

4 April 2014

Dryden Trust
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Dear Brent & Ryan

Interpretation - Policy 6.3.9 of the Canterbury Regional Policy Statement

1. You have asked for a legal opinion on a preliminary issue that has arisen as a result of discussions with Selwyn District Council staff regarding the draft Rural Residential Strategy 2013 (**RRS**).
2. The Land Use Recovery Plan (**LURP**) directs the Council to amend its District Plan to the extent necessary to implement an adopted Rural Residential Development Strategy in accordance with Chapter 6 of the Canterbury Regional Policy Statement (**RPS**). The draft RRS seeks to determine sustainable options for managing rural residential development and has identified, on a preliminary basis, some specific areas for rural residential development having regard to a range of criteria. The Council is at pains to stress that the identification of such areas is preliminary only and that additional areas may well arise for consideration during the consultation and hearing process. Dryden Trust has submitted on the draft RRS seeking the inclusion of certain land in Rolleston that meets the relevant criteria and has been designed to stand on its own merits as a rural residential development but would also enable urban development to be considered at a later stage, if that were ever to arise.
3. We understand that the Council has queried whether catering for 'future proofing' in the RRS is potentially inconsistent with the RPS. Our advice on this issue is set out below.

Summary of advice

4. In our view, it is entirely appropriate for the Council to cater for future proofing when considering the merits of including additional rural residential areas in the RRS.
5. Taking account of the possibility of future urban development is simply good planning practice and entirely consistent with the wider Recovery Strategy. It does not create a presumption or expectation on the part of landowners that such areas are "in transition to full urban development" and, to that extent, is not inconsistent with Chapter 6 of the RPS.
6. It is important to note that the identification of rural residential areas within the RRS does not pre-empt the statutory requirements under the RMA, where the substantive merits of rezoning land are still required to be considered under a private plan change process that will need to be initiated by land owners if and when they may seek to develop the land in the future. Land owners should certainly not be penalised for taking the initiative to design rural residential development proposals in a way that will achieve long term sustainable outcomes **if** demand were to increase or change over time. Such an approach is entirely consistent with the

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Recovery Strategy and the strategic direction of the Council to determine sustainable long term housing options for the District.

Explanation

7. In identifying priority areas for greenfield development, the LURP anticipates a regional policy framework supporting some rural residential development during the recovery period to allow a range of choices of housing types for those needing to relocate. The LURP identifies that rural residential development must be limited to not only avoid inefficient land use and infrastructure, but (importantly) to also protect future urban expansion options¹. It is expressly recognised in the LURP that the supply and uptake of rural residential activity will be regularly monitored to cater for changes in uptake and demand over time. Future proofing is entirely consistent with this objective. It does not create any presumption that urban development will occur. It simply preserves the opportunity for a merits-based discussion at a later date should there be a change in uptake or demand for a range of choices of housing types. Such an approach accords with the overarching purpose of the Recovery Strategy and is enabling of people and communities.
8. The regional policy framework identified in the LURP is contained in Chapter 6 of the RPS, which includes a range of policies and methods to manage rural residential development. While a holistic approach to evaluating the policy framework will be necessary when considering the RRS at the upcoming hearing, for the purposes of this opinion we have focussed our analysis on Policy 6.3.9(7) as we understand that this is what the Council is seeking some comfort on.
9. Policy 6.3.9 is a key policy. It includes a wide range of criteria. Relevantly, Policy 6.3.9(7) states:

Policy 6.3.9 – Rural residential development

In Greater Christchurch, rural residential development further to areas already zoned in district plans as at 1st January 2013 can only be provided for by territorial authorities in accordance with an adopted rural residential development strategy prepared in accordance with the Local Government Act 2002, subject to the following:

...

(7) A rural residential development area **shall not be regarded as in transition to full urban development.**

(emphasis added)

10. The phrase "in transition" is not defined in the RPS. On an ordinary reading of this phrase, this suggests an active process of change.
11. The word "transition" is defined in the Collins Concise Dictionary as "*change or passage from one state or stage to another*" or "*the period of time during which something changes*"²; in the online Oxford Dictionary as "*the process or a period of changing from one state or condition to another*"³; and in the online Merriam-Webster Dictionary "*a change from one state or condition to another*".⁴

¹ Page 25, Land Use Recovery Plan.

² 4TH ed, HarperCollins, Glasgow, 2000, page 1582.

³ Oxford Dictionaries Language Matters, www.oxforddictionaries.com (20 March 2014).

⁴ Merriam-Webster, www.merriam-webster.com (20 March 2014).

12. The correct approach to the interpretation of the provisions of a district plan has been considered by the Court of Appeal in *Powell v Dunedin City Council*⁵. We submit that a similar approach would apply to the RPS.
13. The starting point is that words used in the district plan should be used in their plain ordinary sense, as an ordinary, reasonable member of the public would understand them. If this is clear, there is no need to go further.⁶
14. In *Powell* the Court held at paragraph 35:

While we accept it is appropriate to see the plain meaning of a rule from the words themselves, it is not appropriate to undertake that exercise in a vacuum. As this Court made clear in *Ratray*, regard must be had to the immediate context (which in this case would include the objectives and policies and methods...) and, where any obscurity or ambiguity arises, it may be necessary to refer to the other sections of the Plan and the objectives and policies of the Plan itself. Interpreting a Plan by a rigid adherence to the wording of the particular rule itself would not, in our view, be consistent with the judgment of this Court in *Ratray* or the requirements of the Interpretation Act.
15. The Court of Appeal accepted the approach of the High Court in *Powell*⁷ where it held:

The language used in the plan must be given its plain ordinary meaning, the test being 'what would an ordinary reasonable member of the public examining the plan, have taken from the planning documents'.
16. It follows that the meaning of the relevant plan provisions must be taken from the text, in the light of the purpose, and with regard to the immediate context.
17. Planning sensibly for the possibility of future urban development by ensuring that such opportunities are not precluded through poor design or failure to identify suitable areas for rural residential development does not equate to an area being regarded as in transition to full urban development. The Dryden Trust land will remain zoned Inner Plains. The Rural Residential Strategy will not change this. A merits-based assessment would still need to be undertaken prior to any rezoning occurring via a private plan change for rural-residential purposes. Even if rezoning to Living 3 were successful, there are further actions required before the land could then be made available for urban development. It is clearly not in an active process of change.
18. Although the Council has indicated the land in question may become part of a future urban area at some point in the future, there is no certainty that this will occur. The advantage of future proofing through the RRS is that it avoids the prospect of this land being subdivided into 4ha blocks under the existing rural zoning with no controls on such matters as building platforms, curtilage areas or roading layout to cater for future proofing. This could have the unintended outcome of creating real obstacles to achieving a future sustainable urban form, or even actually precluding the opportunity to consider the site for a future urban area in the long term. Ironically, such an outcome could in fact constrain any future urban expansion option if such were to arise during the monitoring and review process envisaged by the LURP. It is considered that such an approach to managing rural residential development could in fact undermine the recovery efforts anticipated by the LURP and is unlikely to meet the purpose of the RMA.
19. The RRS states that the District Plan identifies that the single most significant resource management issue affecting the Plains is the demand for small allotments less than 4ha in size for residential development. The RRS also expressly recognises that some land owners purchase 4ha parcels for lifestyle purposes in the absence of affordable low-density living

⁵ [2002] NZRMA 174 (CA)

⁶ *MacKenzie District Council v Glacier and Southern Helicopters* C83/97

⁷ *Powell v Dunedin City Council* [2004] NZRMA 49

environments. The lack of direction and control as to the form and location of rural residential development in the current District Plan makes the management of cumulative effects associated with incremental change to the rural environment and growth of Townships difficult to manage. Yet, at a strategic level, the Council recognises that consolidated urban settlements are a more sustainable typology and that peri-urban nodes can take advantage of definitive boundaries to manage growth and reduce the risk of urban sprawl, with appropriate location selection enabling long term residential growth paths to be preserved.

20. The RRS states that the identification of rural residential areas is not only a statutory requirement under the LURP, but is also important because it provides direction to the community, development sector, service providers and land owners in respect to where rural residential development is anticipated within the UDS area of the District for the next 10 to 15 years - or sooner depending on housing uptake and monitoring reviews. That is a key point.
21. The Rolleston Structure Plan and recent amendments to the District Plan set out the strategic planning direction for the township. Rolleston is identified as a Key Activity Centre under the LURP and Chapter 6 of the CRPS. It is the primary growth area within the District, with capacity to support a significant population in the coming years. Failing to cater for future proofing through the RRS would be inconsistent with this strategic direction.
22. Ultimately the optimal form, function and character of rural residential development nodes need to be determined using a comprehensive analysis of any given site's context within its wider surroundings. This is a matter that will be canvassed in more detail at the upcoming hearing, but our understanding is that the proposal satisfies all the relevant pre-requisites. It can be economically serviced with reticulated water and wastewater services; is able to be integrated with the established township; is not affected by any significant constraints; and is in single ownership of a party with aspirations to rezone the land. In our opinion, it also does not undermine the urban consolidation and intensification principles of the LURP or Chapter 6 of the CRPS – if anything, the future proofing element is entirely consistent with such principles of good planning.
23. We are happy to discuss this opinion directly with the Council if it would be of assistance.

Yours faithfully
Anderson Lloyd



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