

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2025] NZEnvC 001

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

BETWEEN

STEVEN HOPKINS

TERESA HOPKINS

(ENV-2022-AKL-000090)

HYNDS PIPE SYSTEMS LIMITED

HYNDS FOUNDATION

(ENV-2022-AKL-000087)

Appellants

AND

WAIKATO DISTRICT COUNCIL

Respondent

AND

CRAIG HALL

Section 274 Interested Party

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

Last case event: 20 November 2024

Date of Order: 6 January 2025

Date of Issue: 6 January 2025



Topic 10.1 – Pokeno South – Spatial Extent – Proposed Waikato District Plan
Topic 16 – Land use compatibility/Reverse sensitivity issues (non-infrastructure) – Proposed
Waikato District Plan

CONSENT ORDER

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

- (1) the GRUZ and SUB chapters of the PDP are amended in accordance with **Appendix 1** to this Order;
- (2) the planning maps are amended in accordance with **Appendix 2** and **Appendix 3** to this Order; and
- (3) the following parts of the Hynds' appeal in Topic 16 remain unresolved:
 - (a) row 2 of Appendix 1 to Hynds' notice of appeal regarding amendments to Strategic Objective SD-O10; and
 - (b) row 9 of Appendix 1 to Hynds' notice of appeal regarding amendments to GRUZ-P13.

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

REASONS

Background

[1] This consent order relates to appeals by Hynds Pipe Systems Ltd and Hynds Foundation (**Hynds**) and Steven & Teresa Hopkins (the **Hopkins**) against parts of the decisions of the Waikato District Council (**Council**) in respect of the Proposed Waikato District Plan (**PDP**).

Original submissions

Hynds

[2] Hynds Pipe Systems Ltd leases 9 McDonald Road, Pokeno (the **Hynds Factory Site**) which is zoned Heavy industrial zone (**HIZ**). The Hynds Factory Site is owned by Stuart P.C. Limited, a related company to Hynds. Hynds Pipe Systems Ltd operates a large-scale pre-cast concrete products manufacturing and distribution facility at the Hynds Factory Site.

[3] Under the notified version of the PDP, the land adjacent to the Hynds Factory Site was rezoned from Aggregate Extraction and Processing (**AEP**) to Rural zone. This area of land included the property at 62 Bluff Road which is situated between the Hynds Factory Site and 67 Pioneer Road (the **Hopkins' Land**) and was then owned by a third party. The notified version of the PDP also retained the Rural zoning of the Hopkins' Land and the land subsequently purchased by the Hynds Foundation at 10 Bluff Road.

[4] Hynds Pipe Systems Ltd lodged a submission on the PDP opposing the rezoning of land surrounding the Hynds Factory Site, including 62 Bluff Road from AEP to Rural and requesting an appropriate or new zoning to restrict residential activity on that land. If the Council was not of a mind to grant this relief, Hynds sought to amend the Rural zone provisions for residential development adjacent to land zoned HIZ (including the Hynds Factory Site) to include appropriate activity rules and land use rules to prohibit or restrict residential development or subdivision.

[5] During the PDP hearings, Hynds presented evidence¹ confirming its recent purchase of 62 Bluff Road, situated between the Hynds Factory Site and the Hopkins' Land. 62 Bluff Road was rezoned from AEP under the Operative District Plan (**ODP**) to Rural in the notified version of the PDP. It was noted that the previous owner of the property (Grander Investments Limited) lodged a submission seeking the site be zoned HIZ. Hynds further submitted in support. Upon purchasing 62 Bluff Road, Hynds became a successor in title and took over Grander Investments Limited's

¹ Legal submissions on behalf of Hynds Pipe Systems Limited and the Hynds Foundation dated 13 May 2021 at [5.1].

submission and subsequently refined the original rezoning proposal. Hynds requested that only the portion of the 62 Bluff Road site adjacent to the Hynds Factory Site be zoned HIZ, whilst retaining the proposed Rural zone on the balance (**refined rezoning request**).

[6] Expert landscape and visual evidence was presented on behalf of Hynds at the PDP hearings in support of its refined rezoning request, including the provision of an Indicative Design Concept for an ecological reserve and sculpture park on the rural zoned land proposed to be retained at 62 Bluff Road².

[7] The Hopkins opposed this relief at the hearing on the basis that rezoning part of the 62 Bluff Road site to HIZ would reduce buffer distances between their property and the Hynds Factory Site, which could constrain their future development options.

The Hopkins

[8] Under the Operative Waikato District Plan (Franklin Section), the Hopkins' Land was zoned Rural. The notified version of the PDP retained this Rural zoning. The Hopkins made a submission on the PDP seeking to rezone their property to Village zone to enable the scale of future residential development they wished to undertake.

[9] Hynds lodged a further submission opposing the rezoning sought by the Hopkins. The basis for the further submission was that it would enable residential intensification which has the potential to create reverse sensitivity effects for the neighbouring heavy industrial zoned land, including the nearby Hynds Factory Site.

[10] The Hopkins presented rebuttal evidence from Birch Surveyors in response to Hynds' landscape evidence discussed in paragraph 6. The rebuttal evidence included an indicative subdivision plan which proposed an Environmental Protection Area (**EPA**) overlay over areas of the Hopkins' Land.³ Also presented was a highlights package which contained pictures of the areas to be planted and a subdivision concept

² Evidence of Rachel Virginia de Lambert on behalf of Hynds Pipe Systems Limited and the Hynds Foundation in support of rezoning request dated 17 February 2021.

³ Rebuttal Evidence of Sir William Birch on behalf of Stephen and Teresa Hopkins dated 3 May 2021.

plan.⁴ The package supported the proposed EPA, noting that the gullies present had potential ecological value (wetlands) and that the steep hillslopes also justified protection to assist with stabilisation, which could be achieved through indigenous planting.⁵

Decision

Hynds

[11] In Decision Report 28I – Zoning: Pokeno (the **Decision**), the Independent Hearings Panel (**IHP**) accepted Hynds’ submission and rezoned part of the 62 Bluff Road site from Rural to HIZ as sought in Hynds’ refined rezoning request because it considered it appropriate given the need for additional industrial zoned land.⁶ The IHP also considered that the proposed revegetation of the rural zoned land that comprised the majority of 62 Bluff Road as a buffer to neighbouring properties was beneficial. The IHP accepted the evidence presented during the hearing from Hynds’ experts that the traffic, noise and lighting effects of the rezoning will be acceptable.⁷

[12] The IHP considered Hynds’ submission with respect to amending the Rural zone to include appropriate activity rules and land use rules for residential development adjacent to the HIZ in Decision Report 22: Rural Zone.⁸ The IHP considered that such provisions were unnecessary for the remaining GRUZ land in proximity to the Pookeno industrial area given its decision to increase the minimum site size to 40 ha. This would, in the context of the Pookeno industrial area, mean that there is very limited opportunity for future housing to be located in the rural area in close proximity to Hynds’ existing industrial activities.

The Hopkins

[13] In the Decision, the IHP rezoned the Hopkins’ Land to RLZ with the proposed EPA overlay. The IHP considered that potential reverse sensitivity issues

⁴ Highlights Package Sir William Birch on Behalf of Stephen and Teresa Hopkins (#451.1) (Development Considerations) dated 11 May 2021.

⁵ Ibid at [1.6].

⁶ Decision Report 28I: Zoning – Pokeno at [119].

⁷ Ibid, at [119].

⁸ Decision Report 22: Rural zone at [5.42].

could be managed by orientating future dwellings on the Hopkins' Land towards the north-east, rather than towards industrial land.⁹ The IHP further considered that the rural lifestyle development of the Hopkins' Land, combined with the extensive EPA planting, would provide a soft edge to the Pookeno township and an appropriate transition from the State Highway 1 motorway to GRUZ land.¹⁰ In line with the rezoning decision, the IHP also included a rule in the SUB chapter (**SUB-R70**) to promote subdivision of the Hopkins' Land in accordance with the lot layout presented in evidence which is reflected in Figure 23 in the rule.¹¹

[14] It is noted that when the IHP's zoning decision for the Hopkins' Land was transposed into the GIS mapping, the properties directly adjacent to the Hopkins' Land at 39, 51 and 65 Pioneer Road (the **Neighbouring Properties**) were mistakenly identified as RLZ. No submissions were made seeking the rezoning of these properties, nor were the merits of rezoning these properties discussed in the s 42A report or the Decision. The rezoning of these properties in the mapping included in the Decision with respect to the Hopkins' submission is therefore an error.

The appeals

[15] On 1 March 2022, Hynds and the Hopkins' filed appeals against the decisions version of the PDP. Of relevance to this consent order, the appeals seek the following:

Hynds

- (a) apply a more restrictive activity status to new dwellings and minor dwellings on GRUZ land in proximity to the Hynds Factory Site. Hynds' notice of appeal noted that this relief could be achieved through either a setback or buffer provision; and
- (b) delete the RLZ applied to the Hopkins' Land and the Neighbouring Properties and retain the GRUZ zoning (with restrictions on establishing dwellings and minor dwellings on this land as set out in 15(a) above).

⁹ Decision Report 28I: Zoning – Pokeno at [118].

¹⁰ Ibid at [118].

¹¹ Ibid at [118] and page 69.

The Hopkins

- (c) Amend the planning maps to remove from the HIZ the elevated area of land that provides a natural screen between much of the industrial land and the Hopkins' Land; and
- (d) that the balance of the land in 62 Bluff Road and 10 Bluff Road be subject to a covenant in favour of Council and landscaped as proposed by Hynds' landscape expert in Hearing 25: Rezoning.

[16] The appeals have been assigned to Topic 10.1: Pookeno South – Spatial extent and Topic 16: Land use compatibility / reverse sensitivity issues (non infrastructure). This draft consent order resolves the Hopkins' appeal in its entirety (Topic 10.1), resolves Hynds' interest in Topic 10.1 and partially resolves Hynds' interest in Topic 16.

Parties to the appeals*Hynds*

[17] Craig Hall, Yashili New Zealand Dairy Co. Limited, Pokeno Community Committee, Pokeno Village Holdings Ltd, the Hopkins, Synlait Milk Ltd and Havelock Village Ltd gave notice of an intention to become a party to Hynds' appeal under s 274 of the Act. Pokeno Community Committee, Pokeno Village Holdings Ltd, Havelock Village Ltd, Synlait Milk and Yashili New Zealand Dairy Co. later withdrew their interests.

[18] In his s 274 notice, Mr Hall (who owns the property at 39 Pioneer Road) opposed the relief sought by the Hynds' appeal outlined above at paragraphs 15(a) and 15(b).

The Hopkins

[19] Mr Hall, Havelock Village Ltd, Pokeno Village Holdings Ltd and Hynds gave notice of an intention to become a party to the Hopkins' appeal under s 274 of the

Act. Havelock Village Ltd and Pokeno Village Holdings Ltd later withdrew their interest in the Hopkins' appeal.

Agreement reached

[20] Following the filing of the appeals the parties entered into direct negotiations and after two Court-assisted mediations, Hynds, the Hopkins', Council and Mr Hall have reached agreement. It is noted that prior to the first mediation, Yashili New Zealand Dairy Co. Limited expressed it did not have any interest in the matters set down for mediation and sought leave to be excused.

[21] To resolve the concerns raised in the Hynds and the Hopkins' appeals set out above, the parties have agreed to the following:

Provisions applying to the Hopkins' Land

- (a) Retain the RLZ zoning over all of the Hopkins' Land.
- (b) Amend the planning maps to introduce a new Buffer Planting Area on the Hopkins' Land as shown in **Appendix 2**.
- (c) Amend the wording of rule SUB-R70 and subdivision layout plan labelled Figure 23 within rule SUB-R70 as set out in **Appendix 1** to reference the Buffer Planting Area on the Hopkins' Land and the requirements for the planting of that area.
- (d) Removal of all of the EPA on the Hopkins' Land from Figure 23 and the PDP planning maps as shown in Appendices 1 and 2.
- (e) Outside of the PDP, the Hopkins have agreed to register a land covenant on their land as soon as practicable following a consent order being issued to resolve Hynds' concerns regarding the RLZ zoning of the Hopkins' Land.

Zoning of the Neighbouring Properties

- (f) Rezone the Neighbouring Properties GRUZ as per the map attached as **Appendix 2**. It was agreed by the parties that there was no jurisdiction for the IHP to rezone the Neighbouring Properties RLZ.

Hynds Industry Buffer Area on GRUZ land

- (g) Amend the planning maps to introduce a new Hynds Industry Buffer Area (**Industry Buffer**) as shown on the map attached as **Appendix 3**.
- (h) Insert a corresponding rule into the GRUZ chapter regarding the Industry Buffer as set out in **Appendix 1**.

Extent of the HIZ at 62 Bluff Road

- (i) Retain the full extent of the HIZ on the Hynds' property at 62 Bluff Road.

Covenant in favour of the Council

- (j) As a result of the other agreements reached between the parties, the Hopkins no longer wish to pursue the relief at paragraph 13(e) of their notice of appeal.

Section 32AA evaluation

[22] 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. Council has prepared a standalone s 32AA evaluation, which is included in Appendix E to the Joint memorandum of the parties dated 20 November 2024.

[23] In summary, the s 32AA assessment concludes that the proposal:

- (a) Constitutes sustainable management of natural and physical resources in accordance with s 5 of the RMA. It retains the PDP decisions zoning for the appellants' sites which provides for development potential and enable social and economic well-being. It will also avoid or mitigate

potential adverse reverse sensitivity effects relating to both existing and new activities.

- (b) Enables the efficient use and development of the relevant land through the application of appropriate zoning, overlays and provisions that do not unnecessarily restrict development potential in accordance with s 7(b) of the RMA.
- (c) Protects the amenity values of future landowners on the Hopkins' Land in accordance with s 7(c) of the RMA.

[24] In summary, the s 32AA assessment further concludes that the proposed amendments to the PDP maps:

- (a) will be an efficient way to achieve the objectives of the proposal, and the PDP. This is because they will:
 - (i) not require wide-reaching changes to the PDP, remove some superfluous requirements for the development of the Hopkins' Land, and focus the Buffer Planting Area and type of planting required where it most efficiently mitigates any potential reverse sensitivity effects; and
 - (ii) protect the operations of the regionally significant Hynds Factory Site by addressing any potential reverse sensitivity effects while remaining consistent with the zone objectives for the RLZ and HIZ.
- (b) Enable rural residential development on the Hopkins' Land while maintaining development potential on Hynds' land. They also provide increased certainty for Hynds' existing and future development that reverse sensitivity effects which may impact on their operations are mitigated.
- (c) Do not unreasonably constrain land within the Hynds Industry Buffer, with only a height restriction applying to new buildings for a sensitive

land use, and no impact on existing buildings with a sensitive land use. The amendments will also not significantly reduce development opportunities, as the affected sites have existing development, and six of the ten affected sites can avoid new development within the Industry Buffer. The amendments will be effective at reducing the visibility of industrial sites from any new buildings and will also be effective at enabling potential reverse sensitivity effects to be considered thoroughly through a resource consent process.

Consideration

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

- (a) the notices of appeal from Hynds and the Hopkins' each dated 1 March 2022; and
- (b) the joint memorandum of the parties in support of draft consent orders dated 20 November 2024.

[26] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297.

[27] 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; and
- (c) the Court is satisfied that the changes sought are within the scope of Hynds' and the Hopkins' submissions and appeals.

Order

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

- (a) the GRUZ and SUB chapters of the PDP be amended in accordance with **Appendix 1** to this Order;
- (b) the planning maps are amended in accordance with **Appendix 2** and **Appendix 3** to this Order;
- (c) the following parts of the Hynds' appeal in Topic 16 remain unresolved:
 - (i) row 2 of Appendix 1 to the Hynds notice of appeal regarding amendments to Strategic Objective SD-O10; and
 - (ii) row 9 of Appendix 1 to the Hynds notice of appeal regarding amendments to GRUZ-P13; and
- (d) the Hopkins' appeal is resolved in its entirety.

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



S M Tepania
Environment Judge | Kaiwhakawā o te Kōti Taiao



Appendix 1: Tracked change version of the agreed amendments to the GRUZ and SUB chapters

1. New rule GRUZ-R64 to be inserted into the GRUZ chapter:

<u>GRUZ-R64</u>	<u>Sensitive land use within the Hynds Industry Buffer specific control area</u>	
	<p><u>(1) Activity status: RDIS</u></p> <p><u>Where:</u></p> <p>(a) <u>Any new building for a sensitive land use located within the Hynds Industry Buffer (except for any new building on land owned by Stuart P.C Limited) must:</u></p> <p>i. <u>not exceed 5m in height measured from natural ground level immediately below that part of the structure.</u></p> <p>ii. <u>Comply with the following standards:</u></p> <p>a. <u>GRUZ-S1;</u></p> <p>b. <u>GRUZ-S2;</u></p> <p>c. <u>GRUZ-S8;</u></p> <p>d. <u>GRUZ-S9; and</u></p> <p>e. <u>GRUZ-S12.</u></p> <p><u>Council's discretion is restricted to the following matters:</u></p> <p>(b) <u>Potential for reverse sensitivity effects on existing and permitted land use and development in the Heavy Industrial zone;</u></p> <p>(c) <u>Mitigation measures, including the extent to which legal mechanisms have been put in place to minimise reverse sensitivity effects arising out of complaints from future owners and occupiers of the proposed building.</u></p>	<p><u>(2) Activity status where compliance not achieved: DIS</u></p>

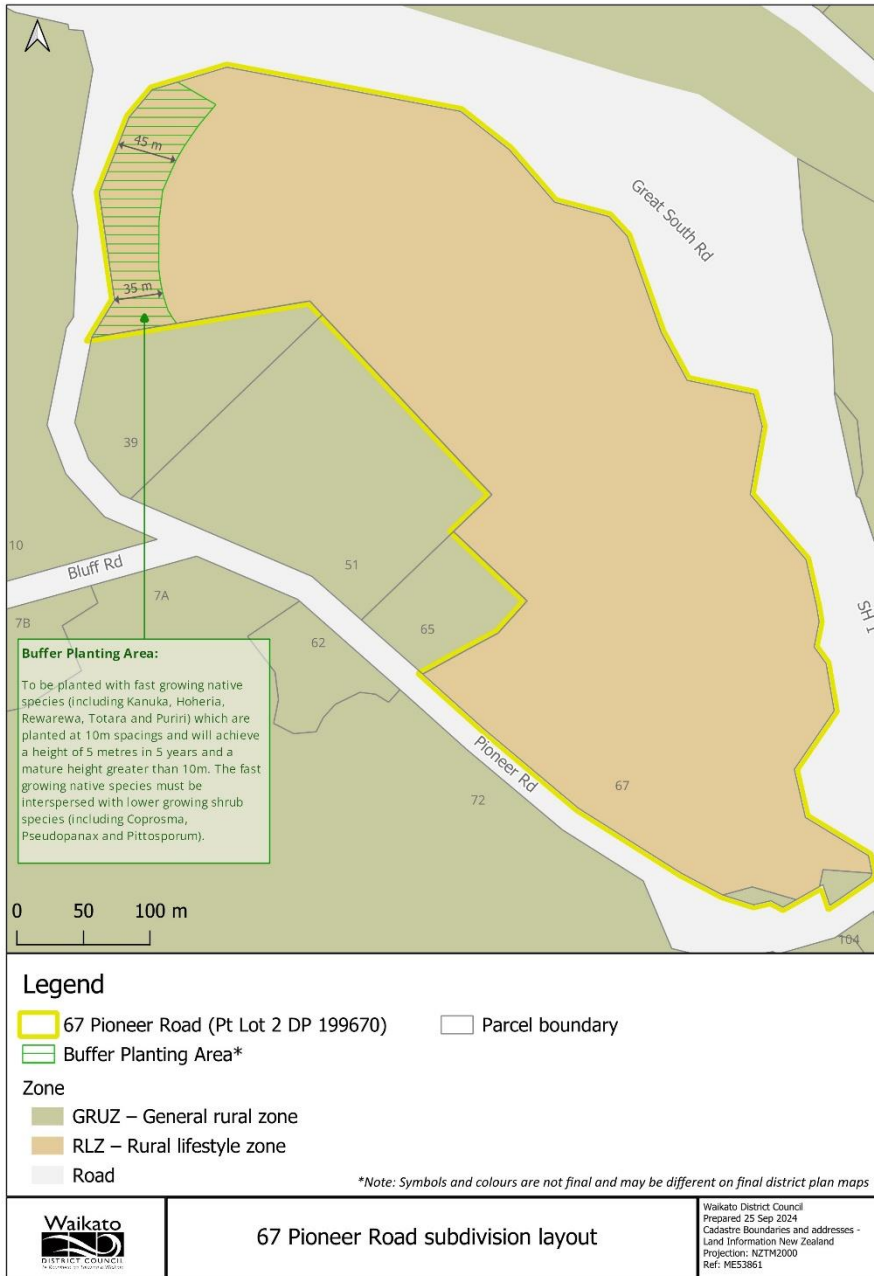
2. Amend SUB-R70 as follows:

SUB-R70 Subdivision of land at 67 Pioneer Road, Pōkeno		
RLZ – Rural lifestyle zone	<p>(1) Activity status: RDIS</p> <p>Activity-specific standards:</p> <p>(a) Any subdivision at 67 Pioneer Road, Pōkeno (Pt Lot 2 DP 199670).</p> <p>Council’s discretion is restricted to the following matters:</p> <p>(b) Accordance with the subdivision layout <u>and planting requirements</u> on Figure 23 below, including the <u>width, species and spacing of the planting within the Buffer Planting Area.</u></p>	<p>(2) Activity status where compliance not achieved: n/a</p>

3. Delete Figure 23 from below rule SUB-R70 and replace with an updated Figure 23 as below:

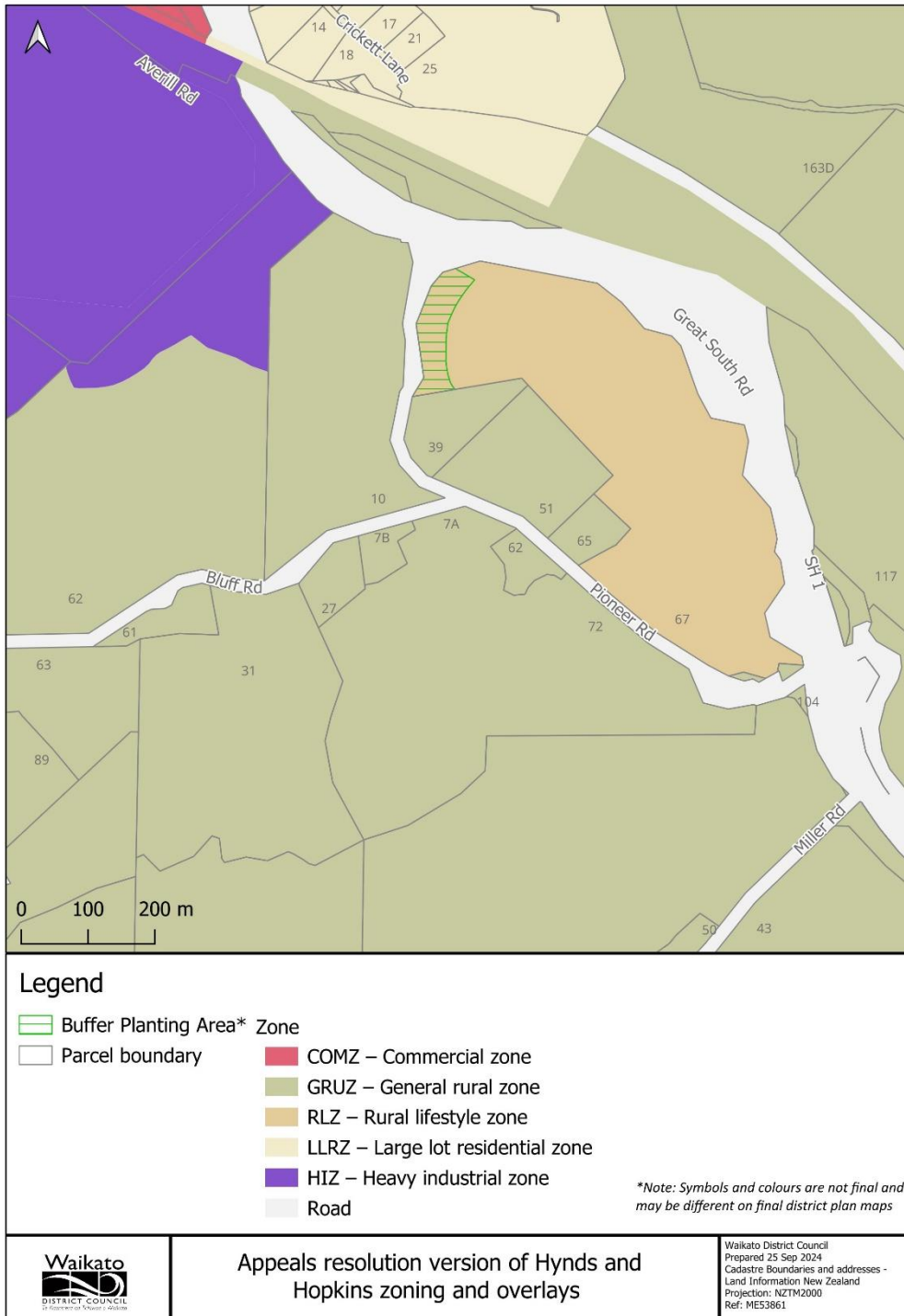


Figure 23 – 67 Pioneer Road subdivision layout



67 Pioneer Road subdivision layout

Appendix 2: Agreed amendments to the planning maps to remove the EPA from the Hopkins' Land and rezone the Neighbouring Properties



Appendix 3: Agreed amendments to the planning maps to introduce the Hynds Industry Buffer

