

**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 **TOP END PROPERTIES LIMITED**

Appellant

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. Top End Properties Limited (the **Appellant**), 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 Appellant made a submission on the Proposed Plan that was lodged by Birch Surveyors Limited (Submitter number 89).
3. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**Act**).
4. The Appellant 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 7.684 ha at 205 Helenslee Rd as shown in the map below:

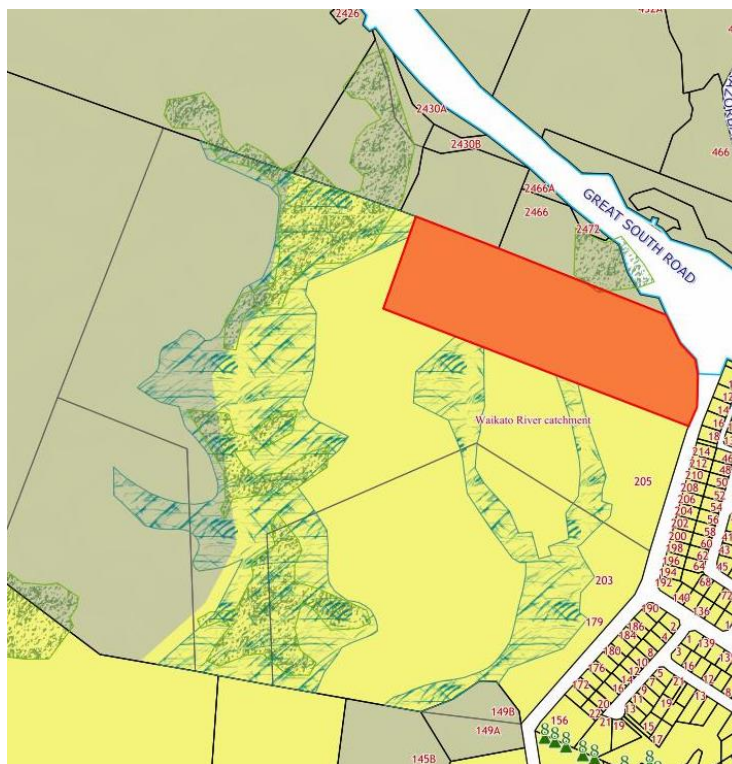


Figure 1 – Top End land

PROVISIONS BEING APPEALED

7. The Decision rezoning map from the Pokeno Report is inserted below:

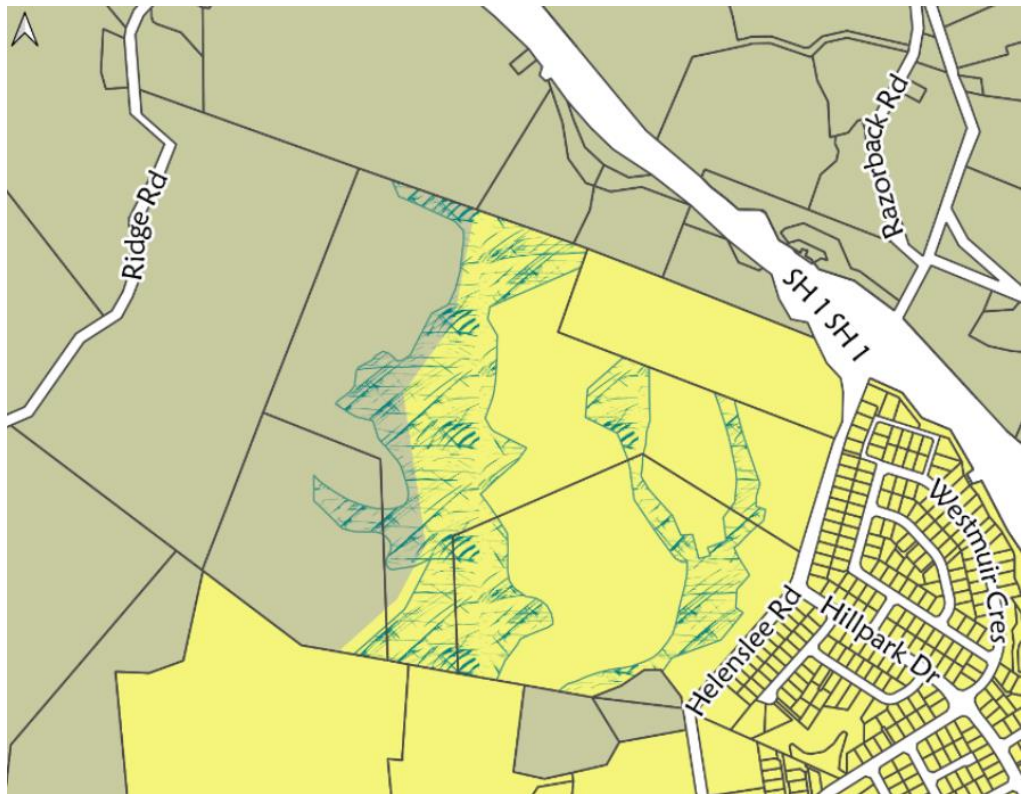


Figure 2 – Proposed Plan Decision Zoning Map

8. The Appellant supports in principle the Decision that rezoned the Top End land from the legacy Plan rural zone to General Residential Zone (**GRZ**), subject to the qualifications below.
9. The Appellant is appealing the following parts of the Decision:
- a) Part 3 – 2 GRZ – General Residential Zone
 - b) Part 3 – 3 MDRZ - Medium density resident zone
 - c) The zoning Maps for the appeal land
10. The Appellant sought medium density residential development in accordance with the Master Planned (refer to the plan below) development outcome requested in the original submission relief:



Figure 3 – Top End and CSL Master Plan

11. However, the Decision applied a uniform low density GRZ across all of the land zoned for urban activity. The density of development sought has not been adequately provided for in the Decision GRZ. Therefore, the objectives, policies and rules, including the zoning, are appealed.
12. The Decision GRZ objectives, policies and rules, are in the process of being superseded by the mandated provisions in Schedule 3A of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Enabling Housing Act**). Therefore, the Proposed Plan provisions are appealed, and the Medium Density Residential Standards (**MDRS**) from the Enabling Housing Act, are sought to replace the GRZ on the Appellants' land for the reasons set out below.

REASONS FOR APPEAL

13. The reasons for the appeal include, but are not limited to, the following matters:
14. 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 allocation, public and private welfare, and operational efficiency (s 7(b)). Urban land is a scarce resource and providing for higher density development will enable a more efficient use of natural and physical resources and promote sustainable management;
 - d) mean that the Respondent achieves its functions as a territorial authority under s 31 of the Act, and in particular, by ensuring ("shall") that there is sufficient development capacity for housing and business land to meet demand (s 31(1)(aa));
 - e) satisfy s 32 and s 32AA requirements, and in particular, the need to assess the benefits and costs of low density GRZ verses medium density residential development. The GRZ will result in lost opportunities for housing, economic growth and employment, and does not meet the tests in (s 32(2)(a));
 - f) satisfy the matters that must be considered for a Proposed Plan (s 74);
 - g) "give effect" to the higher order statutory planning instruments as is required (s 75(3)) and as explained further below;
 - h) avoid, remedy and mitigate, significant adverse environmental effects, and in particular, the adverse effects on social and economic wellbeing from a shortage of housing choices;
 - i) recognise the significant and positive urban design and amenity outcomes that the Appellants' Master Planned development could contribute to Pokeno; and
 - j) demonstrate sound resource management practice.
15. Regarding the higher order statutory planning framework, and without limiting the generality of the above:
- a) The Decision does not give effect to the National Policy Statement – Urban Development 2020 (**NPS-UD**) including ensuring that there is sufficient

urban development capacity that is zoned, and commercially viable. For example, 2.2 Policies:

Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

(a) have or enable a variety of homes that:

(i) meet the needs, in terms of type, price, and location, of different households; and.....

.....

(c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport;

(d) and support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and

(e) support reductions in greenhouse gas emissions

- i. Housing choice and affordability will be improved by enabling higher density development that reduces the land cost component of housing (Policy 3).
 - ii. The relief sought will give effect to a well-functioning urban environment (Objective 1 and Policy 6).
 - iii. Providing an accessible and integrated “live, work and play” Master Planned urban environment will support reductions in greenhouse gas emissions.
- b) The Decision does not give effect to the relevant objectives and policies of the Waikato Regional Policy Statement (**WRPS**) and in particular;
- iv. The removal of medium density housing provisions/opportunities will not achieve a compact urban form, integrated with infrastructure (WRPS 3.12(c)), and will not help to ease pressure for additional greenfield development in inferior locations.
 - i. The relief sought “gives effect” to the WRC-RPS and Chapter 3.12 Built Environment objectives, and Chapter 6 provisions in particular. Pokeno is an established village in a strategically important location, and it has been appropriately identified as a significant growth node for the Region.

- ii. The residential zoning sought in the submission and hearing evidence provided for medium density housing and the Decision not only rejected the medium density zoning sought, but:
 - imposes a relatively large minimum lot size of 450 m²;
 - rejected provisions allowing up to two dwellings in the GRZ as a Permitted Activity; and
 - removed the Notified Proposed Plan “multi-unit development” activity provisions.
 - iii. A higher density of development will best achieve the protection of productive soils from inappropriate subdivision, use and development (WRPS 3.25 & 3.26).
 - iv. The Master Plan, and detailed background technical reports provided by the Appellant, gives effect to WRPS 6.1.7 and 6.1.8 regarding the process and information requirements for rezoning land for urban development. It is noted that the original submission contained over 200 pages of supporting expert reports.
 - v. It is appropriate that new residents have accessible employment opportunities, and commercial and community services, within the newly zoned area, to manage travel demand.
16. It is noted that the WRPS pre-dates the NPS-UD and has not been amended to reflect the new statutory requirements. Therefore, if there is any inconsistency, and the NPS-UD is more enabling of housing capacity provision, it should be given more weight.
17. The Decision does not ensure consistency and integration (horizontal and vertical) with the relevant objectives and policies of other parts of the Proposed Plan and the higher order statutory requirements. For example, the removal of provisions providing for medium density development, and the Decision GRZ, does not implement:

Objective UFD-01 – Urban environment

A compact urban form that provides for connected liveable communities.

Or;

SD-04 – Housing variety

A variety of housing types are available to meet the community's housing needs.

18. Medium Density Residential Standards (**MDRS**) in the Enabling Housing Act are now mandated for residential zones (s 77G). The Respondent is required to prepare an intensification planning instrument (**IPI**), and a variation to the Proposed Plan for notification by 20 August 2022, to apply MDRS in the District.
19. It is considered that the MDRS provisions can be incorporated into the Proposed Plan now through this appeal under clause 34 of Schedule 3 (new Part 5 inserted into Schedule 12 of the Act) of the Enabling Housing Act. The Respondent is a Tier 1 territorial authority, the Pokeno township is an “urban environment” (s 77F), and there are currently understood to be no qualifying matters that would preclude the application of the MDRS (s 77I). The Submission sought medium and high density residential development.
20. Further reasons are outlined in the original submission, further submission, and in the detailed legal submissions and expert evidence, presented during the Hearings process.

RELIEF SOUGHT

21. The Appellant seeks 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) For the avoidance of doubt, the Appellant supports that part of the Decision that changed the zoning its site from rural to residential activities.
 - c) That the Proposed Plan be amended, insofar as it does not provide the Appellant with the;
 - objectives and policies;
 - rules;
 - activity status;
 - standards;

- and zoning relief,

to achieve the medium density residential development, sought in its submission and attached Master Plan.

- d) The Proposed Plan be amended to incorporate the MDRS provisions of the Enabling Housing Act, on the Appellants' land shown as GRZ in the Decision and appropriate related planning provisions (s 80E).
- e) In the alternative to MDRS, that the GRZ (or its successor name) for the Appellants' land contains planning provisions (objectives, policies and rules including assessment criteria) to enable medium density development by way of:
- allowing a minimum lot size of less than 450m² (SUB-R11(a)(i)).
 - allowing up to three dwellings in the GRZ as a Permitted Activity; and
 - reintroducing the "multi-unit development" activity and provisions for the GRZ from the legacy Operative Waikato District Plan: Franklin Section, or reintroduction of the deleted multi-unit development rules in the Decision.
 - introducing the Medium Density Residential zone.
- f) A zoning plan of the combined Top End and CSL relief being sought is provided below:
- RLZ/EPA,
 - MDRS Residential replacing the GRZ

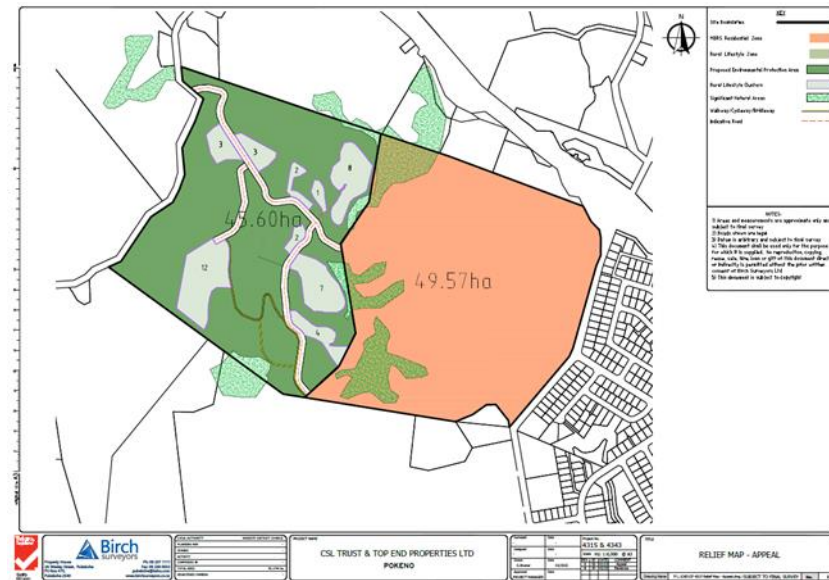


Figure 4 – Top End and CSL zoning relief

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

MEDIATION

- 22. 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

- 23. 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 Pokeno 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



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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.