Mr Sewell was excused from mediation as his property was not included in the amended appeal area. Following mediation, the parties engaged in further negotiations and have now reached agreement which will resolve the amended appeal in its entirety.

[13] The parties have agreed to:

- (a) Amend the planning map to rezone the northern tip of Mr Upton's property from GRUZ to GRZ (shown as **Area 2** in the map below).
- (b) Include the following statement within Part 1: Introduction and general provisions / How the plan works / General approach of the PDP:

Other matters outside of the District Plan, such as the presence of easements or restrictive covenants on a Certificate of Title, may also have an influence on the extent to which a particular activity (regardless of activity class set out below) can be undertaken on a site.

- (c) Retain the GRZ zoning across the de Lautour property (shown as **Area 1** in the map below).



Statutory Planning assessment

[14] A planning assessment was carried out in relation to the partial rezoning of the Area 2 from GRUZ to GRZ. The remaining parts of the agreement were not assessed on the basis that:

- (a) the agreed inclusion of the statement within the Introduction to the PDP is not a provision and, instead, makes plan users aware of the potential impacts of instruments on title; and
- (b) the GRZ zoning across Area 1 reflects the zoning decided by the Independent Hearing Panel.

[15] Area 2 consists of approximately 6,000 m². The area can be accessed from Rangimarie Road which services the existing residential area to the north. Area 2 is effectively severed from the rest of 86 Saalbrey Road by a stream along the southern side.

[16] The Council acknowledged that a residential zoning for Area 2 was appropriate both through the operative residential zoning of the District Plan and the proposed residential zoning in the notified PDP.

[17] The parties agree that rezoning Area 2 enables the residential use of land that is located within a residential area and is not suitable for farming purposes due to access constraints. The parties agree that this meets the relevant statutory planning requirements. Specifically:

- (a) The rezoning allows for an efficient use of resources that can contribute to promoting sustainable development that can positively impact on the social and economic well-being of Ngaaruawaahia. The rezoning is therefore considered to be consistent with the purpose of the Act.
- (b) The rezoning of Area 2 will contribute to enabling a well-functioning urban environment to establish within this part of Ngaaruawaahia. Specifically, the residential zone on this site provides for a more suitable land use outcome than rural given access constraints and the residential character of the area to the north. For these reasons it is considered that the rezoning is consistent with the overarching objective of the National Policy Statement on Urban Development which seeks to achieve well-functioning urban environments.
- (c) The rezoning of Area 2 will give effect to the Waikato Regional Policy Statement (WRPS) including Plan Change 1 on the basis that Area 2 is located within an area that has existing access to infrastructure services and can therefore be effectively integrated. Furthermore, any potential land use conflicts can be avoided on the basis that the land to the north is already zoned for residential purposes. These outcomes give effect to UFD-O1 and UFD-P2 of the WRPS.

- (d) The residential zoning of Area 2 is consistent with:
- (i) The Future Proof Strategy 2020;
 - (ii) Waikato 2070;
 - (iii) Waikato Blueprint – Ngaaruawaahia;
 - (iv) The Ngaaruawaahia Structure Plan of March 2017; and
 - (v) The Ngaaruawaahia Structure Plan of October 2024.

[18] Based on the above, the parties agree that the rezoning of Area 2 from GRUZ to GRZ meets the relevant statutory tests.

Section 32AA assessment

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

[20] The only zoning change is to rezone the northern tip of 86 Saalbrey Road from GRUZ to GRZ. It is considered that a further evaluation of this rezoning is not required as:

- (a) both the operative District Plan zoning and the notified PDP zoning for this property is/was Residential; and
- (b) the scale and significance of the change is low given it involves a small area of land of some 6,000 m².

[21] The agreed inclusion of the statement within the Introduction to the PDP does not require a s 32AA analysis given that it is not a provision.

[22] Similarly, the GRZ zoning across 46 Jackson Street does not require a s 32AA analysis as it reflects the zoning decided by the Independent Hearing Panel.

Consideration

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

- (a) the notice of appeal dated 28 February 2022;
- (b) the memorandum of the appellant seeking to amend the appeal to reduce the extent of the appeal area dated 22 August 2024; and
- (c) the joint memorandum dated 22 November 2024.

[24] 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;
- (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.

[25] The Court is satisfied that the changes sought are within the scope of the appellant's submissions and appeal.

Order

[26] Therefore, the Court orders, by consent, that:

- (a) the zoning maps of the Proposed Waikato District Plan (decisions version) be amended in accordance with **Appendix A** to this Order;
- (b) Part 1: Introduction and general provisions / How the plan works / General approach of the Proposed Waikato District Plan (decisions version) be amended in accordance with **Appendix B** to this Order; and
- (c) Simon Upton's appeal allocated to Topic 1.1: Zoning - Ngaaruawaahia Topic 13.1: Urban residential development – Urban form and development is otherwise dismissed.

[27] Under s 285 of the Act there is no order as to costs.



S M Tepania

Environment Judge | Kaiwhakawā, Te Kōti Taiao



Appendix A – Amended zoning map for 86 Saulbrey Road, Ngaaruawaahia



Appendix B – Proposed addition to Introduction on Chapter 1 of the Waikato PDP (decisions version)

Part I: Introduction and general provisions / How the plan works / General approach

General approach

Categories of activities

Rules determine whether resource consent is required for a particular activity. The Resource Management Act 1991 provides categories of permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited activities for every land use or subdivision. The following table shows the order and summarises the meaning of these categories.

Other matters outside of the District Plan, such as the presence of easements or restrictive covenants on a Certificate of Title, may also have an influence on the extent to which a particular activity (regardless of activity class set out below) can be undertaken on a site.

Is resource consent required?	Activity status abbreviation	Activity class	Comments
No consent required	PER	Permitted	No resource consent is required. However, approvals may be required under other legislation, such as a building consent under the Building Act or a resource consent under the provisions of the Waikato Regional Plan.
Consent required	CON	Controlled	The Council must grant consent. Consent conditions may be imposed on matters over which control is reserved, as listed in the rule table. The Council may refuse to grant a controlled activity subdivision if the provisions of s106 of the Resource Management Act apply.
	RDIS	Restricted discretionary	The Council may grant or decline consent. Assessment of the application is restricted to matters over which discretion is restricted in the rule table. If granted, the Council may impose conditions on the consent, but only for those matters over which discretion is restricted.
	DIS	Discretionary	The Council may grant or decline consent. The consent may be granted with or without conditions. The Council will assess the application on the full range of matters without limitation.

	NC	Non-complying	The Council may grant or decline consent. The application can only be granted if Council is satisfied that the requirements of s104D of the Resource Management Act are met. If the consent is granted it may be granted with or without conditions. The application will be assessed on a full range of matters without limitation.
No consent possible	PR	Prohibited	No application can be made for a prohibited activity and Council must not grant a consent.