

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV –

IN THE MATTER of an appeal under clause 14(1) of
Schedule 1 of the Resource
Management Act 1991

AND

IN THE MATTER of a Proposed District Plan

BETWEEN **THE BUCKLAND COUNTRY LIVING
LANDOWNERS GROUP AND ORS
[A FULL LIST OF THE INDIVIDUAL
PARTIES THAT HAVE FILED THIS
APPEAL IS IN ANNEXURE 1]**

Appellants

AND

WAIKATO DISTRICT COUNCIL

Respondent

**To: The Registrar
Environment Court – Auckland**

**NOTICE OF APPEAL TO THE ENVIRONMENT COURT AGAINST
A DECISION ON A PROPOSED DISTRICT PLAN
BY THE WAIKATO DISTRICT COUNCIL**

1 March 2022

Counsel Instructed

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DECISION APPEALED

1. The Buckland County Living Landowners Group, a collective of submitter landowners (the **Appellants**), appeals a decision of the Respondent, the Waikato District Council, on the following matter (the **Decision**):

The Proposed Waikato District Plan, notified and determined under Schedule 1 of the Act (**Proposed Plan**).

2. The Appellants made submissions on the Proposed Plan that were lodged by The Surveying Company Limited (The Buckland Group is Submitter number 682), and a full list of the individual Appellants is in Annexure 1.
3. The Appellants are not a trade competitors for the purposes of section 308D of the Resource Management Act 1991 (**Act**).
4. The Appellants received notice of the Decision on 17 January 2022.
5. The Decision was made by commissioners and adopted by the Respondent.

THE LAND AFFECTED

6. The Appellants land affected by the Proposed Plan is the area shown on the map below:

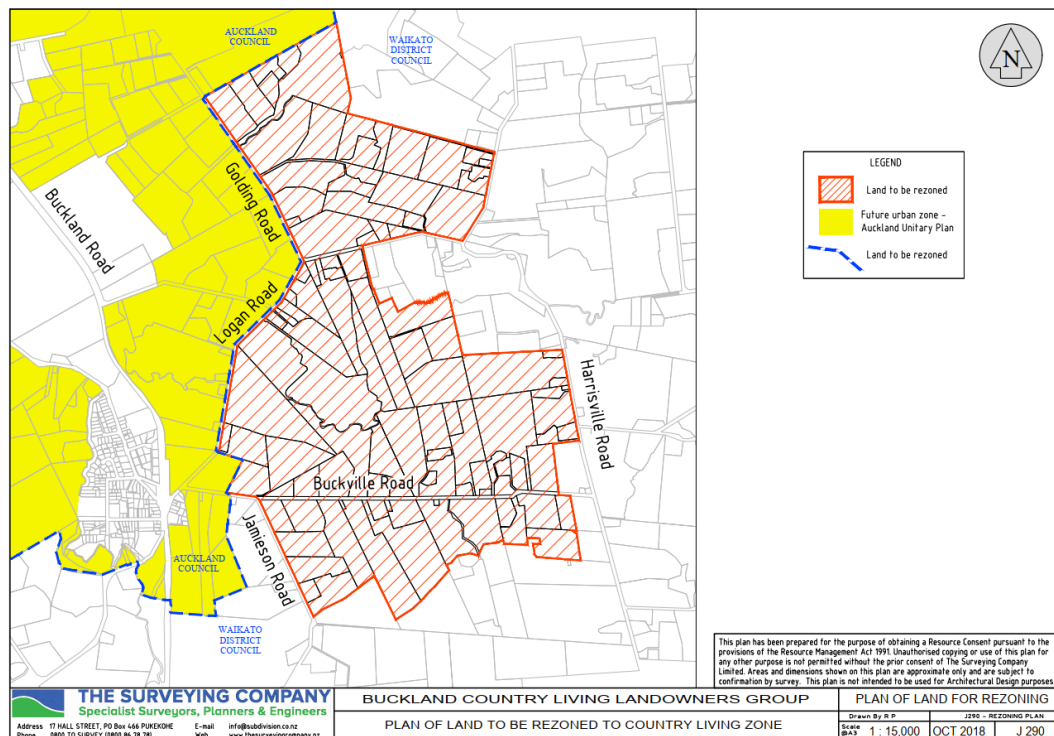


Figure 1 – Appellants land (map lodged with submission)

PROVISIONS BEING APPEALED

7. The map from the Tuakau Decision report is inserted below:

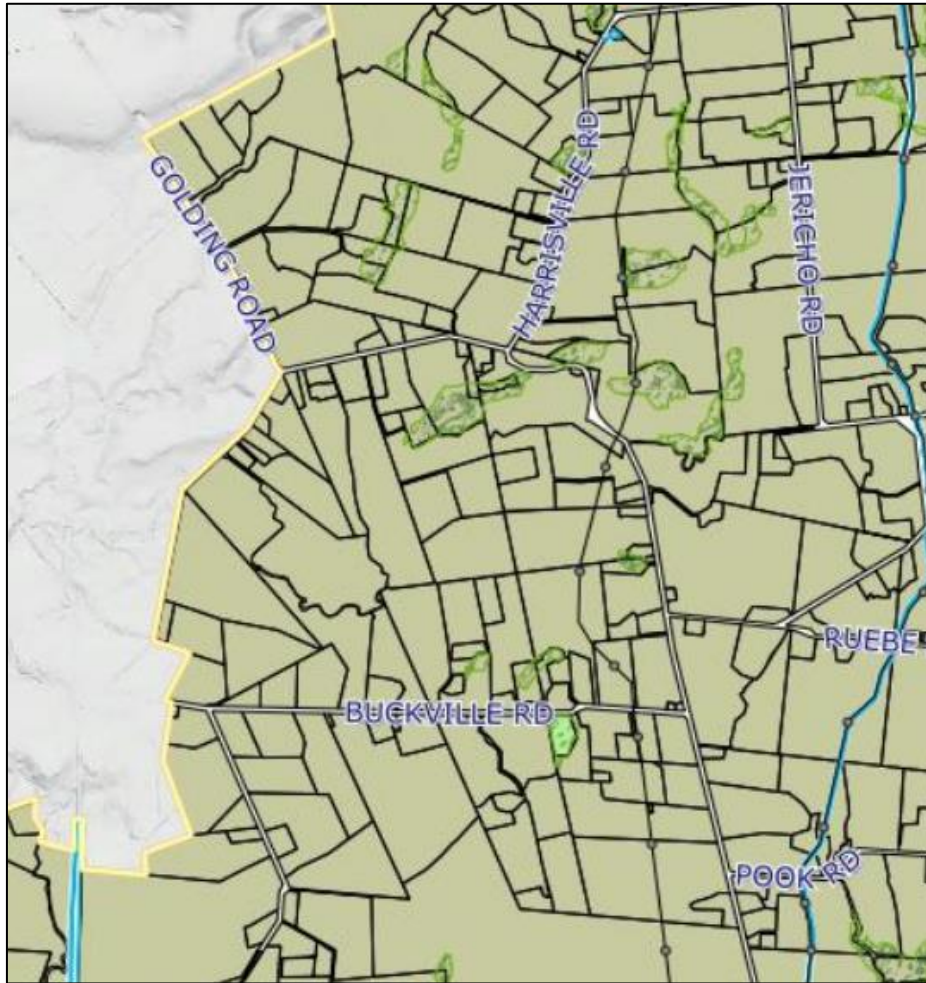


Figure 2 – Proposed Plan Decision Zoning Map

8. A relevant extract from the summary of submissions is below:

Submitter Number:	682	Submitter:	The Buckland Country Living Zone Landowners Group
Point Number	682.1		
Summary of Decision Requested:	Amend the zoning of approximately 400 ha located north of Tuakau, between Logan/Golding Roads and Harrisville Road from Rural Zone to Country Living Zone (refer to the map attached to the submission which specifically identifies all properties subject of this rezoning request).		
Decision Reasons:	<ul style="list-style-type: none"> • The area contains limited development constraints making it appropriate for rural residential use. • The proposed Rural zoning is an inefficient use of land that is in close proximity to the urban areas of Buckland and Pukekohe. Rezoning to a Country Living Zone will enable an efficient use of the land resource. • A Country Living Zone in this location will provide an essential buffer for the Future Urban Zone that is in Auckland Council's jurisdiction where more housing and a less open rural environment is anticipated. A logical progression in zoning for urban development will therefore be enabled and reverse sensitivity will be reduced. • There is no section 32 analysis to justify the proposed Rural zoning for the identified location. • Some rural areas in Buckland and Tuakau contain elite/prime soils which contribute significantly to regional and national food supplies. Intensification of land for rural residential should be encouraged away from these soils and where there is adjoining urban development. The majority of the identified properties do not contain elite/prime soils and their development for rural residential purposes will provide an essential buffer between higher density development to the north and west and rural land to the east and south. 		

9. The Appellant is appealing the following parts of the Decision:
 - a) The Decision for the Appellants land to remain General Rural (**GRUZ**), is appealed. A Rural Lifestyle Zone (**RLZ**), is sought.
 - b) The provisions of the GRUZ and RLZ including the objectives, policies, rules and standards (including the subdivision provisions).

REASONS FOR APPEAL

10. The reasons for the appeal include, but are not limited to, the following matters:
11. Regarding the Act, the Decision on the Proposed Plan does not:
 - a) meet the purpose and principles in Part 2;
 - b) enable people to provide for their social and economic wellbeing and for their health and safety, by unnecessarily limiting the development opportunities on the Appellants' land;
 - c) use the land resource efficiently in terms of providing a housing and lifestyle opportunity on land that is already compromised for primary production (s7(b));
 - d) satisfy s 32 and s 32AA requirements, and in particular, the need to assess the benefits and costs of the GRZ verses RLZ. The GRZ will result in lost opportunities for housing, economic growth and employment, and does not meet the tests in (s 32(2)(a));
 - e) satisfy the matters that must be considered for a Proposed Plan (s 74);
 - f) "give effect" to the higher order statutory planning instruments as is required (s 75(3)) and as explained further below;
 - g) avoid, remedy and mitigate, significant adverse environmental effects, and in particular, the adverse effects on social and economic wellbeing from a shortage of housing and lifestyle choices and opportunities;
 - h) demonstrate sound resource management practice.

12. Regarding the higher order statutory planning framework, and without limiting the generality of the above:
- a) The decision does not provide for housing choice, particularly in the northern Waikato where there is high demand and very little provision for this form of housing;
 - b) The decision will not achieve efficient use and development as the subject land will neither be used for rural lifestyle development and yet nor will the land be used for productive rural activities to the level expected by the Rural zone. In effect, it will be stuck in “no mans land” not making an effective or efficient contribution to either rural productivity or rural lifestyle living;
 - c) The decision fails the tests of section 32 and 32AA as applying the Rural zone to the subject land is not the most efficient and effective means of achieving the objective of the Rural zone. Furthermore, the subject land is more consistent with the description of the Rural Lifestyle zone as compared to the description of the Rural zone;
 - d) The decision does not promote the protection or enhancement of High Class Soils and rural productivity as it does not enable titles amalgamated or created in the wider rural environment to be transferred to the subject land;
 - e) The decision does not promote the protection of wetlands and other features of environmental value to be protected or enhanced as it does not enable titles created in the wider rural environment to be transferred to the subject land.
13. The Decision does not give effect to the relevant objectives and policies of the Waikato Regional Policy Statement (WRPS) and in particular;
- a) WRPS requires rural lifestyle development to be provided for and managed in appropriate locations. The decision fails to achieve this at a high level given that there are only 2 locations in the northern Waikato given where the RLZ is applied. At a more specific level, Buckland is an ideal location for RLZ given that it is on the border of Pukekohe, is already fragmented and provides a transition to the rural environment;
 - b) The decision does not achieve an integrated approach to development as sought by the WRPS as it does not address the interface between the urban

development on the Auckland side of the boundary with the rural development on the Waikato side of the boundary;

- c) The decision does not give effect to the provisions of the WRPS which compel regional council's to investigate using TDR's as a means of providing for rural lifestyle development in appropriate locations and to encourage the amalgamation of titles in the rural environment.

14. The Hearings Panel decision did not apply sound reasoning as:

- d) Adopting blanket/'in principle' approach of precluding non-productive uses on land use class 1 and 2 cannot be justified in terms of the provisions of Section 32 of 32AA or the higher order statutory planning framework. A more nuanced approach should be adopted instead.
- e) The decision assumes that all properties within the RLZ will be non-productive when in fact that the objective of the zone seeks to enable productive activities to occur;
- f) It identified that the RLZ cannot be applied as a 'transition zone' (between urban and rural environments) but yet the purpose statement of the RLZ reads:

"The Rural Lifestyle Zone is typically located on the fringe of towns and provides a transition to the surrounding rural area"¹

15. Regarding the requested RLZ, it would:

- a) help satisfy the demand for rural lifestyle living, particularly as there are only 2 other sites where rural lifestyle development is enabled in the northern Waikato;
- b) ensure that rural lifestyle development is appropriately located, in particular:
- Future residents will have access to the schools, employment and the services provided in Pukekohe (rather than being in a remote location);
 - The development will occur on soils which are already significantly compromised by the fragmented nature of the land;

¹ Page 1 Rural Lifestyle Zone

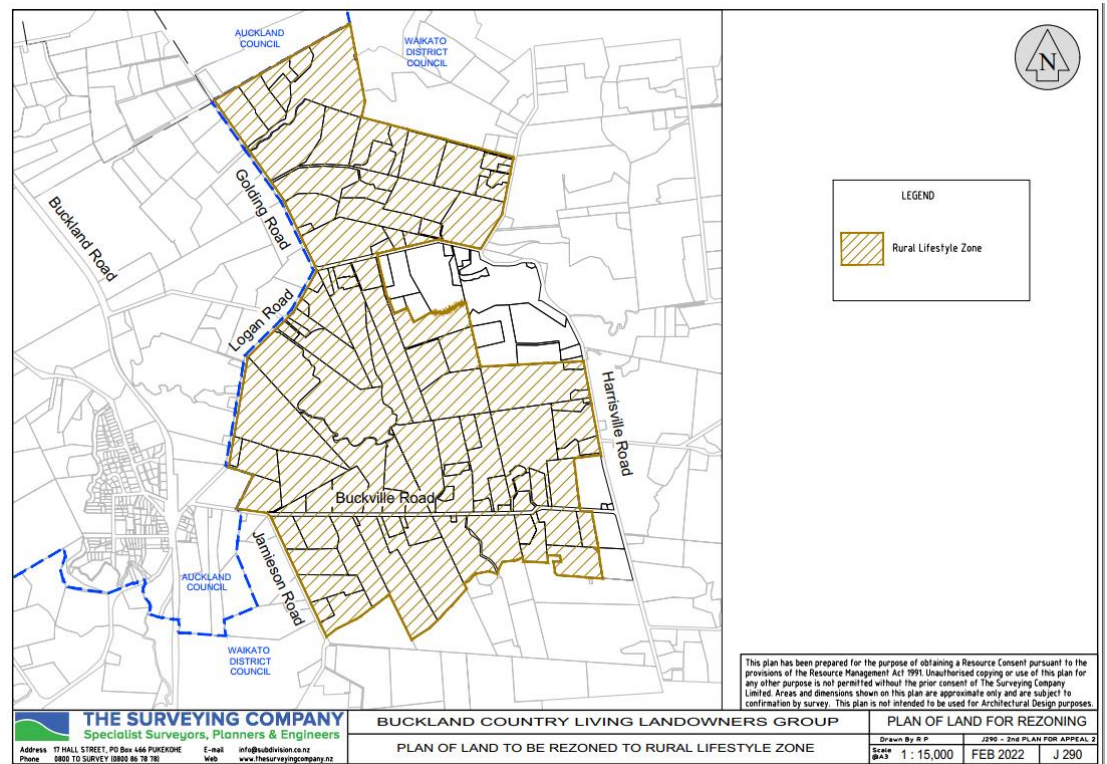
- The development will occur in a location where there is high demand for this housing typology;
 - The development will not generate a significant level of reverse sensitivity effects given that there are very little productive activities occurring on or adjoining the subject land.
- c) provide a “natural” transition from the urban zones of Auckland to the truly rural production areas of the Waikato;
 - d) maintain and enhance amenity values with appropriate siting, design and colours of housing, and the provision of mitigation and enhancement planting, through consent application plans and consent assessment criteria ;
 - e) provide an opportunity for the permanent protection of degraded and threatened, yet significant, ecological remnants, including Significant Natural Areas (**SNAs**) and natural features, if the development occurred through the use of conservation lot and/or transferable title provisions. This meets the requirements of the Act (including s 6(c) & s 7(d) & (f)) and the WRPS including the objectives and policies for the protection of indigenous biodiversity;
 - f) promote the amalgamation of titles and consequently the protection of high class soils and rural productivity, if the rural residential development occurred through the transfer of titles from the wider rural environment; and
 - g) give effect to the National Policy Statement – Fresh Water Management – 2020 (**NPS-FW**) while the GRZ.
16. Further reasons are outlined in the original submissions, and in the detailed legal submissions and expert evidence, presented during the Hearings process.

RELIEF SOUGHT

17. The Appellants seek the following relief:
- a) That the Decision be overturned, in part, in accordance with the grounds outlined in this appeal and the relief sought.
 - b) That the Proposed Plan be amended, insofar as it does not provide the Appellants with the;

- objectives and policies;
- rules, including for subdivision;
- activity status;
- standards (including subdivision standards);
- and zoning relief.

to achieve rural lifestyle development on their land. This could be achieved by applying the RLZ as it currently stands or through amending the provisions so that they are specific to the characteristics of the subject land. The specific provisions could also include the transfer of titles to the subject land from the wider rural environment to enable rural lifestyle development. This relief is shown on the plan below:



c) In the alternative, the General Rural zone could be retained provided that specific provisions were included to recognise the suitability of the subject land for more intensive development than would otherwise be provided for in the General Rural zone. These specific provisions could also include the transfer of titles to the subject land from the wider rural environment to enable rural lifestyle development.

- d) Other such relief, and consequential amendments, as considered appropriate to meet the purpose of the Act and the higher level statutory planning requirements.
- e) Costs of and incidental to this appeal.

MEDIATION

18. The Appellants consent to engaging in mediation, or any other dispute resolution activity that may be appropriate, to try and settle its appeal.

DOCUMENTS ATTACHED

19. The following documents are attached to this notice:
- a) The Appellants original submission and further submission on the Proposed Plan (**Appendix A**).
 - b) The zoning Decision report of the Respondent for the Tuakau area (**Appendix B**). Other parts of the Decision can be provided on request.
 - c) A list of names and addresses of persons to be served with a copy of this notice (**Appendix C**).

DATED this *1st* day of March 2022



Peter Fuller
Counsel for the Buckland Group and Individual Appellants

Address for service:

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Advice to recipients of copy of notice of appeal*How to become a party to proceedings*

You may be a party to the appeal if;

- (a) within 15 working days after the period for lodging a notice of appeal ends you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to the appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

ANNEXURE 1 – PARTIES TO THE APPEAL**List of Buckland Country Living Zone Submitters and Appellants**

D & J Trust
Anthony Van Lieshout
Pirie and Lynne Brown
Andrew and Jo Payne
William and Paulette Screen
Dirk-Jan and Family Oostdam
Peter Donald Johnson
Graham Reaks
Gary and Jill Morris
Equus Enterprises Ltd
Susan and Maurice McKendry
James Edward Greenhough
Kirsten Seamer
Peter and Lee Walter
Bruce and Raelyn Wallbank
Nigel and Lee Tiley
Cameron and Alicia De'Arth
David Shorter
Yvonne Pack
Steven Shue
Jennifer Buchanan
Taik Seok Hwang
Philip and Jan Hillmer
John and Gail Cameron
Wallace and Ann Maree Bremner
Andrew George Reeves
Helen Thomas
Harrisville Family Trust
Duncan McNaughton
The Buckland Country Living Zone Landowners Group

APPENDIX A – APPELLANTS ORIGINAL SUBMISSIONS

APPENDIX B – TUAKAU DECISION REPORT

APPENDIX C – LIST OF PARTIES TO BE SERVED

Respondent – Waikato District Council

District Plan Hearings Administrator
 Waikato District Council
 Private Bag 544
 Ngaruawahia 3742
 Email: Districtplan@waidc.govt.nz

Waikato Regional Council

Waikato Regional Council
 Attn: Andrew Tester
 Senior Policy Advisor
 Private Bag 3038
 Waikato Mail Centre
 Hamilton 3240
 Email: andrew.test@waikatoregion.govt.nz
 Cc: waikatoregion.govt.nz

Submitters

Ben Stallworthy
 Gwenith Sophie Francis
 Christine Montagna
 Waka Kotahi NZ Transport Agency
 Henry Gao
 Matthew Rogers, Catherine Rogers, Martin Mooney, Helen Mooney
 Mercury C
 John Scott
 Anthony Montagna
 Kirsten Marx
 Anthony James Parker
 Nesdam & Fisk Madsen Trust
 Pamela Rosalind Anne Parker
 Lauren Alexandra Banks
 Pamela Jocelyn Lewis
 Lisa Vickery
 Heather Walden
 Karen Daphne McMurtry
 Peter Christopher Chapman
 James Wilson McMurtry
 Nichola Taylor
 Andrea Scott
 Scott Taylor
 Lynda Mellsop
 Bronwyn McMurtry
 Grant David Maclean
 Ruth Phillips
 Linda Andrew
 Calvin Andrew
 Faine Delwyn Mende
 Nicole Ormsby

Maire Enterprises Limited
Sharageen Holdings Limited
Tammy Baker
Gary Finlay
Shana King
Graydon Millen
Peter Francis Montagna
Justine Wootton
Elizabeth Jean Deadman
Graham Gavin Deadman
Graham A Deadman
Oshila Greathead
Samuel Philip Crisp
Carly Rae Crisp
Carlo Montagna
David Gordon Eady
Auckland Council
Waikato Regional Council
Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)
Waka Kotahi NZ Transport Agency (formerly New Zealand Transport Agency)
Mercury E
Watercare Services Ltd
MJ Stormont
Mercury D
Kāinga Ora – Homes and Communities (formerly Housing New Zealand Corporation)
Auckland Transport

Also refer to separate attachment