

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2024] NZEnvC 063

IN THE MATTER OF appeals under clause 14 of Schedule 1 of
the Resource Management Act 1991

BETWEEN HORTICULTURE NEW ZEALAND

(ENV-2022-AKL-000043)

FEDERATED FARMERS OF NEW
ZEALAND

(ENV-2022-AKL-000051)

Appellants

AND WAIKATO DISTRICT COUNCIL

Respondent

Court: Alternate Environment Judge L J Newhook sitting alone under s
279 of the Act
Last case event: 14 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
Environment Court, by consent, orders that:



- (1) The Interpretation and GRUZ – General Rural Zone chapters in the Proposed Waikato District Plan be amended in accordance with Appendix 1 to this order (additions marked as underlined and deletions as ~~strike through~~);
- (2) The Federated Farmers appeal with respect to subtopic 11.2: Residential and seasonal workers accommodation is otherwise dismissed; and
- (3) The Horticulture New Zealand appeal is otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent determination relates to two appeals against the decisions of Waikato District Council on the Proposed Waikato District Plan (**PDP**) in relation to submissions by Horticulture New Zealand (**Horticulture NZ**) and Federated Farmers of New Zealand (**Federated Farmers**) seeking various amendments to definitions, objectives, policies and rules relating to rural activities in the General Rural Zone (**GRUZ**).

[2] On 17 January 2022, an Independent Hearing Panel on behalf of the Respondent made decisions on the relief sought by both Horticulture NZ and Federated Farmers with respect to the GRUZ chapter of the PDP.

[3] Horticulture NZ and Federated Farmers subsequently filed the appeals seeking, amongst other relief:

- (a) Horticulture NZ: amendments to the definition of ‘farming’, amendments to policies GRUZ-P5, GRUZ-P16 and GRUZ-P14, and amendments to Rules GRUZ-S1, GRUZ-S2, GRUZ-S8, GRUZ-S9 and

GRUZ-S12 in the Interpretation and GRUZ chapters of the PDP decisions version; and

- (b) Federated Farmers: amendments to GRUZ-S2 and the insertion of a new permitted activity rule in the GRUZ chapter of the PDP decisions version to provide for the maintenance and replacement of existing buildings and structures, and the erection of new buildings and structures ancillary to agricultural production activities, within an identified natural feature or landscape.

[4] These parts of the two appeals have been assigned to the following subtopics in Topic 11: General rural zone – land use activities:

- (a) Subtopic 11.1: Strategic direction and rural activities;
- (b) Subtopic 11.2: Residential and seasonal worker accommodation; and
- (c) Subtopic 11.3: Artificial crop protection structures.

[5] Bathurst Resources Ltd & BT Mining Ltd, Fruhling Trust, Pukekohe Vegetable Growers Association, Meridian Energy Ltd, Te Whakakitenga o Waikato and Anna Noakes have given notice of an intention to become a party to these appeals under section 274 of the Act.

Agreement reached between the parties

[6] Since the appeals were filed, Horticulture NZ, Federated Farmers and Council have engaged in constructive discussions and have reached an agreement on changes to the Interpretation and GRUZ chapters of the PDP decisions version (**the agreed amendments**). The agreed amendments will fully resolve Horticulture NZ's appeal and resolve Federated Farmers' interest in subtopic 11.2.

[7] The agreed amendments to the PDP are set out in **Appendix 1** to this order (additions marked as underlined and deletions as ~~strike through~~).

Section 32AA evaluation

[8] Section 32AA of the Act requires a further evaluation of any changes to a proposed plan change since the initial section 32 evaluation report and the IHP's decision.

[9] It is agreed by all parties to the two appeals that the agreed amendments to the Interpretation and GRUZ – General Rural Zone chapters of the PDP decisions version as outlined in Appendix 1, satisfies the concerns raised in the appeals for the following reasons:

Topic 11.1 – Strategic direction and rural activities

- (a) They ensure consistency with the overarching direction provided at an objective level, with clause (3) of GRUZ-O1 seeking that the GRUZ 'provide for' community facilities and rural commercial activities, among other matters;
- (b) They are consistent with the common drafting approach to policy wording in the rest of the PDP which uses the verb 'enable' where the following activity is permitted, and 'provide for' when the activity is generally anticipated, albeit either only permitted at a small scale, or with a clear consenting pathway as a controlled or restricted discretionary activity;
- (c) They ensure the policies in the GRUZ chapter are not misused as a tool to restrict legitimate farming-related buildings in order to protect hypothetical sensitive activities which might locate on adjacent rural-zoned sites at some point in the future;
- (d) They avoid reverse sensitivity effects by recognising that new sensitive activities should not be established in locations where they would be exposed to unacceptable amenity effects generated by rural buildings on adjacent sites;

- (e) They ensure the definitions in the PDP are consistent with the wording used in the NPS;
- (f) They achieve the key policy outcome in clause (2)(a) of GRUZ-P16 which is to manage the effects of building size and location on existing sensitive activities;
- (g) They ensure the PDP framework provides a clear demarcation between the permitted, occasional use of a paddock for a landing strip to facilitate aerial spraying or fertiliser spreading, and the use of farmland as a small-scale aerodrome or permanent base for a commercial aerial contracting operation;

Topic 11.2 – SWA

- (h) They better align the outcomes anticipated for seasonal worker accommodation (**SWA**) with the existing outcomes for minor residential units in the GRUZ chapter;
- (i) The limitation on the scale of the SWA facility to be no larger than a minor unit (which is otherwise permitted), combined with the standard rules on boundary setbacks, manage reverse sensitivity, amenity and character effects on the wider rural environment;
- (j) They maintain rural density and amenity/character outcomes by ensuring that sites between 1-5ha do not contain both a minor residential unit and a SWA;
- (k) They are consistent with the policies in the NPS-HPL, especially with respect to the policy direction on prioritising and supporting the use of highly productive land for land-based primary production;
- (l) They avoid a potentially significant cost in terms of the lack of appropriate enablement for seasonal workers in close proximity to where their employment is located;

- (m) The addition of the new provisions create no difference in environmental effects because the scale of buildings and the intensity of activity is the same;
- (n) They ensure a suitable level of on-site amenity is provided for SWA;
- (o) The floor area based metric for SWA is more certain and more readily enforceable and thus a more effective method;
- (p) The agreed package of provisions are considered to appropriately provide for SWA to meet a specific housing need and to enable the provision of labour in close proximity to horticultural operations. This therefore supports the utilisation of highly Productive Land for rural production;
- (q) Where neighbouring residential units are located within 12m, they ensure that there is reasonable separation between the dwellings and the structure, whilst not unduly restricting the use of such structures when adjacent to vacant farmland;
- (r) Adequate controls on potential landscape effects are maintained for minor residential units and non-habitable farm buildings in landscape areas, through providing either a permitted (subject to activity standards) or restricted discretionary consenting pathway;

Topic 11.3 – ACP Structures

- (s) They ensure the use of Artificial Crop Protection (**ACP**) Structures which is integral to the productive use of land for growing crops and which are not uncommon or unanticipated in rural environments. Enablement of these structures also facilitates the productive use of highly productive land and helps to give effect to the NPS-HPL;
- (t) The requirement to use recessive colours on the cloth assists in mitigating visual effects;

- (u) The economic benefits of the use of ACP Structures outweighs the benefits of maintaining an open rural character, especially where such structures in part contribute to that character themselves; and
- (v) They are the most effective method as they avoid adding further complications to the complexity of rule GRUZ-S12 with a series of exemptions and additional internal boundary ACP Structures clauses.

Consideration

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

- (a) The Horticulture NZ and Federated Farmers notices of appeal dated 1 March 2022; and
- (b) The Joint Memorandum of the parties dated 14 March 2024.

[11] 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.

[12] The Court is satisfied that the changes sought are within the scope of both Horticulture NZ's and Federated Farmers' submissions and appeals.

Order

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

- (a) The Interpretation and GRUZ – General Rural Zone chapters in the Proposed Waikato District Plan be amended in accordance with

Appendix 1 to this order (additions marked as underlined and deletions as ~~striketrough~~);

- (b) The Federated Farmers appeal with respect to subtopic 11.2: Residential and seasonal worker accommodation is otherwise dismissed;
- (c) The Horticulture NZ appeal is otherwise dismissed; and
- (d) There is no order as to costs.



L J Newhook
Alternate Environment Judge



Appendix I: Tracked change version of amendments to the Interpretation and GRUZ – General Rural Zone chapters

Part I: Introduction and general provisions / Interpretation

Term	Definition
Farming	Means: (a) Any agricultural, pastoral, horticultural, aquacultural, or apicultural activity having as its primary purpose the production of any livestock, fish, poultry, or crop using the in-situ soil, water and air as the medium for production; and includes: (b) Processing, as an ancillary activity of farm produce grown on the same site, such as cutting, cleaning, grading, chilling, freezing, packaging and storage; (c) Any land and buildings used for the production of commodities from (a) and used for the initial processing of commodities in (b) and includes greenhouses, indoor hydroponics, pack houses and coolstores; (d) Loading areas for helicopters and airstrips for top dressing and spraying the same site <u>Intermittent use of airstrips and helicopter loading areas for fertiliser application, agrichemical spraying, and pest control as part of farming activities;</u> and (e) On-farm agricultural and horticultural research activities; It excludes: (f) Intensive farming; or (g) Further processing of those commodities from (a) into a different product.

Part 3: Area-specific matters / Zones / Rural zones / GRUZ – General rural zone

GRUZ – General rural zone

GRUZ-P5 Other anticipated activities in rural areas

~~Enable~~ Provide for activities that ~~provide~~ for the rural community's social, cultural, and recreational needs, subject to such activities being of a scale, intensity, and location that are in keeping with rural character and amenity values.

GRUZ-PI4 Density of residential units and seasonal worker accommodation.

- (I) Maintain an open and spacious rural character by:
- (a) Limiting residential units and seasonal worker accommodation to those associated with farming and productive rural activities;
 - (b) Limiting residential units to no more than one per Record of Title, except for particularly large titles where a minimum of 40ha is provided for each residential unit;

- (c) Limiting the size, location, and number of minor residential units and requiring such units to be ancillary to an existing residential unit; and
- (d) Limiting seasonal worker accommodation to no more than one facility per Record of Title that is at least ~~20ha~~ 1ha in area.

GRUZ-PI6 Building scale and location.

- (1) Provide for buildings and structures where they are necessary components of farming and rural-related activities including rural industry, rural commercial, and extractive activities.
- (2) Manage the size and location of buildings and structures to:
 - (a) Maintain adequate levels of outlook, daylight, and privacy for adjoining existing sensitive land uses and public reserves; and
 - (b) Maintain rural character, amenity, and landscape values, in particular where located in areas with high landscape values, the coastal environment, and adjacent to waterbodies.

Rules

Land use – activities

GRUZ-R18	Seasonal worker accommodation
(1) Activity status: <u>PER CON</u> Activity-specific standards: (a) Is used solely for part of the year to meet labour requirements for primary production; (b) Comprises of communal kitchen and eating areas and separate sleeping and ablution facilities; (c) <u>The buildings used for seasonal worker accommodation shall not occupy more than 120m² in total; Accommodates no more than 12 workers; and</u> (d) <u>Is located on a Record of Title of at least 1ha; and</u> Complies with Code of Practice for Able Bodied Seasonal Workers, published by Dept of Building and Housing 2008. (e) <u>Where located on a Record of Title that is 5ha or less, the Record of Title shall not already contain a Minor Residential Unit.</u> <u>Advice note: Seasonal Worker Accommodation is subject to the Code of Practice for Able Bodied Seasonal Workers.</u>	<u>(2) Council's control is reserved over the following matters:</u> (a) <u>On-site amenity for occupants.</u> <u>Any application arising from this rule shall not be limited or publicly notified.</u> <u>(2) (3) Activity status where compliance not achieved with (a) and (b); and (c) where the Record of Title is more than 5ha: RDIS</u> Council's discretion is restricted to the following matters: (a) The effectiveness of methods to avoid, remedy, or mitigate the effects on existing activities, including the provision of screening, landscaping, and methods for noise control; and (b) <u>On-site amenity for occupants. The extent to which the application complies with the Code of Practice for Able Bodied Seasonal Workers, published by the Department of Building and Housing 2008.</u>

published by Dept of Building and Housing 2008.	<u>(4) Activity status where compliance not achieved with (c) and the Record of Title is between 1-5ha: DIS</u> <u>(5) Activity status where compliance not achieved with (d) or (e): NC</u>
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Land use – building

GRUZ-S1	Number of residential units and seasonal worker accommodation within a lot
(1) Activity status: PER Where: (a) One residential unit within a Record of Title containing an area less than 40ha; (b) Within a lot Record of Title containing an area of 40ha or more, one additional residential unit is permitted for every additional 40ha of area up to a maximum of three residential units; (c) One seasonal worker accommodation shall be located within a Record of Title containing an area of 20ha<u>1ha</u> or more (this is in addition to the residential unit in GRUZ-S1(I)(a); and in addition to a Minor Residential Unit in GRUZ-S2(I)(a) <u>provided the Record of Title is more than 5ha</u>); (d) Any residential unit(s) under GRUZ-S1(I)(a) and (b), or seasonal worker accommodation under GRUZ-S1(I)(a)(c) must not be located within any of the following landscape and natural character areas: (i) Outstanding Natural Feature; (ii) Outstanding Natural Landscape; (iii) Outstanding Natural Character Area; - or (iv) High Natural Character Area.	(2) Activity status: DIS Where: (a) A residential unit that complies with GRUZ-S1(I)(a) or (b) and is located within an area listed in (d); or (b) Seasonal worker accommodation that complies with GRUZ-S1(I)(c) and is located within an area listed in (d). (3) Activity status: NC Where (a) A residential unit that does not comply with GRUZ-S1(I)(a) or (b); (b) Seasonal worker accommodation that does not comply with GRUZ-S1(I)(c).

GRUZ-S2	Minor residential units
(1) Activity status: PER Where: (a) One minor residential unit not exceeding 120m² gross floor area (excluding accessory buildings) within a Record of Title lot. (b) The minor residential unit shall be located on the same Record of Title as an existing residential unit and shall: (i) Be located within 100m of the existing residential unit; (ii) Share a single driveway access with the existing residential unit. (c) Any minor residential unit must not be located within any of the following landscape or natural character areas <u>shall have a maximum height of 7.5m and a Light Reflectance Value of less than 35%:</u> (i) Outstanding Natural Feature; (ii) Outstanding Natural Landscape; (iii) Outstanding Natural Character Area; or (iv) High Natural Character Area. <u>(d) Any minor residential unit must not be located on a Record of Title that is 5ha or less and that already contains seasonal worker accommodation.</u>	(2) Activity status where compliance is not achieved with GRUZ-S2(1)(c): RDIS <u>Council's discretion is restricted to the following matters:</u> (a) <u>Effects on the identified landscape or natural character values, including cultural values associated with those landscapes or natural features, including consideration of:</u> (i) <u>The proximity and extent to which the proposal is visible from public places and roads (including unformed legal roads), ease of accessibility to that place, and the significance of the view point;</u> (ii) <u>The extent to which the proposal avoids being located on ridgelines or visually prominent locations, and any natural elements such as landforms and existing or proposed vegetation within the site that mitigate the visibility of the proposal;</u> (iii) <u>The appropriateness of the scale, form, design and finish (materials and colours), including consideration of any adverse effects of reflectivity, glare and light spill;</u> (iv) <u>The extent to which the proposal will result in adverse cumulative landscape effects;</u> (b) <u>Whether the proposal supports the continuation of farming activities in the rural zone.</u> <u>(2)(3) Activity status where compliance is not achieved with GRUZ-S2(1)(a)-(b): DIS</u> <u>(4) Activity status where compliance is not achieved with GRUZ-S1(1)(d): NC</u>

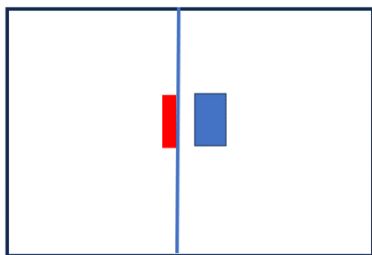
GRUZ-S8	Height in relation to boundary
(1) Activity status: PER Where: (a) A building or structure (excluding <u>Artificial Crop Protection Structures</u>, poles or	(2) Activity status where compliance not achieved: RDIS Council's discretion is restricted to the following matters:

aerials) must not protrude through the height in relation to boundary rising at an angle of 45 degrees commencing at an elevation of 2.5m above ground level at every point of the site boundary.	(a) Height of the building; (b) Design and location of the building; (c) Admission of daylight and sunlight to the site and other site; (d) Privacy on any other site; and (e) Amenity values of the locality.
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GRUZ-S9	Building coverage
(1) Activity status: PER Where: (a) The total building coverage must not exceed: (i) 2% of the site area or 500m² (whichever is larger) for sites smaller than 10ha; (ii) 5,000m² for sites larger than 10ha. (b) GRUZ-S9(1)(a) does not apply: (i) To a structure that is not a building; or (ii) Eaves of a building that project less than 750mm horizontally from the exterior wall of the building. (c) No site coverage limit applies to Artificial Crop Protection Structures that meet the following standards: (i) Green or black cloth shall be used on vertical faces within 30m of the site boundary; (ii) (i) Green, black or white cloth shall be used on horizontal surfaces.	(2) Activity status where compliance not achieved: RDIS Council's discretion is restricted to the following matter: (a) Design, scale and location of the building.

GRUZ-S19	Building setbacks – Artificial Crop Protection Structures
(1) Activity status: PER Where: <u>(a) Artificial Crop Protection Structures are exempt from GRUZ-S12;</u> <u>(b) Green or black cloth shall be used on vertical faces within 30m of the site or road boundaries;</u> <u>(c) Setbacks for Artificial Crop Protection Structures do not apply except for where they are located adjacent to an internal boundary where there is an existing lawfully established residential unit located on an adjacent site and within 12m of the boundary. In this circumstance a minimum 5m setback shall apply to that portion of the Artificial Crop Protection Structure that is parallel to the face of the neighbouring residential unit.</u>	(2) Activity status where compliance is not achieved: RDIS <u>Council's discretion is restricted to the following matters:</u> <u>(a) Rural amenity values.</u>

Advice note: To clarify the application of GRUZ-SX(1)(c) the below diagram shows the applicant site on the left, and the neighbouring property is to the right of the blue internal boundary line. The blue rectangle is the neighbouring residential unit, set less than 12m off the internal boundary. The red area on the left is the area subject to the 5m setback – there is no setback required along the balance of the shared boundary.



GRUZ-S20

Buildings (excluding residential units) within an Outstanding Natural Feature; Outstanding Natural Landscape; Outstanding Natural Character Area; or High Natural Character Area

(1) Activity status: PER

Activity-specific standards:

- (a) Be non-habitable;
- (b) Shall have a maximum height of 5m;
- (c) Shall have a maximum area of 50m²;
- (d) Shall either be located within 100m of an existing residential unit; or shall not be located within 400m of another building;
- (e) Shall have a Light Reflectance Value of less than 35%.

(2) Activity status where compliance not achieved: RDIS

Council's discretion is restricted to the following matters:

- (a) Effects on the identified landscape or natural character values, including cultural values associated with those landscapes or natural features, including consideration of:
 - (i) The proximity and extent to which the proposal is visible from public places and roads (including unformed legal roads), ease of accessibility to that place, and the significance of the view point;
 - (ii) The extent to which the proposal avoids being located on ridgelines or visually prominent locations, and any natural elements such as landforms and existing or proposed vegetation within the site that mitigate the visibility of the proposal;
 - (iii) The appropriateness of the scale, form, design and finish (materials and colours), including consideration of any adverse effects of reflectivity, glare and light spill;

	(iv) <u>The extent to which the proposal will result in adverse cumulative landscape effects;</u> (b) <u>Whether the proposal supports the continuation of farming activities in the rural zone.</u>
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