

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2024] NZEnvC 066

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

BETWEEN FEDERATED FARMERS OF NEW
ZEALAND

(ENV-2022-AKL-000051)

Appellant

AND WAIKATO DISTRICT COUNCIL

Respondent

Court: Alternate Environment Judge L J Newhook sitting alone under s
279 of the Act

Last case event: Joint memorandum in support of draft consent orders dated 12
March 2024

Date of Order: 5 April 2024

Date of Issue: 5 April 2024

CONSENT ORDER

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



- (1) the TREE-P1, SUB-P5, SUB-P8 and SUB-P9 in the Notable Trees (**TREE**) and Subdivision (**SUB**) chapters of the decisions version of the Proposed Waikato District Plan be amended in accordance with **Appendix 1** (additions marked as underlined and deletions as ~~struckthrough~~) to this order;
- (2) the appeal with respect to Topic 20: Miscellaneous regarding TREE-P1, SUB-P5, SUB-P8 and SUB-P9 is otherwise dismissed.

B: Under section 285 of the Act, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to an appeal by Federated Farmers of New Zealand (**Federated Farmers**) against parts of the decisions of Waikato District Council (**the Council**) on the Proposed Waikato District Plan (**PDP**) in relation to its submissions seeking amendments to various objectives, policies, rules and definitions to enable its members to operate their businesses in a fair and flexible commercial environment.

[2] The parties jointly filed a memorandum and a draft consent order on 12 March 2024 seeking to resolve Federated Farmers' appeal in respect of the provisions under Topic 20, including Policies TREE-P1, SUB-P5, SUB-P8 and SUB-P9.

Background

Original Submission and PDP Decision

[3] In relation to Topic 20, Federated Farmers' submission opposed policy TREE-P1 which relates to the identification of notable trees, due to concerns that the policy could be used to justify some form of assessment or onerous consenting requirement in respect of any tree.

[4] Federated Farmers also submitted on several subdivision rules in the notified version of the PDP seeking relief to facilitate appropriate subdivision provisions in rural areas.

[5] An Independent Hearing Panel made a decision on 17 January 2022 on behalf of the Council rejecting Federated' Farmer's submission. It chose to retain the wording of TREE-P1 as in the notified version of the PDP. However, it did amend the notable trees schedule to include an explanation about how notable trees are identified. In line with the National Planning Standards, the IHP also inserted a new subdivision chapter into the decisions version of the PDP and all relevant subdivision provisions in the notified version of the PDP were collated there.

Appeal

[6] On 1 March 2022, Federated Farmers filed an appeal against parts of the decision on the PDP seeking the following amendments with respect to Topic 20:

- (a) Amend policy TREE-P1 to reference identifying and scheduling trees which are assessed as having significant and/or notable values;
- (b) Amend policy SUB-P5 to delete clause (c) which relates to achieving lot yields anticipated in approved structure plans;
- (c) Amend policy SUB-P8, which relates to connected neighbourhoods, to limit the application to subdivision in urban areas only; and
- (d) Amend policy SUB-P9, which relates to recreation and access, to limit the application to subdivision in urban and residential areas only.

[7] Pukekohe Vegetable Growers Association, Pokeno West Limited and Anna Noakes have each given notice of an intention to become a party to this appeal under section 274 of the Act.

Agreement reached between the parties

[8] Since the appeal was filed, the parties have engaged in direct discussions and have reached an agreement to fully resolve Federated Farmers' appeal points in Topic 20. Federated Farmers' remaining interest in Topic 20 is as a section 274 party to Transpower New Zealand Limited's appeal.

[9] The agreed amendments to the TREE and SUB chapters are set out in Appendix 1 and include the following:

(a) Amend policy TREE-P1 as follows:

TREE-P1 Identification
Identify and schedule trees, including groups of trees, that
~~and assess~~ have ~~for~~ significance and/or notable values.

(b) Amend policy SUB-P5 as follows:

SUB-P5 Co-ordination between servicing and development and subdivision
(1) Ensure development and subdivision:
(a) Is located in areas where infrastructure capacity has been planned and able to be funded;
(b) Where located in areas subject to an approved structure plan, provides sufficient infrastructure capacity to meet the demand identified in the structure plan;
(c) Within urban areas (including Future Urban Zone), ~~A~~ achieves the lot yield anticipated in an approved structure plan; and
(d) Includes infrastructure provision for both the strategic infrastructure network and local infrastructure connections.

(c) Amend policy SUB-P8 as follows:

SUB-P8 ~~Connected neighbourhoods~~ Connectivity
(1) Design subdivision in urban areas to support the creation of a liveable, walkable and connected neighbourhood ~~by having to:~~
(a) Provide ~~achieve~~ ~~A~~ a road network that ~~achieves all of the following is:~~
(i) Easy and safe to use for pedestrians and cyclists; and
(ii) Accessible for emergency and other services
(b) Provide ~~Connected~~ connections with a variety of routes within the immediate neighbourhood and between adjacent land areas; ~~and~~

- (c) Provide ~~Connected~~ connections to public transport, shops, schools, employment, open spaces and other amenities; and
- (d) Provide vehicle crossings and associated access that allow for safe and efficient movement to and from sites; and
- (e) Minimise potential conflict between vehicles, pedestrians, and cyclists on the adjacent road network.
- ~~(2) Vehicle crossings and associated access are designed and located to provide for safe and efficient movement to and from sites and minimising potential conflict between vehicles, pedestrians, and cyclists on the adjacent road network.~~
- (2) Design subdivision in rural areas to:
 - (a) Provide accessibility for emergency and other services; and
 - (b) Provide vehicle crossings and associated access that allow for safe and efficient movement to and from sites.

(d) Amend policy SUB-P9 as follows:

SUB-P9 Recreation and access

- (1) Provide for the recreation and amenity needs of residents within urban areas by:
 - (a) Encouraging open spaces which are prominent and accessible by pedestrians;
 - (b) Requiring the location, number and size of open spaces to be in proportion to the future density of the neighbourhood and provide for a range of different activities and users; and
 - (c) Enabling pedestrian and/or cycle linkages.

Section 32AA evaluation

[10] Section 32AA of the Act requires a further evaluation for any changes to a proposal since the initial section 32 evaluation report and the decision. In the joint memorandum, the parties prepared a section 32AA evaluation of the appropriateness of the agreed amendments.¹

[11] It is agreed by the parties that the proposed amendments to the policies TREE-P1, SUB-P5, SUB-P8 and SUB-P9 satisfy the concerns raised in the Appeal

¹ Joint memorandum in support of draft consent orders Topic 20: Miscellaneous dated 12 March 2024, at [15] – [17].

and that they are the most appropriate way to achieve the objectives of the PDP on the following basis:

TREE-P1

- (a) the amendment to TREE-P1 provides clarity to plan users that only those trees which have been assessed as having notable value should be protected and scheduled as opposed to every tree, which would be a significant burden on landowners;
- (b) the agreed amendment, which clarifies the intended application of the policy, is considered the most efficient and effective way to give effect to section 76(4A) (4B) of the Act which provides protection to scheduled trees, whilst avoiding the imposition of a blanket tree protection rule in urban areas specifically;
- (c) the agreed amendment achieves strategic direction SD-O12 of the PDP decision version which provides specific protection for “Outstanding natural features and landscapes, and significant indigenous terrestrial flora and fauna”. It also achieves objective TREE-O1 which recognise and maintain “the contribution of the district’s notable trees”;
- (d) the benefit of the proposed amendment to policy TREE-P1 is the clarity it provides to the application of the tree protection rules. Such clarification avoids the application of a blanket tree protection rule which could result in an array of unnecessary consent applications that would slow down the consenting process;
- (e) the costs of the proposed amendment to landowners would be less than those incurred under the current wording in the PDP decisions version. Under the amended wording, only notable trees would need to be scheduled and would therefore require resource consent for any works to them or near them;
- (f) there are no economic growth or employment opportunities as a result of the amendment; and
- (g) there is sufficient and certain information on the amendments. The risk of acting is minimal as TREE-P1 as amended is similar to

Objective 8.1.1 of the Franklin Section of the Operative Waikato District Plan ('ODP') and 12.3.8 in the Waikato Section, which protect trees of heritage significance. Landowners who are not involved in these proceedings will therefore not be disadvantaged by the amendments to TREE-P1.

SUB-P5, SUB-P8, SUB-P9

- (a) The amendments to SUB-P5, SUB-P8 and SUB-P9 all seek to clarify which parts of these policies relate to urban subdivisions and which relate to rural subdivisions. This avoids the imposition of unnecessary and onerous requirements for rural subdivisions in particular, which are not subject to structure plans and do not require the same level of public amenities as urban subdivision (e.g. public open spaces, public footpaths, crossings);
- (b) the agreed amendments seek to address the uncertainty in the application of the policies, which was an unintended consequence of the creation of a single subdivision chapter under the National Planning Standards. By bringing all of the subdivision provisions together in one chapter, the distinction between rural and urban subdivisions is no longer clearly stipulated. Without such clarification in the policies, there is the potential for different interpretations which in turn could slow down the consenting processes;
- (c) clarifying the application of SUB-P5, SUB-P8 and SUB-P9 is an efficient and effective way to achieve the following PDP objectives:
 - (i) SD-O5 and AINF-O7: the proposed amendments will enable the integrated delivery of new development and appropriate infrastructure by avoiding overly onerous and inappropriate requirements on rural subdivisions;
 - (ii) AINF-O1: the proposed amendments to SUB-P5, SUB-P8 and SUB-P9 will help to provide the appropriate levels of infrastructure for urban and rural subdivisions. The amendments ensure infrastructure is developed that is appropriate for the setting in which the site is located;

- (iii) AINF-O3: the proposed amendments to the SUB chapter acknowledges the differences between the rural and urban areas and enables the delivery of appropriate levels of infrastructure and local amenities without placing an unnecessary burden on rural subdivisions in particular;
 - (iv) AINF-O8(1)(a): the integrated delivery of a land transport network that is accessible, safe and efficient has been at the heart of the amendments the SUB chapter, in particular SUB-P8. It recognises that the requirement for connectivity for different modes of transport is higher in urban areas than in rural areas but that safety is key in all circumstances;
 - (v) SUB-O1: this objective seeks that the subdivision layout and design should promote the land use outcomes sought for the residential and other zones. Additional clarity around the application of the subdivision policies SUB-P5, SUB-P8 and SUB-P9 will make it easier for the plan user to identify the appropriate level of infrastructure and amenity provision for both the rural and urban areas. The amendments distinguish between the different environments;
 - (vi) Objective UFO-O1: the proposed amendments to the SUB chapter will enable the provision of a “compact urban form” and “connected, liveable communities” by clarifying what levels of infrastructure, services, connectivity and amenities are required in the urban area. This will help to distinguish urban areas from the rural ones; and
 - (vii) Objective GRUZ-O1(4): the proposed clarifications to the SUB policies will clarify what level of infrastructure, services, connectivity and amenities are appropriate in the rural area which will help to maintain the “rural character and amenity”.
- (d) the benefit of the proposed amendments to the SUB chapter is the clarification as to the appropriate level of infrastructure that is required for new subdivisions in rural or urban areas. The proposed amendments will help to reduce the unnecessary expense of providing inappropriate infrastructure and thus maximise development potential;

- (e) the costs of the proposed amendments on landowners would be less than those incurred under the current wording of the policies in the PDP decisions version, as the application of the policies will be clearer and thus unnecessary consent applications and/or differences in interpretation will be reduced;
- (f) there are no economic growth or employment opportunities as a result of the amendment; and
- (g) there is sufficient and certain information on the effects of the amendments. Landowners who are not involved in these proceedings will not be disadvantaged by the amendments to the policies as the proposed amendments seek to avoid placing unnecessary and overly onerous requirements in particular on rural areas which will help landowners to save money by not having to deliver the same level of infrastructure, services and amenities as is expected from subdivisions in urban areas.

Consideration

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

- (a) the notice of appeal dated 1 March 2022; and
- (b) the joint memorandum of the parties in support of draft consent orders dated 12 March 2024.

[13] The Court is making this order under section 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; and
- (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.

[14] The Court is satisfied that the changes sought are within the scope of Federated Farmers' submissions and the appeal.

Order

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

- (a) the policies TREE-P1, SUB-P5, SUB-P8 and SUB-P9 in the TREE and SUB chapters of the PDP decisions version be amended as set out in **Appendix 1** to this order (additions marked as underlined and deletions as ~~strikethrough~~); and
- (b) the appeal with respect to Topic 20: Miscellaneous is otherwise dismissed; and
- (c) there is no order as to costs.



L J Newhook
Alternate Environment Judge



Appendix 1: Tracked change version of the agreed amendments to the TREE and SUB chapters of the PDP decisions version

TREE chapter

TREE-P1 Identification

Identify and schedule trees, including groups of trees, ~~that and assess~~ have ~~for~~ significance and/or notable values.

SUB chapter

SUB-P5 Co-ordination between servicing and development and subdivision

- (1) Ensure development and subdivision:
 - (a) Is located in areas where infrastructure capacity has been planned and able to be funded;
 - (b) Where located in areas subject to an approved structure plan, provides sufficient infrastructure capacity to meet the demand identified in the structure plan;
 - (c) Within urban areas (including Future Urban Zone), ~~A~~ achieves the lot yield anticipated in an approved structure plan; and
 - (d) Includes infrastructure provision for both the strategic infrastructure network and local infrastructure connections.

SUB-P8 ~~Connected neighbourhoods~~ Connectivity

- (1) Design subdivision in urban areas to support the creation of a liveable, walkable and connected neighbourhood ~~by having~~ to:
 - (a) ~~Provide achieve A~~ Provide a road network that ~~achieves all of the following; is:~~
 - (i) Easy and safe to use for pedestrians and cyclists; and
 - (ii) Accessible for emergency and other services
 - (b) ~~Provide Connected~~ Provide Connected connections with a variety of routes within the immediate neighbourhood and between adjacent land areas; ~~and~~
 - (c) ~~Provide Connected~~ Provide Connected connections to public transport, shops, schools, employment, open spaces and other amenities; ~~and~~
 - (d) Provide vehicle crossings and associated access that allow for safe and efficient movement to and from sites; and

- (e) Minimise potential conflict between vehicles, pedestrians, and cyclists on the adjacent road network.
- ~~(2) Vehicle crossings and associated access are designed and located to provide for safe and efficient movement to and from sites and minimising potential conflict between vehicles, pedestrians, and cyclists on the adjacent road network.~~
- (2) Design subdivision in rural areas to:
 - (a) Provide accessibility for emergency and other services;
and
 - (b) Provide vehicle crossings and associated access that allow for safe and efficient movement to and from sites.

SUB-P9 Recreation and access

- (1) Provide for the recreation and amenity needs of residents within urban areas by:
 - (a) Encouraging open spaces which are prominent and accessible by pedestrians;
 - (b) Requiring the location, number and size of open spaces to be in proportion to the future density of the neighbourhood and provide for a range of different activities and users; and
 - (c) Enabling pedestrian and/or cycle linkages.