

**BEFORE THE HEARINGS COMMISSIONERS FOR THE WAIKATO DISTRICT
COUNCIL**

UNDER the Resource Management Act 1991

AND

IN THE MATTER of hearing submissions and further submissions
on the Proposed Waikato District Plan relating
to **Hearing 12: Chapters 5 and 23 - Country
Living Zone**

PARTIES REPRESENTED **THE SURVEYING COMPANY LTD**
(SUB746 and FS1308)

BUCKLAND LANDOWNERS GROUP

**THE SURVEYING COMPANY AND BUCKLAND GROUP LEGAL
SUBMISSIONS**

3 April 2020

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MAY IT PLEASE THE PANEL

Introduction

1. These submissions have been prepared on behalf of The Surveying Company Ltd (Sub 746 FS1308) (**Surveying Company**) that made submissions on various points to try and ensure that objectives, policies and rules for the Waikato District Council Proposed Plan (**Proposed Plan**) are fit for purpose. It is pleasing to see that many of the submission points that the Surveying Company raised in this Topic have been recommended for approval, or accepted in part, in the s42A Reports.
2. These submissions have also been prepared on behalf of a group of landowners at Buckland. The Surveying Company made a submission on behalf of the “Buckland Landowners Countryside Living Group” (the **Buckland Group**) and the individual owners also made submissions as per the schedule in **Appendix 1** of these submissions. The main relief sought in these submissions is for their land to be rezoned to the Country Living Zone (**CLZ**), to be now called the Rural Lifestyle Zone (**RLZ**), as per the recommendation in the s42A Report. This new zone tile is acceptable to my clients.
3. It is understood that the Buckland Group does not arguably have direct standing in this hearing because they did not submit on the RLZ objective/policy/rule provisions themselves. Therefore, these legal submissions, and the planning evidence of Mr Hartley, rely on the Surveying Company submission for standing in this Hearing.
4. However, the Buckland Group do have an interest in the outcome of this hearing because, if successful in the zone extents hearing to be held later in the year, they will be subject to the planning provisions to be determined in this hearing. Regarding the zone extents hearing the Buckland Group is currently preparing evidence to support its rezoning relief to present to the Panel.
5. Finally, the Buckland Group also supports the submission of Middlemiss Farm Holdings Limited (Sub 794) that in summary, seeks to introduce an enhancement subdivision, and a transferrable development right regime,

to the Proposed Plan. The Panel has previously heard from me on the Middlemiss submission and submissions and evidence will be presented to subsequent hearings in that regard.

RLZ - Earthworks, minor dwellings, stream setbacks

6. The Surveying Company sought relief regarding the volume of earthworks that are appropriate as a permitted activity (500m³) and the s41A Report has largely agreed with that submission. As can be seen from the evidence of Mr Hartley he supports this outcome and it is commended to the Panel for adoption.
7. The Surveying Company also sought that minor household unit opportunities be retained as a permitted activity and this has also been recommended in the s42A Report. Minor household units can contribute an important housing choice, at an affordable price, for extended family arrangements and also satisfy rural housing demand while avoiding separate new titles being otherwise created.
8. Mr Hartley did raise a question in his evidence about whether deck areas are included in the area measurements for a minor household unit, but from the rebuttal s42A Report, it appears that this concern may already be addressed in the definitions (section 14). Mr Hartley can further comment on this point when giving evidence as is helpful to the Panel.
9. Regarding stream setbacks, the Surveying Company submitted on this point and Mr Hartley agrees with the position recommended in the s42A Report.

Minimum and average lot sizes

10. In its original submission, the Surveying Company sought a minimum lot size of 3,500m² and refined this in its further submission to 3,000m². Based on his extensive experience in rural planning, Mr Hartley has recommended in his evidence to have a minimum of 3000m² and an average of 5,000m². He has provided a robust analysis of planning reasons to support his position and has also identified precedents from other district plans that have adopted a similar approach.

11. Mr Hartley has also highlighted the strong RLZ objective and policy framework that would enable the Council to decline non-complying applications that do not, for example, have a sufficient setback from a boundary to maintain the open space character of the zone.
12. In summary, the main reasons supporting an averaging approach include;
 - a. it enables a superior landscape design and subdivision response to individual site characteristics and features;
 - b. suitable building platforms, curtilage and access, are easier to identify;
 - c. some larger lots (than 5000m²) are better able to be used for productive rural activities;
 - d. the larger lots created can better accommodate remnant areas of bush, wetlands and riparian areas, that should ideally be protected and managed in perpetuity, as part of the subdivision development. It is operationally better, and easier for Council to ensure compliance, if these areas are managed by a single owner than to be arbitrarily divided up to meet the 5000m² threshold;
 - e. Lots of 3000m² can be maintained without the need for extensive mowing (the ubiquitous “lifestyle” ride-on mower) if planted appropriately, whereas lots of 5000m² can require more maintenance; and
 - f. Averaging enables people to have more choice to find a lot that best meets their social and economic wellbeing. For example, retired baby boomers that have a motorhome may want a smaller low maintenance property, but still with a rural outlook, and are likely to choose a 3000m² lot. On the other hand, a family with a small pony, and aspirations to grow their own food, would most likely choose a 7000m² lot to best meet their needs (based on a simple averaging of a 1 ha 2 lot subdivision).
13. It is submitted that the s42A Report has not been fully addressed each of these reasons, and the main justification provided for opposing the relief

sought is that there would be a risk to the character of the CLZ, as outlined in paragraph 133:

My concern is that by allowing smaller sites (albeit balanced with larger sites to maintain the overall average lot size of 5,000m²) there is a risk that the character of the Country Living Zone is eroded, and it becomes significantly more challenging to decline a subdivision with under-sized lots. This would particularly be the case where the smaller sites are located on the road frontage, and the larger sites are rear sites. In my experience, the perception of character is usually based on viewpoints from public places such as the road.

14. The first point to note in response, is that approving poor amenity or undersized lot proposals (on average) would clearly be contrary to the well-articulated objectives and policies of the Plan (refer to 5.6.1 and 5.6.3 as highlighted by Mr Hartley). The Panel is invited to consider why the Council would exercise its discretion to grant such applications, against the explicit intent of its own objectives and policies, when it can simply decline the applications?
15. In my submission the averaging approach supported by Mr Hartley is preferable as it would lead to more flexible and design led subdivision patterns, greater diversity of rural residential opportunities, and more sustainable land management outcomes. Otherwise, there will most likely be a simplistic “cookie cutter” approach, were 5000m² lots are created irrespective of the topography, landscape features, biodiversity protection, the most suitable building sites, and the retention of productive capacity.

RDA criteria expansion?

16. Should the Panel be minded not to adopt a 5000m² averaging approach based on the current assessment provisions, an alternative approach would be to further strengthen the rural character criteria of discretion in the assessment of an averaging application. Currently subdivision must create lots with a net site area “..of at least 5000m²” and this is a restricted discretionary activity. The main relevant matter of discretion is Section 23.4.2(b)(i):

“Adverse effects on amenity values”.

17. The Panel will no doubt be aware, that notwithstanding that s104C of the Act (regarding the determination of restricted discretionary activities),

appears to limit discretion to only those matters listed as criteria in a plan, the Courts have taken a reasonably liberal approach of what this means. For example in *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37, the Court held that in considering an application for a restricted discretionary resource consent, the council had a duty to consider all the matters over which discretion was restricted, **the objectives and policies of the plan** and the relevant national policy statement in **so far as they related to the matters over which discretion was restricted**, and matters under ss 105 and 107 where relevant (Westlaw).

18. Therefore, in my submission, because the Proposed Plan (quoted above) identifies “amenity values” as a criterion, it does allow a processing planner to have recourse to the objectives and policies to expand on what specific “amenity values” the effects upon which are to be managed e.g. views to the Waikato River and open space character.
19. However, arguably it is better from a plan drafting perspective to expressly specify the matters that the objectives and policies are trying to achieve, in the list of assessment criteria, and with appropriate wording. Assessment criteria wording will be different to the phrasing of an objective or policy.
20. If the Panel were to adopt an averaging approach, as per the relief sought, the submitters would not oppose the expansion of the RDA assessment criteria to more fully mirror the rural character protection values in the objectives and policies for the RLZ zone. These factors are already comprehensive, as indicated previously, and include matters such as public views of valued features (such as the Waikato River).
21. Mr Hartley has also considered this matter and can assist the Panel with proposed additional criteria as is helpful. In my submission expanding and reinforcing the RDA amenity assessment criteria would address the concerns expressed in the s42A Report including loss of rural character, clustering houses near a road, and views from public places.
22. In conclusion, it is submitted that an averaging approach best promotes the Purpose of the Act. Indeed, and contrary to what the s41A Report has

indicated, averaging could be used to reduce the visibility of houses more than just a 5000m2 minimum rule. This is because, for example, the larger lots could be deliberately located near public areas and there would be increased opportunities for houses to be positioned in more visually discrete locations.

DATED at **AUCKLAND** this *3rd* day of April 2020

The Surveying Company Ltd and the Buckland Group
by their barrister and duly authorised agent

Peter Fuller



Peter Fuller
Barrister
Quay Chambers

APPENDIX 1 – BUCKLAND COUNTRY LIVING LANDOWNERS GROUP

**Proposed Waikato District Plan
Individual Submission Numbers – Buckland Countryside Living Rezone**

Name	Address	Submission Number
Andrew and Jo Payne	198C Buckville Road	98
Andrew George Reeves	461 Harrisville Road	569
Anthony Van Lieshout	165 Golding Road	51
Bruce and Raelyn Wallbank	210C Logan Road	146
Cameron & Alicia De'Arth	199 Buckville Rd	173
David Shorter	33 Jamieson Road	174
Dirk-Jan & Family Oostdam	196B Logan Road and	107
Duncan McNaughton	203 Buckville Road	667
Gary & Jill Morris	157 Golding Road	127
Gary Hooper	639 Harrisville Rd	641
Graham Reaks	76 Logan Rd	112
Henry Gao	133 Buckville Road	841
Jennifer Buchanan	140 Logan Rd	179
John & Gail Cameron	198A Buckville Rd	207
Kirsten Seamer	166 Logan Rd	144
Nigel & Lee Tiley	210F Logan Rd	150
Patricia Honoria Rogers	51 Jamieson Road	842
Peter & Lee Walter	181D Goldings Rd	145
Peter Donald Johnson	94 Buckville Rd	111
Philip & Jan Hillmer	233 Golding Rd	201
Pirie & Lynne Brown	97 Buckville Rd	67
Equus Enterprises (Richard Wright)	182A Logan Rd	140
Steven Shue	169A Buckville Rd	178
Susan and Maurice McKendry	95 Buckville Rd	141
Taik Seok Hwang	111A Buckville Rd	186
Wallace & AnnMaree Bremner	205 Buckville Rd	347
William & Paulette Screen	118 Logan Rd	105
Yvonne Pack	33 Jamieson Rd	175
David & Sue Spencer (Wobinda)	157C Golding Road	Unknown
Mark & Helen Thomas	134 Logan Road	609
Jim & Eileen Greenhough	137B Buckville Road	143