

IN THE MATTER of the Local Government (Auckland Transitional Provisions) Act 2010 (LGATPA) and the Resource Management Act 1991 (RMA)

AND

IN THE MATTER of an appeal under \* [section 156(1)/section 156(3)] of the LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on the proposed Auckland Unitary Plan (**Proposed Plan**)

\* Select one.

AND

IN THE MATTER of Proposed Plan Hearing Topic(s) [specify topic(s) used during Hearings Panel hearing process, including number and name – e.g. 001 Whole Plan and General]

BETWEEN

[\* FULL NAME]

\* State appellant's name here

Since Robert Fizzell

Appellant

AND

AUCKLAND COUNCIL

Respondent

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NOTICE OF APPEAL

<sup>15th Sept 2016</sup>  
Dated [\* day and month] 2016

\* Insert date here

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**General notes:**

1. This template is for appeals lodged under section 156(1) of the LGATPA (appeals by submitters against Auckland Council decisions rejecting Hearings Panel recommendations), or section 156(3) of the LGATPA (appeals by unduly prejudiced persons against Auckland Council decisions accepting Hearings Panel recommendations identified by Panel as 'out of scope').
2. This template is based on Form 6 in the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013, but has been amended in a number of respects – e.g. to reflect certain waivers / directions made by the Environment Court.
3. For designation appeals to the Environment Court under section 157 of the LGATPA, please use Form 7 of the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013.

To: The Registrar  
Environment Court

Auckland  
*Duane Robert Fuzzell*

1. I, [full name], appeal against a decision (or part of a decision) of the Auckland Council (the **Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).
2. I have the right to appeal the Council's decision –

*Select the paragraph(s) that apply.*

- (a) under section 156(1) of the LGATPA because the Council rejected a recommendation of the Hearings Panel in relation to a provision or matter I addressed in my submission on the proposed plan (*state submission number / further submission number*). The Council decided on an alternative solution, which resulted in a provision being included in the proposed plan or a matter being excluded from the Proposed Plan:
- (b) under section 156(3) of the LGATPA because the Council accepted a recommendation of the Hearings Panel that the Hearings Panel had identified as being beyond the scope of the submissions made on the Proposed Plan. The Council's decision resulted in a provision being \*[included in the proposed plan / a matter being excluded from] the Proposed Plan. I \*[am, was, or will be] unduly prejudiced by the \*[inclusion of the provision / exclusion of the matter].

*\* Amend as appropriate.*

3. I provide further details of the reasons for my appeal below.
4. I ~~am~~/am not\* a trade competitor for the purposes of section 308D of the RMA.
5. \*I am/am not† directly affected by an effect of the subject of the appeal that—

- (a) adversely affects the environment; and
- (b) does not relate to trade competition or the effects of trade competition.

*\* Delete entire paragraph if you are not a trade competitor.*

*† Select one.*

6. I received notice of the decision on 19 August 2016.
7. The decision (or part of the decision) that I am appealing is:

- (a) [state—
  - a summary of the decision or part of the decision of the Council rejecting a recommendation of the Hearings Panel;
  - the original Hearings Panel topic number(s) relevant to the decision or part of the decision; and
  - the specific provision included in, or matter excluded from, the Proposed Plan by the decision, as part of the Council's alternative solution, which you are appealing].

8. The reasons for the appeal are as follows:

(a) [set out why you are appealing the decision or part of the decision and give reasons for your views].

9. I seek the following relief:

(a) [Give precise details. Note the limitation specified in section 156(2) of the LGATPA, applicable to appeals under section 156(1), that, if the Council's alternative solution included elements of the Hearings Panel's recommendation, the right of appeal is limited to the effect of the differences between the alternative solution and the recommendation].

10. An electronic copy of this notice is being served today by email on the Auckland Council at [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz). \*[A copy of the notice is also being served on the Minister of Conservation.] Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.

*\* Only include sentence in square brackets if the subject matter of the notice of appeal relates to the coastal marine area, otherwise delete.*

11. \* I attach the following documents<sup>†</sup> to this notice:

(a) ~~a copy of the relevant [\* decision/part of the decision];~~  
*Select one.*

(b) \* any other documents necessary for an adequate understanding of the appeal;

*\* Delete if no other documents are attached.*

(c) \* a list of names and addresses of persons served / to be served with a copy of this notice.

*\* This list should include the Auckland Council and, if relevant, the Minister of Conservation, but need not list any other persons as a consequence of the waivers / directions made by the Court.*

(d) Omit this paragraph if you did not make a submission on the proposed plan and you are appealing on the grounds set out in section 156(3) of the LGATPA.

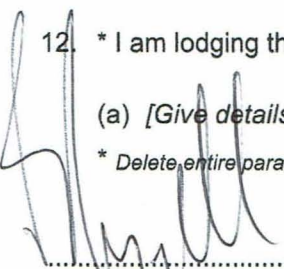
a copy of my submission or further submission (with a copy of the submission opposed or supported by my further submission);

*† These documents constitute part of this form and, as such, must be attached to the notice lodged with the Environment Court. The appellant does not need to attach a copy of the Unitary Plan. In addition, the appellant does not need to attach copies of the submission and decision to the copies of the notice served on the Council and (if relevant) the Minister if the copy served lists these documents and states that copies may be obtained, on request, from the appellant.*

12. \* I am lodging the following related proceedings concerning the Proposed Plan in the High Court:

(a) [Give details of any related proceedings].

*\* Delete entire paragraph if no related proceedings filed.*

  
.....  
Signature of appellant (or person authorised to sign on behalf of appellant)

Date 15<sup>th</sup> September 2016

Address for service of appellant:

Telephone: 09 2928423 021 516 305

Fax/email: frizzprop@gmail.com

Contact person: [name and designation, if applicable]

Bruce Farrell

We own the property at 81 Clevedon Kawakawa Road which is less than 1 km from the Clevedon Village.

Our property is Totally 12 hectares currently farmed as a lifestyle property but it is not a viable farming operation with only approximately 9 hectares of grazeable land balance being native trees bush and stream, house sheds and yard area

The property is flat to gently rolling contour and has significant stands of native bush and trees to which we have added over 2000 .It has a stoney bottom stream running through it.

Given that it is uneconomic unit I would like to propose that it be zoned Country Side Living. The following are surrounding properties which in size fit countryside living some are immediate neighbours others directly across the road which I understand will come under Countryside Living.

The immediately neighbouring properties on Clevedon Kawakawa Road are Nos 69 of 1.35 Ha 84 2.61Ha 101 2 Ha and Immediately across the road

Nos 84 2.61Ha 84A 2.5 Ha 86A 2.29 Ha and 88 8018 M2

Also on McNicol road Nos 9 3.89 Ha 12 McNicol (Immediate Neighbour) 1096 M2 and 90 McNicol an Immediate Neighbour of 20 Ha Which has been confirmed to be zoned Countryside Living in the new plan owned by the Archer family who have confirmed their support to our proposal.

As stated our property is not a viable farming operation and as we are surrounded by the above smaller properties and the Archer property it would seem logical to have our property also to be included as Country Side Living.

### **Note to appellant**

You may appeal only if—

(a) the Council rejected a recommendation of the Hearings Panel in relation to a provision or a matter you addressed in your submission on the proposed plan and the Council decided on an alternative solution that resulted in a provision being included in the proposed plan or a matter being excluded from the proposed plan; or

(b) you are, were, or will be unduly prejudiced by the inclusion of a provision in or the exclusion of a matter from the proposed plan in relation to which the Council accepted a recommendation of the Hearings Panel that the Hearings Panel had identified as being beyond the scope of the submissions made on the proposed plan.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the RMA.

You must lodge the original notice with the Environment Court, and serve a copy on the Council (by email to [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz)), within 20 working days after the Council notifies its decisions in relation to the recommendations of the Hearings Panel under section 148(4)(a) of the LGATPA (i.e. by no later than **16 September 2016**).

You must pay the filing fee required by regulation 15 of the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013 at the time you lodge this notice with the Environment Court.

If your appeal concerns a regional coastal plan provision / the coastal marine area, you must serve a copy of this notice on the Minister of Conservation within 5 working days after this notice is lodged with the Environment Court.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

### **Advice to recipients of copy of notice of appeal**

#### *How to become party to proceedings*

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to [unitaryplan.ecappeals@justice.govt.nz](mailto:unitaryplan.ecappeals@justice.govt.nz)) and serve copies of your notice by email on the Auckland Council (to [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz)) and the appellant.

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 RMA.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

#### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland.

We were not a submitter to the Notified Plan but we did make a submission on the draft AUP ...In my ignorance of procedure I wasn't aware that further submissions were required as you will note from the attached correspondence. Our neighbours have gained Countryside Living with an acreage bigger than ours more suitable to Rural Production and further properties of Hundred acres of good productive farmland further along Clevedon Kawakawa Road have also been granted Countryside Living and also the Canal Housing project on North Road has been approved and is to take up far more productive farmland than ours. I also understand properties further along McNicol Road according to latest map come under Country Side Living and they had made no submissions at all.

It just doesn't make sense that we just 1 km from the village shouldn't be granted Countryside Living Zoning in fact all land East of Holdens Road and East of McNicol as per map attached should logically come under Countryside Living.

Our property at 81 Clevedon Kawakawa Road which is less than 1 km from the Clevedon Village is totally 12 hectares currently farmed as a lifestyle property but it is not a viable farming operation with only approximately 9 hectares of grazeable land balance being native trees bush and stream, house sheds and yard area.

The property is flat to gently rolling contour and has significant stands of native bush and trees to which we have added over 2000. It has a stony bottom stream running through it.

Given that it is uneconomic unit I would like to propose that it be zoned Country Side Living. The following are surrounding properties which in size fit countryside living some are immediate neighbours others directly across the road which are zoned Countryside Living.

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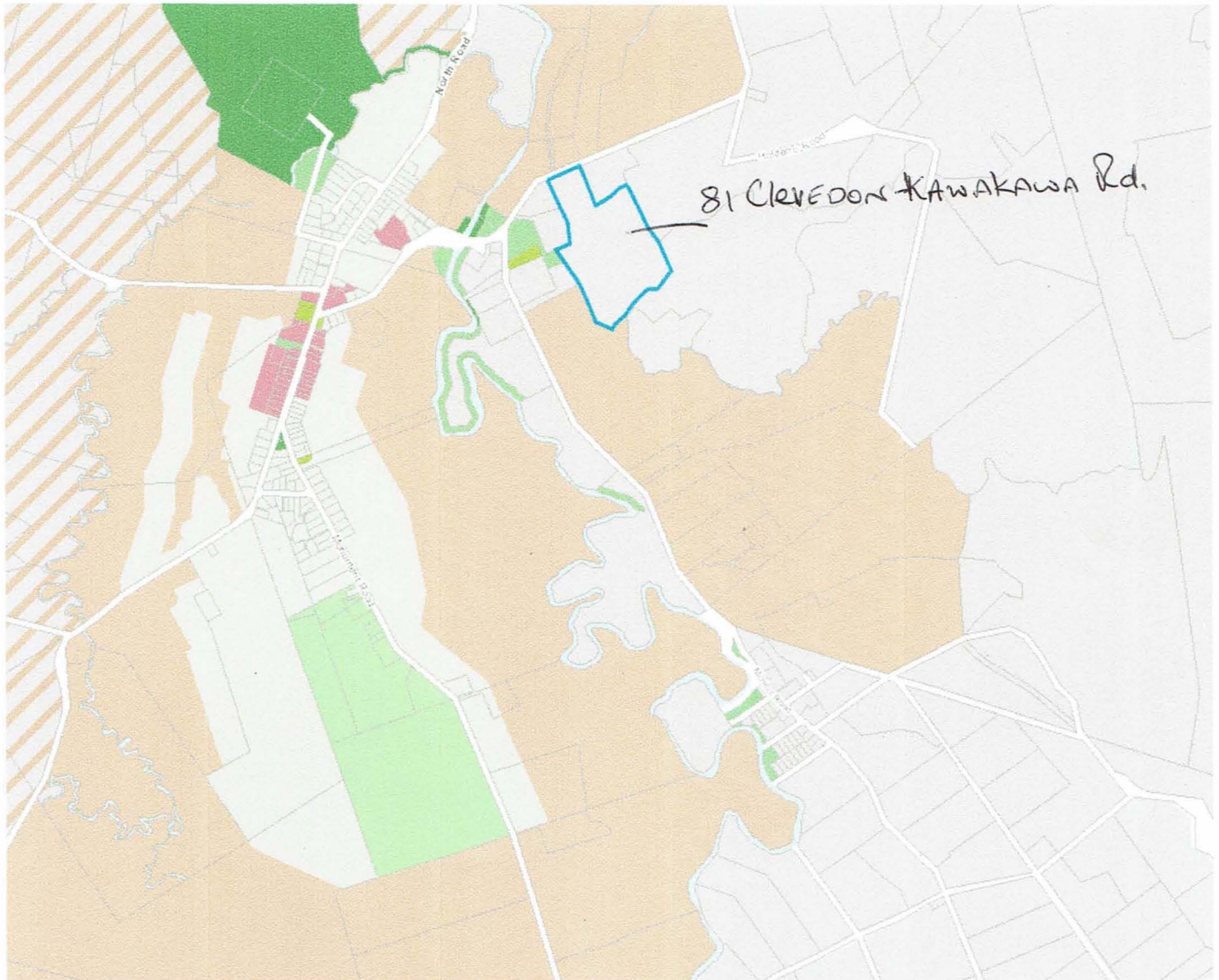
Also on McNicol road Nos 9 3.89 Ha 12 McNicol (Immediate Neighbour) 1096 M2 and 90 McNicol an Immediate Neighbour of 20 Ha Which has been confirmed to be zoned Countryside Living in the new plan owned by the Archer family who have confirmed their support to our proposal.

As stated our property is not a viable farming operation and as we are surrounded by the above smaller properties and the Archer property it would seem logical to have our property also to be included as Country Side Living.

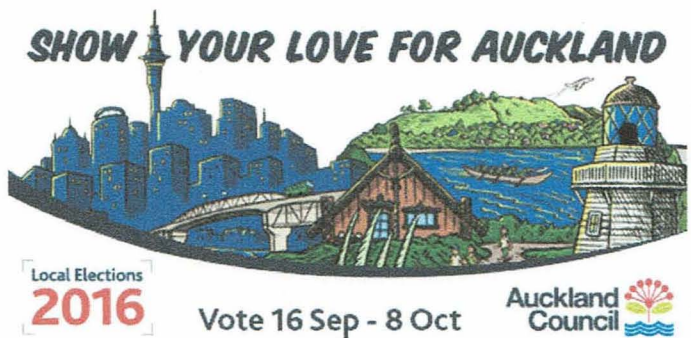
PAUP  
1 message

Lyndon Westlake <Lyndon.Westlake@aucklandcouncil.govt.nz>  
To: "frizzprop@gmail.com" <frizzprop@gmail.com>

15 September 2016 at 12:52

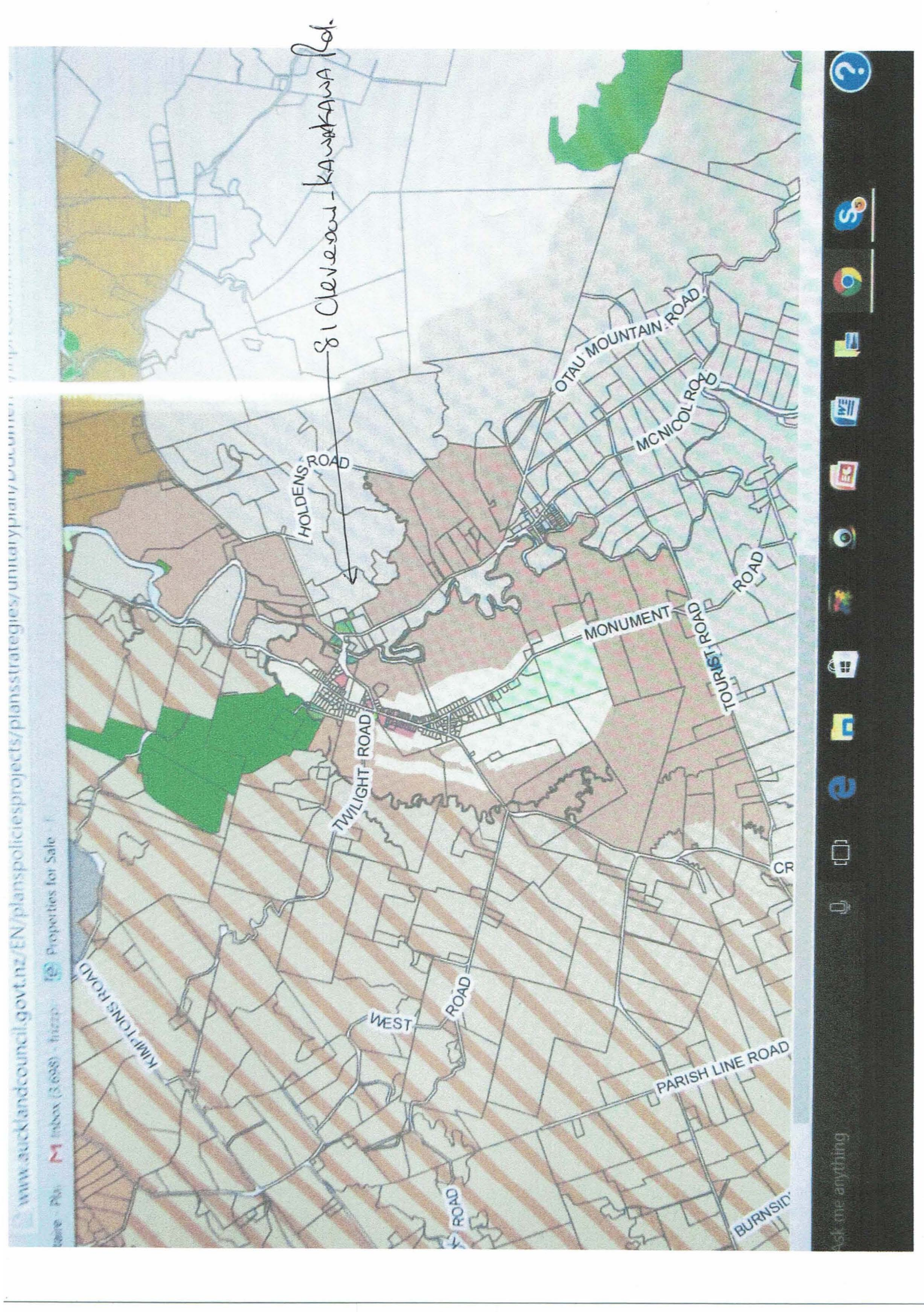


<https://unitaryplanmaps.aucklandcouncil.govt.nz/upviewer/>



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81 Cleveland - KAWAKAWA Rd.

HOLDENS ROAD

TWILIGHT ROAD

MONUMENT ROAD

OTAU MOUNTAIN ROAD

MCNICOL ROAD

TOURIST ROAD

PARISH LINE ROAD

BURNSIDE ROAD

WEST ROAD

KMITTINGS ROAD



**From:** Adam Haycock [Adam.Haycock@aucklandcouncil.govt.nz]  
**Sent:** Monday, 27 May 2013 8:55 a.m.  
**To:** 'frizztrade@xtra.co.nz'  
**Subject:** Acknowledgement Letter - Auckland Council Unitary Plan Feedback

27 May 2013

Bruce Frizzel  
PO Box 195  
Clevedon  
Auckland 2248

[frizztrade@xtra.co.nz](mailto:frizztrade@xtra.co.nz)

Dear Sir/Madam

### **Draft Auckland Unitary Plan**

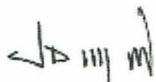
Thank you for your feedback on the draft Auckland Unitary Plan. Your feedback reference number is **4204**.

The next step is that all feedback will be considered to inform the development of the proposed Auckland Unitary Plan. Later this year, council will contact you to advise that consideration of the feedback has been completed and let you know how to access information on the outcome of the feedback received on the draft plan. This information will be publicly available.

Please note that your feedback and contact details may appear in reports that are publicly available. If you have any queries in relation to this matter, or any other unitary plan matter, please contact the Unitary Plan Feedback Management Team at [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz) or on telephone 09 301 0101.

For further information on the draft Auckland Unitary Plan please visit [www.shapeauckland.co.nz](http://www.shapeauckland.co.nz).

Yours sincerely



John Duguid  
Manager Unitary Plan



Our Feedback Reference 4204 as per your letter dated 27th May 2013

Dear Sir, Madam

We made our submission as per above reference number but as yet have had no response.

As per the latest shaded Plan Our immediate neighbour Trent Archer and His Neighbour Peter Walker have been granted Country side Living.

Could you please explain why we as adjoining neighbour have not.

As explained in our submission we have three immediate neighbours with small residential lots and immediately across the road has been designated countryside living also.

It would appear logical and practical that all the land West of Holdens Road should be included as Country side Living

I look forward to your reply

Sincerely

Bruce Frizzell

PS Since

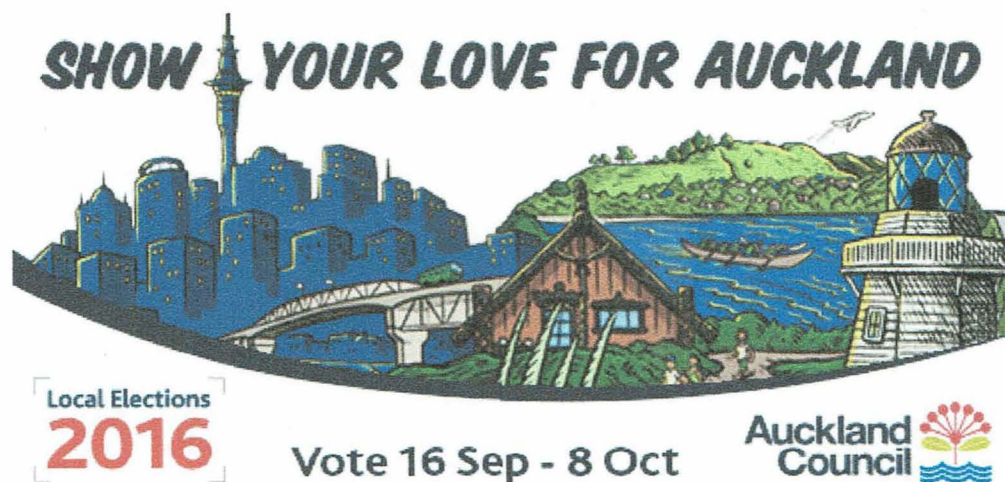
making Our submission our Postal Address has changed to Rural Delivery

which is

81 Clevedon Kawakawa Road

RD 5 Papakura

Auckland 2585





Bruce Frizzell &lt;frizzprop@gmail.com&gt;

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**RE: 81 Clevedon Kawakawa Road**

1 message

**Unitary Plan** <unitaryplan@aucklandcouncil.govt.nz>

5 August 2016 at 12:43

To: Bruce Frizzell &lt;frizzprop@gmail.com&gt;, Unitary Plan &lt;unitaryplan@aucklandcouncil.govt.nz&gt;

Good afternoon Bruce

Unfortunately you did not make a submission to the Proposed Auckland Unitary Plan (PAUP) which was notified on 30 September 2013 and submissions closed late February 2014. The hearings commenced in September 2014 and finished in May this year, the Panel listening to all evidence were required to produce recommendations to council on the PAUP.

Your feedback number 4202 is associated with the almost 11 week consultation Auckland Council held from March to May 2013. We had over 22,000 pieces of feedback that helped improve the PAUP which was then notified for an extended submission period.

You can find your feedback to the draft Auckland Unitary Plan [here](#).

The Independent Hearings Panel provided their recommendations to Council on 22 July. These are recommendations and are not open for submission.

*Regards*

*Therese*

*Therese Strickland | Team Leader Planning Technicians*

*Unitary Plan*

*Plans and Places*

*Unitary Plan enquires line 09 365 3786*

*Auckland Council, Level 24, 135 Albert Street, Auckland*

*Visit our website: [www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz)*

**From:** Bruce Frizzell [<mailto:frizzprop@gmail.com>]

**Sent:** Friday, 5 August 2016 11:29 a.m.

**To:** Unitary Plan

**Subject:** 81 Clevedon Kawakawa Road

To Whom it may Concern



Bruce Frizzell &lt;frizzprop@gmail.com&gt;

**RE: 81 Clevedon Kawakawa Road**

1 message

Unitary Plan &lt;unitaryplan@aucklandcouncil.govt.nz&gt;

8 August 2016 at 08:15

To: Bruce Frizzell &lt;frizzprop@gmail.com&gt;, Unitary Plan &lt;unitaryplan@aucklandcouncil.govt.nz&gt;

Good morning Bruce

The information released on 27 July are the recommendations of the Independent Hearings Panel (IHP) only. They are not Council reports. These have now been provided to the council for consideration and are recommendations only. The council decisions are to be released on 19 August 2016 after consideration of the IHP recommendations. After that there is an appeal period until 16 September and then any appeals have to be determined.

The Panel supplied an Overview report and reports by Hearings for rezoning which talks about the principles on the recommended Panel zoning . Council has put together a briefing for the Auckland Development Committee on these IHP recommendations which would be of assistance to you and you may read this here.

In both the Proposed Auckland Unitary Plan and the IHP recommendations this property is zoned as Rural Production. I cannot comment on why the IHP has recommended you remain zoned as Rural Production

Regards

Therese

*Therese Strickland | Team Leader Planning Technicians*

*Unitary Plan*

*Plans and Places*

*Phone 021 943 497*

*Auckland Council, Level 24, 135 Albert Street, Auckland*

*Visit our website: : [www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz)*

**From:** Bruce Frizzell [mailto:frizzprop@gmail.com]

**Sent:** Sunday, 7 August 2016 3:22 p.m.

**To:** Unitary Plan

**Subject:** Re: 81 Clevedon Kawakawa Road

Therese

Thanks for your reply but it doesnt really answer my question ..could you please answer my query.... why we as

*Regards*

*Therese*

*Therese Strickland | Team Leader Planning Technicians*

*Unitary Plan*

*Unitary Plan enquires line 09 365 3786*

*Auckland Council, Level 24, 135 Albert Street, Auckland*

*Visit our website: : [www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz)*

**From:** Bruce Frizzell [<mailto:frizzprop@gmail.com>]

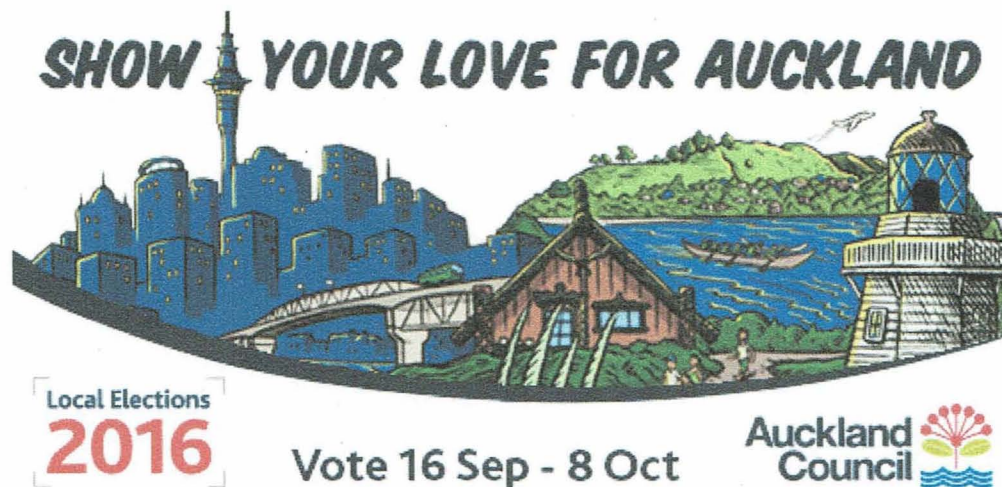
**Sent:** Monday, 22 August 2016 8:52 p.m.

**To:** Unitary Plan

**Subject:** 81 Clevedon Kawakawa Road

Hello further to our conversation earlier in July just wondering what is happening in regard to this ie were we included in country side living if not I understand appeals may be made could you please advise who this could be made to

Thanks Bruce Frizzell



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**From:** Bruce Frizzell [mailto:frizzprop@gmail.com]

**Sent:** Tuesday, 23 August 2016 6:12 p.m.

**To:** Unitary Plan

**Subject:** Re: 81 Clevedon Kawakawa Road

Thanks for that Therese do you have a name and contact details that I can put our case as outlined to you in earlier emails it doesn't make any sense we should be Rural Production

Regards Bruce

On Tuesday, 23 August 2016, Unitary Plan <unitaryplan@aucklandcouncil.govt.nz> wrote:

Afternoon Bruce,

Oh my goodness, I've just double checked. 81 Clevedon Road Papakura is THAB. 81 Clevedon Kawakawa Road is Rural Production.

Many thanks for checking

**From:** Bruce Frizzell [mailto:frizzprop@gmail.com]

**Sent:** Tuesday, 23 August 2016 3:01 p.m.

**To:** Unitary Plan

**Subject:** Re: 81 Clevedon Kawakawa Road

Hi Therese

Thanks so much for your reply.

Are you sure ... That would be great but i can't imagine that would be so could you kindly recheck address is 81 Clevedon Kawakawa Road

Thanks regards Bruce

On Monday, 22 August 2016, Unitary Plan <unitaryplan@aucklandcouncil.govt.nz> wrote:

Good morning Bruce

 Under the Proposed Auckland Unitary Plan decisions version this site is zoned Terrace Housing and Apartment Building Zone. 

To read about this zone Chapter H zones and Chapter E Auckland-wide / Subdivision

In regards to appeals please look at our website and also at the Environment court website the court has appointed a legal process assistant that you may wish to contact to ask further questions