

To: Independent Hearing Panel – Proposed Waikato District Plan 2018

From: Hughes Developments Limited ('Hughes')

**WAIVER OF FAILURE TO COMPLY WITH TIMEFRAME FOR FURTHER
SUBMISSION**

Dated: 16 March 2021

MAY IT PLEASE THE PANEL:

1. We act for Hughes Developments Limited (**Hughes**).
2. As detailed below, we respectfully ask the Panel for a waiver with respect to Hughes' failure to comply with the time period for making a further submission on the Proposed Waikato District Plan 2018 (**the Plan**) – Stage 1 – in accordance with s 37(1) of the RMA, thus allowing a further submission to be made at this time.
3. We appreciate that, should the waiver be granted, the attached further submission would be significantly later than the original timeframe for lodgement but, for the reasons set out below, we consider that the statutory tests for granting a waiver are able to be met and that no prejudice will ensue to any party in doing so.

Hughes' interest

4. Hughes is an existing development entity within the Waikato region. It has successfully developed Riverside Grove in Tuakau and at Kowhai Downs in Pokeno. Following those development projects, Hughes purchased land at 47 Jellicoe Avenue and 2339a Buckland Road at Tuakau (**the land**) in October 2019, approximately 3 months after the 16 July 2019 closing date for further submissions on Stage 1 of the Plan.
5. As shown in **Figure 1** below, the land comprises circa 35ha immediately to the west of the existing Tuakau urban area.

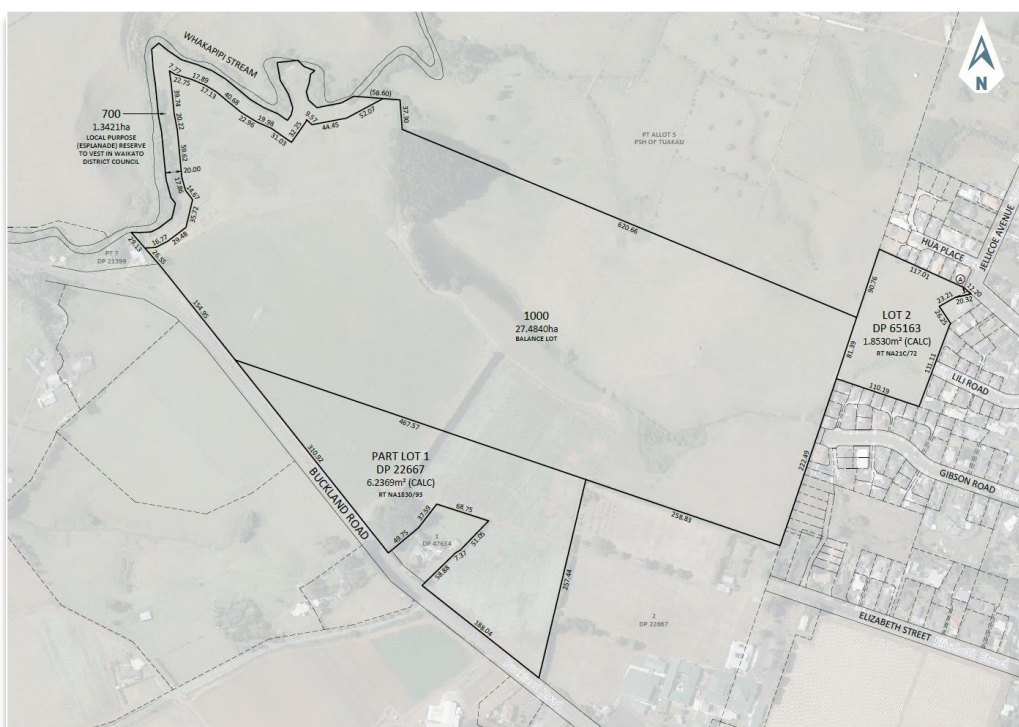


FIGURE 1 – site and locality

6. The 1.85ha block at Jellicoe Ave (see Lot 2 in Figure 1) is zoned residential in both the operative and proposed Plans. The balance of the land, with access to Buckland Road, is zoned rural in the operative Plan and residential in the proposed Plan. The size and scale of the block allows for a masterplanned approach to development which is in keeping with the Hughes business model and its longstanding commitment to providing well designed and enduring communities.
7. Importantly, both blocks have been earmarked for residential development under both the Tuakau Structure Plan and Waikato 2070.
8. Within the last 6 months, Hughes has commissioned a team of experienced urban designers, engineers, ecologists, environmental scientists and planners to commence a masterplanning exercise for the land. Consistent with other developments undertaken by Hughes, the intention is to develop a comprehensive plan collaboratively with the District Council, Regional Council, iwi and other stakeholders to guide the future development of the site in a manner that enhances ecological and recreational values and achieves a high-quality living environment.

9. Subject to obtaining the necessary resource consents, Hughes is motivated and willing to commence low level site works in 2021.
10. When the site was originally purchased, Hughes and its advisory team were aware of the proposed Plan and of the submissions that related to the land, including the submission from Horticulture New Zealand seeking the retention of the operative rural zoning for the Buckland Road block.
11. However, at that time, the date for lodging further submissions on the Plan had already passed and Hughes did not consider it necessary to seek to participate in the Plan review on its own account given its understanding that the block's urbanisation was well supported by Council in the relevant Strategy & Policy documents, including in the notified Plan, and the expectation expressed in those documents and elsewhere that there was a need for more land for housing (not less) in order to meet forecast population growth and associated direction from relevant national statutory instruments. This was further borne out by initial discussion with WDC staff.
12. Since that time, however, the matter has become significantly less certain, particularly as a result of the recent publication of the Council's s42A Framework Report for Hearing 25. This document has indicated to Hughes something of a shift in the Council's position and has generated sufficient concern for Hughes to now seek to join the process as a further submitter.
13. It is apparent that, as the landowner, Hughes has an interest in the Plan that is greater than that of the general public. Hughes therefore qualifies as a person who may make a further submission pursuant to Schedule 1, Clause 8(1)(b) of the RMA.
14. On the basis that a waiver is granted, a further submission is attached at **Appendix 1**. Pursuant to Clause 8(2) of Schedule 1, the further submission is limited to a matter in opposition to an original submission, being the relief sought from Horticulture New Zealand to revert the Buckland Road block to rural zoning.

15. As you will be aware, Section 37A(1), provides that compliance with a time limit shall not be waived unless the decision maker has taken into account:
- a. the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
 - b. the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and
 - c. its duty under section 21 to avoid unreasonable delay.
16. As recently highlighted by the Environment Court, these criteria are “*focussed on natural justice and due process matters...including the rights and interests of participants in those processes.*”¹ Unless a waiver is granted under section 37 (having considered the above criteria), a submission or further submission lodged outside a time limit will be invalid.

Taking account of the interests of persons who may be affected

17. We consider that no persons are affected by the waiver application. This is not an application to make an original submission on the Plan such that opportunity need be made for re-notifying the submission summary and calling for additional further submissions. Neither is it a request to extend the time limits already set (and expired) for receiving further submissions on the Plan.
18. Rather, the application is to make a late further submission relevant to one original submitter. Hughes’ further submission in no way prejudices the original submitter or any other party, nor their ability to call evidence in support of their submission. Granting a waiver for the further submission would not “*set aside all the efforts of the existing parties (and the costs involved) and send them “back to scratch.”*”²

¹ *Sidwell v Thames-Coromandel District Council* [2020] NZEnvC 124 at [33].

² *Director-General of Conservation v New Zealand Transport Agency* [2020] NZEnvC 34 at [20].

19. The scope of the further submission is limited to the scope of the original submission to which it relates, and there are no associated fairness or jurisdictional issues arising.

Taking account of the interests of the community

20. Through the Council, the community has long expressed a desire for urbanisation of the land and this is recognised in the Tuakau Structure Plan, Waikato 2070 and the proposed Plan.
21. Insofar as Hughes is aligned with that express aspiration of the community and Council, the interests of the community will be enhanced by its participation in the Plan review process.

Duty to avoid unreasonable delay

22. We are aware that the hearings process on the Plan review process is well and truly at an advanced stage. The hearing of greatest interest to Hughes, as captured in the scope of the further submission, is Hearing 25.
23. We understand that the evidence exchange has commenced for Hearing 25, and indeed it is the substance of the Council's Framework Report on Hearing 25 that has (largely) stimulated this memorandum. We note also the absence of any evidence called by Horticulture New Zealand on Hearing 25 to date.
24. Given the lateness of this application and the current stage of the Hearing 25 process, we do not therefore propose to seek leave from the Panel to file any expert evidence. We appreciate that such a request would give rise to a need for the Panel to enable opportunity for other parties to call rebuttal, entailing with it a likely delay to the current timetable. We expect that is not desirable for the Panel or the other parties to Hearing 25.
25. With the Panel's leave, however, we may request to table a lay statement and legal submissions in support of our further submission. At the Panel's preference this could either be circulated at the formal start of the proceedings, or in advance should the Panel prefer it to be available to other parties prior. We will await the ruling of the

Panel on the waiver application before making any further formal request in this respect.

26. For the reasons expressed above, Hughes qualifies as a further submitter on the proposed Plan given its interest in the proposal greater than the general public.
27. There are no parties affected by the waiver application for the further submission, the interests of the community as encapsulated in the Tuakau Structure Plan, Waikato 2070 and the proposed Plan will be enhanced by the waiver being granted, and the waiver will not result in unreasonable delay.
28. Accordingly, we respectfully ask the Panel to grant the waiver and accept the further submission attached at **Appendix 1**.



L J Semple

Counsel, Hughes Developments Limited

16 March 2021

APPENDIX 1
Further Submission

**Form 6 Further submission in opposition to submission on Proposed
Waikato District Plan**

[Clause 8](#) of Schedule 1, Resource Management Act 1991

To: Waikato District Council

Name of person making further submission: Hughes Developments Limited

This is a further submission in opposition to a submission on the following proposed plan ('the proposal'):

Proposed Waikato District Plan 2018

Interest in the proposal:

I am a person who has an interest in the proposal that is greater than the interest the general public has. This is owing to land owned by me being zoned residential in the proposal as notified, and subject to a submission opposed to that zoning.

I oppose the submission of:

Horticulture New Zealand
PO Box 10-232, WELLINGTON
Submission 419

The particular parts of the submission I oppose are:

Schedule 2: General Comments, Section 1 – opposition to proposed zoning of land at Tuakau for residential purposes, including my land at 2339a Buckland Road ('the HDL land').

The reasons for my opposition are:

- The notified zoning of the HDL land is the most appropriate to implement the proposed objectives and policies of the proposal, consistent with the sustainable management purpose of the RMA and with higher order direction from relevant statutory instruments, including the National Policy Statement on Urban Development Capacity 2016 (since replaced by the National Policy Statement on Urban Development 2020);
- The relief sought in the submission:
 - provides insufficient evidence and reasons to justify a departure from the proposed zoning for the HDL land as notified;
 - provides insufficient evidence and reasons to justify that the alternative area in east Tuakau identified in the submission is

more appropriate for urban development than the HDL land when all relevant factors are considered;

- fails to consider the positive effects of urbanising the HDL land, including positive effects that are unable to be realised by the alternative proposed in the submission;
- fails to consider the desire of the local community for the HDL land to be urbanised as captured in the Tuakau Structure Plan; and
- takes no account of the direction in the National Policy Statement on Urban Development Capacity (or its 2020 successor) or of the Council's related function under s31(aa) of the RMA to establish, implement, and review objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district.

I seek that:

The part of the submission seeking the rezoning of the HDL land to rural be rejected and that the notified zoning be retained.

Hearing attendance:

I wish to be heard in support of my further submission.

Joint presentation:

If others make a similar submission, I will consider presenting a joint case with them at a hearing.



Alan Grove

15 March 2021

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