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**By email**

Dear Robert

14 February 2023

**Advice on application of the NPS-HPL**

- 1 We have been provided with a copy of Minute 38, in relation to rezoning requests in the Selwyn Proposed District Plan (**PDP**), and the interaction with the National Policy Statement for Highly Productive Land (**NPS-HPL**).
- 2 Specifically, we have been asked to confirm the application of the NPS-HPL to land zoned Rural, with an Inner Plains density overlay area (**Rural: Inner Plains**) in the Operative District Plan (**ODP**), and General Rural (**GRUZ**), with an Inner Plains Specific Control Area (**GRUZ: Inner Plains**) in the PDP.
- 3 A copy of the Minute is included as **Appendix 1**. A copy of the legal submissions referenced in the Minute are set out in **Appendix 2**.

**Overview**

- 4 In summary, we consider that:
  - 4.1 The application of the NPS-HPL depends on whether the land is zoned the equivalent of Rural Lifestyle (as defined in the National Planning Standards (**NPS**)), either in the ODP, or, if not in the ODP, in the PDP. The assessment required is a comparison between the way the land is described in the relevant plan (in the round), and the descriptions of the zones in the NPS.
  - 4.2 Following such an assessment, we have concluded that land identified as Rural: Inner Plains in the ODP is not the equivalent of the Rural Lifestyle Zone in the NPS. Instead, General Rural or Rural Production is the appropriate equivalent.
  - 4.3 Land identified as GRUZ: Inner Plains in the PDP is the equivalent of the General Rural Zone in the NPS, not the Rural Lifestyle Zone.
  - 4.4 Given this, the NPS-HPL applies to land identified as Rural: Inner Plains in the ODP, and GRUZ: Inner Plains in the PDP (provided the other requirements of the NPS-HPL are met).
  - 4.5 This interpretation is consistent with the intent of the NPS-HPL, to avoid the loss of productive land to the rural lifestyle activities, and to allow for preservation of productive land pending a more detailed assessment under the NPS-HPL.
  - 4.6 The NPS zone descriptions refer to 'use'. We have not been provided evidence of on the ground use, so have completed our assessment on the basis of the planning provisions. Evidence of on the ground use of the relevant land could alter the assessment below.

## Decision making framework

- 5 The Environment Court provided a comprehensive summary of the mandatory requirements for plan preparation in *Long Bay-Okura Great Park Society v North Shore City Council*.<sup>1</sup> Subsequent cases have updated the *Long Bay* summary, including in *Colonial Vineyard v Marlborough District Council*.<sup>2</sup> The test is set out in **Appendix 3**. Relevant to the NPS-HPL, the mandatory requirements specified under the Resource Management Act (**RMA**) include:
- 5.1 section 74(1)(ea) – to prepare and change the district plan in accordance with a national policy statement, and
- 5.2 section 75(3) – to give effect to any national policy statement.
- 6 Given these requirements, it is important that the Panel have clear guidance on whether the NPS-HPL applies and is required to be taken into account.
- 7 We do note that even if the NPS-HPL does not apply, there are further considerations as part of the District Plan Review (as set out in **Appendix 3**), in addition to consideration of an NPS. It may very well be that those other considerations also preclude rezoning, even in the absence of consideration of the NPS-HPL. However, this is a matter for the Hearings Panel to consider.

## Application of the NPS-HPL

- 8 Clause 3.5 of the NPS-HPL deals with identifying highly productive land in regional policy statements and district plans. It states that:
- (7) Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:
- (a) is
- (i) zoned general rural or rural production; and
- (ii) LUC 1, 2, or 3 land; but
- (b) is not:
- (i) identified for future urban development; or
- (ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

*[our emphasis]*

- 9 The MfE Guidance comments that:<sup>3</sup>

Clause 3.5(7)(a) makes it clear the NPS-HPL is only relevant to land zoned general rural or rural production. This means all other zones are

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<sup>1</sup> *Long Bay-Okura Great Park Society v North Shore City Council*, EnvC Auckland, 16/7/2008 A78/08 at [34]. *Colonial*

<sup>2</sup> *Vineyard v Marlborough District Council* [2014] NZEnvC 55 at [17].

<sup>3</sup> NPS-Highly-Productive-Land-Guide-to-implementation.pdf (environment.govt.nz) at page 14



excluded from the transitional definition of HPL. All 'urban' zones (including special purpose and future urban zones, as defined in the NPS-HPL) and rural lifestyle zones are excluded from the transitional definition of HPL.

10 So, if a piece of land is:

10.1 not zoned 'general rural' or 'rural production' in the ODP, or

10.2 if it is zoned 'general rural' or 'rural production' under the ODP but is subject to a plan change (such as the PDP) which will rezone it to 'rural lifestyle' (as we do not understand it is being argued that there is rezoning to 'urban'), the NPS-HPL will not apply.

11 The argument advanced by submitters is that the land identified as Rural: Inner Plains in the ODP is not the equivalent of the General Rural or Rural Production Zone, but instead is the equivalent of a Rural Lifestyle Zone.

12 The same argument is advanced in relation to land identified as GRUZ: Inner Plains in the PDP. Given this, those submitters argue that the NPS-HPL does not apply to land identified as Rural: Inner Plains that is being converted to GRUZ: Inner Plains.

13 This is a very narrow approach, ignoring that there is only one Rural Zone in the ODP (and in the PDP), with a range of density overlay areas (in the ODP) or specific control area (in the PDP) – there is no separate 'Inner Plains' zone – simply land zoned Rural with a density overlay area or specific control area.

#### **What are General Rural, Rural Production and Rural Lifestyle zones?**

14 'General Rural', 'Rural Production' and 'Rural Lifestyle' are not defined in the NPS-HPL. However, the NPS-HPL states that:<sup>4</sup>

(4) A reference in this National Policy Statement to a zone is:

- (a) a reference to a zone as described in Standard 8 (Zone Framework Standard) of the National Planning Standards; or
- (b) for local authorities that have not yet implemented the Zone Framework Standard of the National Planning Standards, a reference to the nearest equivalent zone.

15 The NPS states that rural zones include general rural, rural production, rural lifestyle, and settlement zones.<sup>5</sup> The NPS provides the following guidance:

15.1 **General rural zone:** Areas used predominantly for primary production activities, including intensive indoor primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.

15.2 **Rural production zone:** Areas used predominantly for primary production activities that rely on the productive nature of the land and intensive indoor primary production. The zone may also be used for a range of activities that support primary production

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<sup>4</sup> Clause 1.3(4)

<sup>5</sup> Table 13.



activities, including associated rural industry, and other activities that require a rural location.

- 15.3 **Rural lifestyle zone:** Areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General rural and Rural production zones, while still enabling primary production to occur. Settlement zone: Areas used predominantly for a cluster of residential, commercial, light industrial and/or community activities that are located in rural areas or coastal environments.

## Plan Interpretation

- 16 Given this, the following assessment is required:

16.1 Is land identified as 'Rural: Inner Plains' in the ODP the equivalent of a 'general rural', 'rural production' or 'rural lifestyle' zone in the NPS, and

16.2 Is land identified as GRUZ: Inner Plains in the PDP the equivalent of a 'general rural', 'rural production' or 'rural lifestyle' zones in the NPS?

- 17 Because the NPS zone framework standard was not integrated into the ODP, to make that assessment against the NPS zone description for land currently identified as 'Rural: Inner Plains' in the ODP, clause 1.3(4) of the NPS-HPL requires an assessment of what is the 'nearest equivalent zone' to that land. MfE Guidance supports this approach,<sup>6</sup>

If a district plan has not implemented the National Planning Standards, any reference to zones in the NPS-HPL should be read as applying to the 'nearest equivalent zone' in the district plan (refer Clause 1.3(4)(b)). The nearest equivalent zone should be assessed by referring to the zone descriptions in the National Planning Standards and comparing them to the district plan zone description, objectives, policies, activity table and subdivision provisions (in the round). This is to assess whether a 'rural-type' district plan zone is in fact a rural production/general rural, rural lifestyle or settlement zone in the National Planning Standards (as the only four options for rural zones). For example, there may be a special purpose zone in an operative district plan relating to a productive rural environment that is predominately used for primary production activities. Such a zone should be interpreted as rural or rural production zone for the purposes of Clause 3.5(7)(a)(i) rather than an urban zone.

- 18 The MfE Guidance suggests that what is required is comparing the zone 'description, objectives, policies, activity table and subdivision provisions (in the round)' in the ODP to the 'zone descriptions' in the NPS.
- 19 In general, the approach to plan interpretation that has been used by the Environment Court is that the plain and ordinary (or common) meaning should be given to the words in a plan, unless there is something in the context of that plan that means an extension of that meaning is required to avoid absurdity or ambiguity.<sup>7</sup>
- 20 In *Woosh Wireless Limited Wellington City Council*, Judge Thompson identified that the first issue to consider is the text of the plan provision:<sup>8</sup>

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<sup>6</sup> [NPS-Highly-Productive-Land-Guide-to-implementation.pdf \(environment.govt.nz\)](#) at page 14.

<sup>7</sup> See for example *Application by Hutt City Council*, Decision W 046/07 (upheld in the High Court) and *Woosh Wireless Limited v Wellington City Council*, Decision W 103/06.

<sup>8</sup> *Woosh Wireless Limited v Wellington City Council*, Decision W 103/06, n6, at [11].



The first issue is therefore the text - ie the words used and what they mean, with illumination, if required to resolve doubt or ambiguity, from the purpose of the enactment, or in this case the provisions of the Plan.

- 21 In *Powell v Dunedin City Council*,<sup>9</sup> the Court of Appeal identified the proper approach to the interpretation of a district plan, noting that that the orthodox approach to statutory interpretation applies:

While we accept it is appropriate to seek 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 *Rattray*, regard must be had to the immediate context ... 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.

- 22 This ability to rationalise the meaning of words where obscurity and ambiguity exists cannot go too far, however. An absurdity or anomaly cannot simply be created by a person who does not like the plain and ordinary meaning of a word or phrase,<sup>10</sup> nor is it the role of the interpreter to add words to give effect to the Council's intention.<sup>11</sup>
- 23 For the ODP, the NPS zone descriptions have been taken into account, as the Overview Section 42A Report<sup>12</sup> acknowledges that section 58I requires the structure and framework of a district plan to be in accordance with the recently introduced National Planning Standards,<sup>13</sup> and that generally the Council is seeking a district plan which is consistent with the National Planning Standards structure.<sup>14</sup> However, some assessment may be required to confirm the relationship between the NPS zone descriptions and the GRUZ (including with the Inner Plains Specific Control Area) in the PDP. The orthodox plan interpretation approach set out above will be applied.
- 24 Given this guidance in the NPS-HPL and caselaw, it is clear that what is required is an assessment of the text of the ODP and PDP respectively, to understand how the controls on the land are described 'in the round', followed by a comparison with the NPS rural zoning descriptions.

#### **Is 'Rural: Inner Plains' zoning in the ODP 'general rural', 'rural production' or 'rural lifestyle'?**

- 25 The site raised by Mr Schulte is identified as Rural: Inner Plains in the ODP. As set out above, the first question in determining the application of the NPS-HPL is whether the land is the equivalent of General Rural, Rural Production, or Rural Lifestyle zoning.
- 26 Set out in Appendix 4 are extracts from the ODP. In summary, the ODP provides for land identified as Rural: Inner Plains as follows:
- 26.1 The land is zoned Rural. The description of the District Plan notes that '[I]and within the district is zoned as Living, Business or Rural'. The rural zones description notes

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<sup>9</sup> *Powell v Dunedin City Council* [2004] 3 NZLR 721 (CA), at [35].

<sup>10</sup> In *Woosh Wireless Limited v Wellington City Council*, Decision W 103/06 at [21]-[22], the Court stated: 'In short, I would have to use context as justification for holding that words should be given meanings which they could not otherwise rationally be given. I do not think that is an appropriate course for a Court to take. In *Humpty Dumpty's* terms, the rational and accepted meanings of the words should be master, not a strained and artificial interpretation which may happen to suit the needs of the moment. The Council's real solution, if the Plan does not say what it thinks it should, is to change the Plan.'

<sup>11</sup> *Khandallah/Ngaio Community Creche v Wellington City Council* EnvC Wellington W51/2005, 3 June 2005, at [31]-[32]: '[I]t is not for the Court to add in words at this late stage to give effect to the council's intention.'

<sup>12</sup> [PDP overview s42a report \(selwyn.govt.nz\)](#).

<sup>13</sup> At [5.7].

<sup>14</sup> At [8.1].



that: 'there is only one zone in the rural area, though the zone is split into areas to manage specific activities, for example subdivision and residential density, dairy processing activities and buildings, plantations and outstanding landscapes.'<sup>15</sup> There are then multiple density overlay areas within the Rural Zone. Inner Plains is one of those density overlay areas.

- 26.2 Activities are generally permitted in the Rural Zone, provided other rules in the ODP are complied with, and the activity is not listed as discretionary (such as composting, manufacture of fertiliser, prisons or camping grounds) or non-complying (industrial activities). There are other general rules for activities in the Rural Zone (i.e. for contaminated land, or rural based industrial activities).
- 26.3 Activity restrictions specific to the Inner Plains overlay area are limited. Unlike the Port Hills, Malvern Hills and High-Country overlay areas (see Rule 9.3.1), there are no specific list of permitted activities for the Inner Plains overlay area, so the general rules apply. There are some specific references to the Inner Plains within the rules, such as on minimum allotment size (discussed below), and a specific non-complying activity status for erecting a dwelling on an undersized site in Inner Plains (and Existing Development Areas). Clearly, there is no independent regime of rules which apply separately to the Inner Plains overlay area – instead land use is primarily managed by the Rural zoning, with some minimal further additions.
- 26.4 Subdivision in the land identified as Rural: Inner Plains to 4ha is a controlled activity (subdivision is never a permitted activity). Relevant matters of control are allotment size. If the lot size is smaller than 4ha, the activity is non-complying.
- 26.5 The Inner Plains does not have the smallest minimum allotment size in the Rural Zone. For the erection of dwellings, the Bealey Spur Existing Development Area has a minimum land area of 800 m<sup>2</sup>,<sup>16</sup> and for subdivision the Railway Corner Existing Development Area has a minimum allotment size of 2,000m<sup>2</sup>.<sup>17</sup> Other existing development areas also have smaller minimum lot areas, including down to 1 ha.<sup>18</sup>
- 26.6 The ODP notes that between Christchurch City and a line from West Melton to Tai Tapu (which includes the land identified as Rural: Inner Plains) is a 'rural' landscape that provides an important contrast to the 'urban' landscape of the City. The RPS states that this land should remain in "rural or recreational" uses.<sup>19</sup>
- 26.7 The ODP acknowledges that there is a demand for more houses in the rural area, and that most of that demand is in the land identified as Rural: Inner Plains.<sup>20</sup> The ODP manages residential density, to allow for a range of section sizes in the rural area, which maintain a low overall residential density (at levels which are considerably lower than those in townships), maintain rural character, avoid adverse effects,<sup>21</sup> surrounded by land without buildings.<sup>22</sup> In the land identified as Rural: Inner Plains, a minimum 4ha size is required to avoid adverse effects.<sup>23</sup> The ODP states that '[r]esidential

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<sup>15</sup> A4.5 The Rural Area and Zones - Use of Zones.

<sup>16</sup> Table C3.1 — Minimum Land Area to Erect One Dwelling

<sup>17</sup> Table C10.1 – Minimum Allotment Size

<sup>18</sup> Table C10.1 – Minimum Allotment Size

<sup>19</sup> Policy B1.4.12.

<sup>20</sup> B4.1 Residential density and subdivision in the rural area – Issues: Residential density.

<sup>21</sup> Objective B4.1.1, and B4.1.2.

<sup>22</sup> Residential Density and Subdivision In The Rural Area – Anticipated Environmental Results.

<sup>23</sup> Policy B4.1.2.



development means subdividing and erecting houses at a higher density than 1 house per 4 hectares.<sup>24</sup>

- 26.8 The ODP is concerned with the loss of versatile soils, including through urban expansion, and an intention in the ODP to concentrating urban expansion around townships, with an aim of keeping residential density in the rural zone low.
- 27 The next step is confirming which of the zone descriptions in the NPS is the most similar to the above. The phrase 'area used predominantly' is repeated throughout the NPS zone descriptions. 'Predominant' has been described in caselaw as:
- “Predominant” in the Oxford English Dictionary means “superior, ascendant, prevalent” or, as is described as more vaguely, “more frequent”. In the Concise Oxford Dictionary (6th ed 1976), “predominant” means “to be stronger, to preponderate”, and that word appears to have in some of its meanings the same meaning as “predominate” or “predominant”.<sup>25</sup>
- ...
- ...the word “predominant” can convey both quantitative and qualitative notions. For example in Black’s Law Dictionary the word is defined as:
- “More powerful, more common, or more noticeable than others; having superior strength, influence, and pervasiveness.”<sup>26</sup>
- ...
- We understand the ordinary meaning of predominant to be “main”, “primary” or “uppermost”.<sup>27</sup>
- 28 While acknowledging that some of this caselaw sits outside the RMA context, the guidance is that predominant outcome means the primary outcome. Given this, for Rural Lifestyle, we would expect that a predominantly residential lifestyle use would be reflected in areas which mainly provide for residential activities, i.e. it is the main use of that zone.
- 29 For the assessment, we have considered the overall Rural Zone, and that part of the Rural Zone which also has an Inner Plains density overlay area. A comparison against only the Inner Plains density overlay area is not consistent with the treatment that the Plan suggests for the Inner Plains density overlay area, as it is part of the Rural Zone, not an independent zoning. However, given the focus on the Inner Plains density overlay area, we have completed an assessment for both the Rural Zone, and the Rural Zone with the Inner Plains density overlay area, to confirm whether there is any difference. Based on the assessment below, the outcome does not change.
- 30 The other challenges with the NPS descriptions are that they refer to 'areas used', which suggest that the assessment should be completed against the activities taking place in the zones, rather than what the planning framework provides for. We understand that land identified as Rural: Inner Plains includes several large land holdings, but at this stage we have

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<sup>24</sup> B1.1 – Land and Soil Issues – Irreversible use of versatile soils, Policy B1.1.8.

<sup>25</sup> *Marshall v Real Estate Agents Licensing Board* High Court, New Plymouth, 27/7/1987, Greig J A16/86, at 6.

<sup>26</sup> *Energy Beverages LLC v Frucor Suntory* [2022] NZCA 536 at [76].

<sup>27</sup> *National Standards Committee v Denham* [2017] NZLCDT 10 at [55].



not been provided with evidence to review on land use. Accordingly, we have completed our assessment based on the words in the ODP but note that additional evidence could change our assessment.

## Assessment

NPS	NPS Description	Comparison to Rural Zone	Comparison to land identified as Rural: Inner Plains	Assessment
General rural zone:	Areas used predominantly for primary production activities (which includes agricultural, pastoral, and horticultural activities), including intensive indoor primary production (which includes keeping or rearing livestock). The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.	Zone can be used for a range of activities, including primary production activities.  New or expanded intensive livestock production is a restricted activity (Rule 9.8.1.1(b), 9.10.3) in any part of the Rural Zone.	Land subject to the inner plains density overlay area can be used for the same activities as the rest of the Rural Zone, and potentially a wider range of activities than the Port Hills, Malvern Hills and High Country.	This appears to be the best fit for the general Rural Zone and the land identified as Rural: Inner Plains. Whilst we don't currently have evidence on what the land is 'used for', the plan indicates that rural activities, including primary production activities are anticipated and permitted. Although intensive indoor primary production is not 'permitted' this does not prevent its occurrence if a consent is obtained.
Rural production zone:	Areas used predominantly for primary production activities that rely on the productive nature of the land and intensive indoor primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.	Zone can be used for a range of activities, including primary production activities. As above, new or expanded intensive livestock production is a restricted activity.  Reference in the ODP to the requirement to retain the productive nature of land, through retention of versatile soils.	As per rural zone.	This could also be a good fit for both. It is not clear to us that the activities anticipated on this land 'rely' on the productive nature of the land, but given the requirement to protect versatile soils, this is likely the case. In our view versatile soils are being protected to provide for rural activities.



NPS	NPS Description	Comparison to Rural Zone	Comparison to land identified as Rural: Inner Plains	Assessment
Rural lifestyle zone:	Areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General Rural and Rural production zones, while still enabling primary production to occur.	Residential activity is permitted across the Rural Zone, subject to a range of minimum lot sizes.  The ODP does not signal a preference for residential development over any other activity. The ODP notes concerns with loss of versatile soil.	Residential activity is permitted on land subject to the density overlay, subject to 4ha minimum lot (which is not the smallest minimum lot size in the Rural Zone).  The ODP does not signal a preference for residential development. For a Rural Lifestyle zone, we would expect to see objective, policies and rules which are supportive of residential development, and which seek to limit rural activities which effect such residential development.  The ODP notes concerns with loss of versatile soil, and the need to retain rural (i.e. non-residential character) specifically for land identified as Rural: Inner Plains.	Neither area is equivalent to Rural Lifestyle. Although residential activities are permitted in both areas, the ODP does not signal a preference for a predominance of residential activities on this land.  For the Rural: Inner Plains, the ODP signals a deliberate intention to avoid residential scale (described as less than 4ha) development, and for residential development to locate near townships, and the need to retain a rural character on the boundary to Christchurch.
Settlement zone	Areas used predominantly for a cluster of residential, commercial, light industrial and/or community activities that are located in rural areas or coastal environments.	Industrial activities not permitted. Minimum allotment sizes avoids clusters of residential activities.	Industrial activities not permitted. Minimum allotment sizes avoids clusters of residential activities.	Neither area is equivalent to a Settlement Area, given both avoid clusters of residential activities.

## Conclusions

- 31 Given the differing ages of the ODP and the NPS, there is not a clear correlation between the NPS zone descriptions and the ODP treatment of land. However, looking to achieve the best fit, our assessment is that the land identified as Rural: Inner Plains is the equivalent of the General Rural or Rural Production zones in the NPS. We have reached this view because the ODP does not provide predominantly for residential lifestyle in the Rural Zone, including in land subject to the Inner Plains density overlay area. Although the ODP allows for residential activities in land identified as Rural: Inner Plains, this residential activity is no more encouraged than other activities, and there are clear indications that rural character should be maintained, with residential development to occur in townships through residential density controls and the objective and policy framework. For a Rural Lifestyle zone, we would expect



to see objectives, policies and rules which are supportive of rural lifestyle activities, and which seek to limit rural activities which effect such rural lifestyle activities development. This is not the case in the ODP.

- 32 In addition to the above assessment, we have considered whether the minimum lot size of 4ha proposed in the land identified as Rural: Inner Plains is (in itself) determinative of a Rural Lifestyle zoning. As above, this is a somewhat artificial division of the general Rural zone, given the Inner Plains is simply an area, rather than a different zoning.

- 33 The Section 32 Report on the NPS-HPL states:

...If fragmentation of all HPL is considered (LUC 1–3), 5% of HPL had been subdivided into lifestyle blocks (parcels between 2 and 8ha in size) in 2019.<sup>28</sup>

- 34 From this alone, it appears the minimum lot size for land identified as Rural: Inner Plains could be indicative of Rural Lifestyle zoning, being between 2 and 8ha in size. However, what is clear from the extracts below from MfE Guidance<sup>29</sup> is that lot size is not the only characteristic which determines whether a zoning is the equivalent of 'Rural Lifestyle', and the NPS-HPL deliberately did not use lot sizes to determine whether a lot can be productive.

In relation to the National Planning Standards description of rural lifestyle zone, the consideration is not whether the sites are large enough for primary production. It is whether the main land use is primary production or residential activity. It is appropriate to consider specific characteristics of the site and reasonably foreseeable opportunities for using the land for land-based primary production (over a 30-year period) in forming these conclusions.

...

The NPS-HPL deliberately does not contain direction on the size of a lot that will guarantee the productive capacity of HPL will be retained. This will be dependent on a range of factors and will vary from region to region. Whether or not a particular lot can remain productive will vary depending on, for example, fluctuating markets or local conditions in each district. As discussed above, the determining factor is whether the site is large enough so that the predominant use of the site is land-based primary production and not residential lifestyle.

...

Therefore, the size of the parcel is not always as relevant as its potential to support land-based primary production in the context of the agri-business.

- 35 Given this, we consider that our assessment above is appropriate as it takes into account the way the relevant land is described in the ODP as a whole, and that the 4ha minimum zoning must be considered in the context of the zone. It is also clear from the above discussion that a 4ha lot size does not preclude valuable productive capacity. Accordingly, our conclusion remains that the land identified as Rural: Inner Plains is the equivalent of the General Rural or Rural Production zone, not the Rural Lifestyle Zone.

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<sup>28</sup> [National Policy Statement for Highly Productive land - Evaluation under Section 32 of the Resource Management Act \(environment.govt.nz\)](https://environment.govt.nz/assets/publications/NPS-Highly-Productive-Land-Guide-to-implementation.pdf) at footnote 68.

<sup>29</sup> <https://environment.govt.nz/assets/publications/NPS-Highly-Productive-Land-Guide-to-implementation.pdf>.



**Is General Rural, with an Inner Plains overlay the equivalent of 'general rural', 'rural production' or 'rural lifestyle' zoning?**

- 36 Given we have determined the land identified as Rural: Inner Plains is either General Rural, or Rural Production, the next question is whether the PDP rezones the land identified as Rural: Inner Plains to Rural Lifestyle (as this would also mean that the NPS-HPL would not apply).
- 37 The notified version of the PDP proposes that the site be zoned General Rural (**GRUZ**), with a specific control area for rural density of SCA-RD1 Inner Plains (**Inner Plains**) (**GRUZ: Inner Plains**)
- 38 The Section 42A Report for the General Rural Zone<sup>30</sup> notes that:
- The PDP contains only one rural zone, the General Rural Zone or 'GRUZ' to manage all activities. In addition, to manage residential density in GRUZ, various 'specific control areas' apply across the zone.<sup>31</sup>
- 39 The purpose of the GRUZ is to provide for primary production activities and other compatible activities. The overview to the GRUZ notes that:
- While residential activities are part of the General Rule Zone, they should not compromise the ability of the Zone to be used for primary production. To assist this and to protect the open space character and amenity of the rural area, the Zone has been separated into areas, primarily for the purpose of controlling residential density. Areas comprising more open space have more stringent density requirements to maintain the existing rural character.
- 40 Objective GRUZ-O1 allows for subdivision, use and development where this supports amenity, and prioritizes primary production, and retains a contrast to urban areas.
- 41 A new residential unit is permitted in the GRUZ, where the required residential density is achieved.<sup>32</sup> Other permitted activities (subject to standards) include rural service activities,<sup>33</sup> a rural selling place,<sup>34</sup> rural home business,<sup>35</sup> primary industry,<sup>36</sup> rural production,<sup>37</sup> and Intensive Primary Production.<sup>38</sup> Industrial activity is noncomplying.<sup>39</sup> These activities are dealt with in the GRUZ, with no specific exceptions or changes for the Inner Plains.
- 42 The distinction for the Inner Plains specific control area is the minimum size allotment size of 4ha.<sup>40</sup> This is provided for as a controlled activity,<sup>41</sup> with matters of discretion including reflection of natural or physical boundaries. The purpose of the Inner Plains specific control area appears to be to control residential density. Rural: Inner Plains does not have the

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<sup>30</sup> [s42A report template \(selwyn.govt.nz\)](#).

<sup>31</sup> At [4.6].

<sup>32</sup> GRUZ-R3.

<sup>33</sup> GRUZ-R8.

<sup>34</sup> GRUZ-R9.

<sup>35</sup> GRUZ-R10.

<sup>36</sup> GRUZ-R11.

<sup>37</sup> GRUZ-R16.

<sup>38</sup> GRUZ-R18.

<sup>39</sup> GRUZ-R12.

<sup>40</sup> GRUZ-SCHED2.

<sup>41</sup> SUB-R2.



smallest minimum site size (not lot size) in the Rural Zone. SCA-RD8 – Bealey Spur has a minimum site size of 800m<sup>2</sup>.<sup>42</sup>

- 43 As above, we complete below an assessment of the GRUZ, and the GRUZ: Inner Plains against the NPS zones. As above, we consider that it is artificial to consider the land identified as GRUZ: Inner Plains separately, given it is part of the GRUZ, but again, given the focus by submitters, we have completed this exercise.

## Assessment

NPS Zone	NPS Description	Comparison to GRUZ	Comparison to GRUZ: Inner Plains	Assessment
General rural zone:	Areas used predominantly for primary production activities, <sup>43</sup> including intensive indoor primary production. <sup>44</sup> The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.	Zone is specifically identified as being a General Rural Zone. Its purpose is to provide for primary production activities (including intensive primary production) and other compatible activities.	Can be used for the same activities as the rest of the Rural Zone.	This is the best fit for the GRUZ and the GRUZ: Inner Plains. This also appears to be the intention of the drafting.
Rural production zone:	Areas used predominantly for primary production activities that rely on the productive nature of the land and intensive indoor primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.	Zone can be used for a range of activities, including primary production activities.	As per the Rural Zone.	This could also be a good fit for both the GRUZ and GRUZ: Inner Plains. It is not clear to us that the activities anticipated in these areas 'rely' on the productive nature of the land.

<sup>42</sup> GRUZ-SCHED2 - Residential Density - Specific Control Areas

<sup>43</sup> Means: (a) any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities; and (b) includes initial processing, as an ancillary activity, of commodities that result from the listed activities in a); (c) includes any land and buildings used for the production of the commodities from a) and used for the initial processing of the commodities in b); but (d) excludes further processing of those commodities into a different product.

<sup>44</sup> Means primary production activities that principally occur within buildings and involve growing fungi, or keeping or rearing livestock (excluding calf-rearing for a specified time period) or poultry.



NPS Zone	NPS Description	Comparison to GRUZ	Comparison to GRUZ: Inner Plains	Assessment
Rural lifestyle zone:	Areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General rural and Rural production zones, while still enabling primary production to occur.	Residential activity is permitted across the Rural Zone, subject to a range of minimum lot sizes.  There is a specific signal that although residential activities are part of the General Rule Zone, they should not compromise the ability of the Zone to be used for primary production.	As per the GRUZ, except that residential activity is subject to 4ha minimum lot (which is not the smallest minimum lot size in the Rural Zone).	Neither the GRUZ, or GRUZ: Inner Plains is Rural Lifestyle. Although residential activities are permitted in both areas, there is a clear policy direction to ensure that residential activity does not compromise rural activities and character.
Settlement zone	Areas used predominantly for a cluster of residential, commercial, light industrial and/or community activities that are located in rural areas or coastal environments.	Industrial activities not permitted. Minimum allotment sizes avoid clusters of residential activities.	Industrial activities not permitted. Minimum allotment sizes avoid clusters of residential activities.	Neither is a Settlement Area, given both avoid clusters of residential activities.

## Conclusions

- 44 Our conclusion from the above assessment is that the GRUZ and GRUZ: Inner Plains are both the same as a General Rural Zone under the NPS-HPL. This appears to be the intent of the drafting of the PDP and reflects the plain words of the PDP, given the zone is specifically described as a General Rural Zone in a context where the drafters have confirmed that the Council is seeking a district plan consistent with the NPS structure.<sup>45</sup>
- 45 We consider a very persuasive argument would be required to move away from those plain words. We do not consider that such an argument can easily be found in the words of the PDP, because the approach the PDP takes (through explanatory text, objectives, policies and rules) to the GRUZ and GRUZ: Inner Plains indicates that these are areas which, like the General Rural Zone description in the National Planning Standards, seeks to prioritise and allow for primary production. There is a clear indication that residential development should not compromise the primary production activities in the GRUZ and GRUZ: Inner Plains, meaning that there is not encouragement for a predominantly residential lifestyle use, which is what would be required for the area to be considered the equivalent to Rural Lifestyle.
- 46 Given this, under clause 3.6 of the NPS-HPL, our view is that based on the assessment above, land identified as Rural: Inner Plains in the ODP and GRUZ: Inner Plains in the PDP must be treated as highly productive under the NPS-HPL (provided it is also LUC 1, 2, or 3 land, and not identified for future urban development).

## Purpose of the NPS-HPL

- 47 We have also considered the purpose of the NPS-HPL. Whilst this may not necessarily be required, given our assessment on the plain and ordinary meaning of the words in the NPS-

<sup>45</sup> At [8.1].



HPL, ODP and PDP, it can still be helpful to consider purpose. The NPS-HPL includes very clear indications that rural lifestyle rezoning of highly productive land is not encouraged, including policies that rezoning of highly productive land to rural lifestyle should be avoided (noting *King Salmon*, this would require that this activity not be allowed).<sup>46</sup> The MfE Guidance states that:<sup>47</sup>

While rural lifestyle zones may allow primary production to occur, the reason that rural lifestyle on HPL should be avoided is that the use of HPL for predominantly rural lifestyle purposes is an inappropriate use of a scarce resource. Rural lifestyle zoning prevents HPL being used efficiently for land-based primary production as it increases the potential for reverse sensitivity effects, and allows for lot sizes that make land-based primary production less viable.

Subdividing land to create smaller land parcels for rural lifestyle use is not provided for unless there are exceptional circumstances (refer to Clause 3.10). This focus on avoiding rural lifestyle subdivision and development is intentional, as the fragmentation of HPL and its inefficient use for rural lifestyle development was identified through the development of the HPL as one of the key contributing factors to ongoing losses of HPL nationally.

...

The NPS-HPL provides a more stringent 'avoid' approach for rural lifestyle zoning on HPL given this is an inefficient (and generally inappropriate) use of this finite resource.

...

The NPS-HPL contains strong direction through Policy 6 and Clause 3.7 that rural lifestyle zoning of HPL should be avoided. The rationale is that it is inappropriate to:

- use Aotearoa New Zealand's most productive land for low-density housing, and
- prevent future productive use of this land through allowing fragmented ownership and the construction of dwellings and hardstand areas that have the potential to cause reverse sensitivity effects on land-based primary production activities.

48 There is also a clear approach in the NPS-HPL to provide a 'holding position' for possible highly productive land, until the more detailed assessment required under Clause 3.4 can be completed. Whilst there are clear exceptions for application, the MfE Guidance notes that part of the rationale for exemptions is to make sure the NPS-HPL does not undermine work that is well advanced by local authorities to plan for new urban growth areas, given the effort required to plan new urban areas.<sup>48</sup> Presumably the approach is also designed to acknowledge that there are some areas where intrusion of rural lifestyle is such that there is no purpose in applying the NPS-HPL. However, we are not convinced that the land identified as Rural: Inner Plains in the ODP and GRUZ: Inner Plains in the PDP fit within this scenario, given both the ODP and PDP still support and encourage primary production activities on this land.

49 If the land identified as Rural: Inner Plains in the ODP and GRUZ: Inner Plains in the PDP were treated as a Rural Lifestyle zone under the NPS-HPL, then this would mean that the NPS-HPL does not apply, and this land (which appears from the ODP and PDP to contain significant versatile soil) would lose the protection of the NPS-HPL. It is our view that this

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<sup>46</sup> *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38.

<sup>47</sup> At page 20, 39, 49.

<sup>48</sup> NPS-Highly-Productive-Land-Guide-to-implementation.pdf (environment.govt.nz) at 14.



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would be inconsistent with the purpose and approach of the NPS-HPL, which appears to be to provide interim protection to land like this, whilst a more detailed assessment is completed.

## **Conclusion**

50 Our conclusions are set out in the overview above.

Yours sincerely

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## **APPENDIX 1**

### **DIRECTIONS OF THE COMMISSIONERS**

#### **MINUTE 38**

#### **Request for Legal Opinion**

#### **Rezoning Requests**

#### **NPS-HPL**

- [1] A number of submitters seeking the rezoning of GRUZ land to GRZ or LLRZ are promoting a legal argument that the NPS-HPL does not apply to them.
- [2] The legal argument is most succinctly set out in paragraphs 11 to 28 of the CavellLeitch Limited legal submission "Legal submissions on behalf of G & J Drinnan regarding a rezoning request for part of No.2 Hamptons Road, Prebbleton" dated 2 February 2023. That legal submission was provided for the Prebbleton Rezoning Hearing 30.2.
- [3] In summary, the argument is that under the Operative Selwyn District Plan (OSDP) land in the Inner Plains zone can be subdivided down to 4 hectare sites. Relying on the Ministry for the Environment Guidance for the NPS-HPL, this is said to be a 'rural residential' zoning as defined in the National Planning Standards even though it is not named as such in the Operative District Plan. That is then claimed to exempt the land from the NPS-HPL because the NPS only applies to land that at the commencement of the NPS was either 'rural production' or 'general rural'.
- [4] If the above legal argument is correct, it has potentially wide reaching implications given that under the Proposed Selwyn District Plan (PSDP) land in the GRUZ with a SCA-RD1 overlay also has a minimum site size of 4 hectares.
- [5] We consequently request an urgent legal opinion from Council's solicitors on the legal argument set out in the CavellLeitch Limited legal submission, and in particular whether or not land in an OSPD Inner Plains zone and/or in a PSDP GRUZ SCA-RD1 overlay area is subject to the NPS-HPL.



Rob van Voorthuysen

**Independent Commissioner – Chair - on behalf of the DPR Hearing Panel members**

10 February 2023

**APPENDIX 2: EXTRACT FROM LEGAL SUBMISSIONS ON BEHALF OF G & J DRINNAN REGARDING A REZONING REQUEST FOR PART OF NO.2 HAMPTONS ROAD, PREBBLETON DATED 2 FEBRUARY 2023.**

**Is the NPS-HPL applicable?**

- 11 At first glance the answer to this question may appear obvious. The Drinnan block contains LUC1 land, and the NPS-HPL position, prior to regional mapping of HPL, is that rural land classified as LUC1, 2 or 3 is deemed to be HPL for the purpose of the NPS.
- 12 However, not all rural land is included for consideration as deemed HPL. The framing of Clause 3.5 of the NPS-HPL makes a differentiation between "general rural and rural production" zoned land and "urban and rural lifestyle" zoned land. Rural land which, *at the commencement* of NPS-HPL was zoned rural lifestyle, is not intended to be included as deemed HPL.
- 13 In addition, land which is zoned rural lifestyle will not need to be considered as HPL as part of the regional mapping exercise, which is also limited to land zoned rural general and rural production. Therefore, it is accepted that the question of applicability to the Drinnan block is an important question in the context of the application of the NPS-HPL generally.
- 14 The Drinnans' view that, *as at commencement*, their land was (and is) effectively zoned rural lifestyle. This stems primarily from the inclusion in the plan of a 4ha minimum lot size for the Rural: Inner Plains.
- 15 While the plan itself does not use the term rural lifestyle to describe that inclusion, there is support in the national planning standards<sup>49</sup> (**standards**) for the identification of a zone allowing subdivision to 4ha as a rural lifestyle zone, in fact the guidance associated with the release of the NPS-HPL referred to lot sizes of 8ha as rural lifestyle<sup>50</sup>. The Council itself acknowledged, in its submission on the standards<sup>51</sup> and the comments on the proposed Rural Residential Zone (that became the rural lifestyle zone), that:
- ...the current "Inner Plains" zone better aligns with the purpose statement of the Rural Residential Zone, where the minimum lot size is 4ha and these are often considered to be lifestyle blocks. ...
- [underlining added]
- 16 It is evident that the Operative Selwyn District Plan (OSDP) is the relevant planning instrument at the commencement of the NPS-HPL. It also appears equally evident that the OSDP was never amended to specifically align to the standards in terms of the rural zone descriptions. But the relevant zones under the NPS-HPL are those described in the standards<sup>52</sup> and it is

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<sup>49</sup> Ministry for the Environment (MfE). 2019. *National Planning Standards*. ME 1394, ISBN: 978-1-98-852598-3. Published April 2019.

<sup>50</sup> MfE guideline (Information sheet), published 6 October 2022, ref: INFO 1091.

<sup>51</sup> See: 15.1 Senior Strategy and Policy Planner submission [on behalf of Council] for MfE Attachment 003, dated 30 July 2018 (submitted online).

<sup>52</sup> Clause 1.3(4), NPS-HPL: "A reference in this [NPS] to a **zone** is: (a) a reference to a zone as described in [the standards]; or (b) for local authorities that have not yet implemented the [standards], a reference to the nearest equivalent zone. [underlining added, bold in original]."



these that are relevant to its interpretation and application. As the latest guidance issued by the Ministry for the Environment describes<sup>53</sup>:

...All 'urban' zones (including special purpose and future urban zones, as defined in the NPS-HPL) and rural lifestyle zones are excluded from the transitional definition of HPL.

If a district plan has not implemented the National Planning Standards, any reference to zones in the NPS-HPL should be read as applying to the 'nearest equivalent zone' in the district plan (refer Clause 1.3(4)(b)). The nearest equivalent zone should be assessed by referring to the zone description, objectives, policies, activity table and subdivision provisions (in the round). This is to assess whether a 'rural-type' district plan zone is in fact a rural production/general rural, rural lifestyle or settlement zone in the National Planning Standards (as the only four options for rural zones). For example, there may be special a purpose zone in an operative district plan relating to a productive rural environment that is primarily used for primary production activities. Such a zone should be interpreted as rural [*sic*<sup>54</sup>] or rural production zone for the purpose of Clause 3.5.7(a)(i) rather than an urban zone.

[underlining added]

- 17 The Drinnan's understand the Council's position to be that the Drinnan land is simply zoned 'rural' under the OSDP, therefore the Drinnan Block is deemed HPL. However, the standards, which identify the zones relevant to the NPS-HPL, does not include 'rural' as a zone option, the nearest being rural general. That is defined as follows:

Areas used predominantly for primary production activities, including intensive indoor primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.

[underlining added]

- 18 While the standards define a rural lifestyle zone as:

Areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General rural and Rural production zones, while still enabling primary production to occur.

[underlining added]

- 19 The standards also include "Mandatory directions" and, according to mandatory direction 2 under the Zone Framework Standard:

If an existing zone in a plan is consistent with the description of a zone in table 13, that existing zone must use that zone name in table 13, ...

[underlining added]

- 20 It is also understood that the Council considers that the policies in the OSDP that relate to versatile soils are relevant to whether Rural: Inner Plains should be considered a rural lifestyle

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<sup>53</sup> Ministry for the Environment. 2022. *National Policy Statement for Highly Productive Land: Guide to Implementation*. Wellington. ME 1726, ISBN: 978-1-991077-2. Published December 2022. (online).

<sup>54</sup> It is presumed that 'rural' here refers to rural general, as 'rural' is not one of the "only four options for rural zones".



zone. The Drinnans have difficulty with that proposition. The existence or otherwise of versatile soils (or HPL) in the Inner Plains does not affect whether land is zoned Inner Plains, or not. Land shown on the planning maps as Inner Plains, regardless of the soils present, can be subdivided to 4ha. That means that whatever protection the versatile soil provisions might give, is not relevant to the ability to subdivide. They might conceivably influence conditions, but it is not clear how.

- 21 The Drinnans understand that the Council's position is also that, because the PSDP maintains the one rural zone with overlays, and has considered the standards, that should count against view that the Rural: Inner Plains is a rural lifestyles zone. In response, the Drinnans say:
- 21.1 This position assumes that the Council's approach to the standards is correct in this respect:
- 21.2 That, based on the descriptions of use of zones and overlays in the standards, which indicate that overlays will generally apply on a District-wide basis to identify and manage values, risks and other factors, "in a different manner from the underlying zone provisions", the use of an overlay in the PSDP tends to simply maintain the sense of sub-zones, rather than any departure from an underlying approach to density in the rural area: and,
- 21.3 Given the similarity in, and familiarity with, this approach under the OSDP, it is perhaps unsurprising that it has not been raised as an issue. In other words, it is a distinction with no real change in approach.
- 22 Accordingly, the Drinnans do not accept that the approach to the rural zoning issue in the PSDP undermines their view of the reality of the situation at the commencement of the NPS-HPL.
- 23 Attached to these submissions (**Appendix 1**) is further analysis of the OSDP plan provisions that the Drinnans' say support the idea that the Selwyn Rural: Inner Plains should, in fact, be considered a rural lifestyle zone. The key remains the ability to subdivide to 4ha and place a dwelling on any such lots as of right.
- 24 So while there remains land in the Rural: Inner Plains that is held in parcels greater than 4ha<sup>555</sup>, and is clearly still used for rural production, the ability to subdivide that land to 4ha lots, with an entitlement to a dwelling on each of those lots, is enabled under the OSDP and has the potential to reduce or end productive uses on that land regardless of the status of the soil. In saying that, the Drinnans' view is that a 4ha lot, while capable of some productive uses, can no longer be considered available for large scale rural production.
- 25 At first glance, it may appear inconsistent with the purpose of the NPS- HPL to exclude such land from the additional protection the NPS provides, especially where land is not yet subdivided and remains in productive use. However, the fact is that, while existing rural uses are protected in the OSDP (for as long as landowners chose to pursue them), in accordance with the NPS-HPL and the standards, the protection afforded has already been undermined by the allowable minimum lot size indicating the creation of a Rural Lifestyle Zone. In other words, the productive potential has already been reduced to enabling the retention of the feel

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<sup>555</sup> In the "Selwyn 2031 District Development Strategy", dated October 2014, it recorded that, at that time, 37% of the land area was held in land holdings over 20ha. Given the rate of development at Selwyn since 2014, and the ability to subdivide to 4ha, it is suspected that this number may have reduced further.



of an open rural environment (rural character) and to prevent reverse sensitivity impacts, where such allotments still border productive rural uses.

- 26 So, is Rural: Inner Plains able to be considered a zone? The discussion in Appendix 1 supports that it can.
- 27 The Council may still argue, despite its own references to Rural: Inner Plains as a zone in resource consent decisions, on planning maps and in strategy documents, that the Inner Plains remains just an 'area' in the Rural zone of the OSDP. But, the Drinnans' submit, that argument is undermined by the minimum lot size chosen, for only the Inner Plains, and the practice of showing and utilizing the Rural: Inner Plains as a distinct planning unit, or zone, in contrast to the Rural: Outer Plains and other rural zones.
- 28 The fact that the standards describe the possible rural zones as "Areas used predominantly..." [my underlining] also tends to undermine the argument that an area cannot also be considered a zone. The terms can be, and are, used interchangeably.
- 29 On this basis, the Drinnans say their land was not (and is not) zoned general rural or rural production at the commencement of the NPS-HPL. Accordingly, the NPS-HPL does not apply to the Drinnan block. A position that is consistent with the latest Ministry for the Environment Guidance to Implementation on the NPS-HPL.

## APPENDIX 3 - THE PLAN CHANGE TEST

Extract from *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55<sup>56</sup>

### A. General requirements

1. A district plan (change) should be designed to **accord with**— and assist the territorial authority to **carry out** — its functions so as to achieve the purpose of the Act.
2. The district plan (change) must also be prepared **in accordance with** any regulation-(there are none at present) and any direction given by the Minister for the Environment.
3. When preparing its district plan (change) the territorial authority **must give effect** to any national policy statement or New Zealand Coastal Policy Statement.
4. When preparing its district plan (change) the territorial authority shall:
  - (a) have regard to any proposed regional policy statement;
  - (b) give effect to any operative regional policy statement.
5. In relation to regional plans:
  - (a) the district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order; and
  - (b) **must have regard to** any proposed regional plan on any matter of regional significance etc.
6. When preparing its district plan (change) the territorial authority must also:
  - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and PDPs of adjacent territorial authorities;
  - **take into account** any relevant planning document recognised by an iwi authority; and
  - not have regard to trade competition or the effects of trade competition;
7. The formal requirement is that a district plan (change) must also state its objectives, policies and the rules (if any) and may-state other matters.

### B. Objectives [the section 32 test for objectives]

8. Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act.

### C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies;
10. Each proposed policy or method (including each rule) is to be examined, having **regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives of the district plan **taking into account**:
  - (i) the benefits and costs of the proposed policies and methods (including rules); and
  - (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods; and
  - (iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.

<sup>56</sup> Paragraph 17, citations removed.



**D. Rules**

11. In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment.
12. Rules have the force of regulations.
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive than those under the Building Act 2004.
14. There are special provisions for rules about contaminated land.
15. There must be no blanket rules about felling of trees in any urban environment.

**E. Other statutes:**

16. Finally territorial authorities may be required to comply with other statutes.

**F. (On Appeal)**

17. On appeal the Environment Court must have regard to one additional matter — the decision of the territorial authority.

## **APPENDIX 4: EXTRACTS FROM THE ODP**

### **A4.5 The Rural Area and Zones**

...

#### **The Rural Area**

...

The dominant land use in the Rural zone remains farming. Farming is becoming increasingly diverse in both types of crops grown and livestock reared, and the methods used to undertake the activities. There are many other activities, which also occur in the Rural zone, which need to be recognised and provided for as part of promoting sustainable management of natural and physical resources. They include (but are not limited to):

...

- Residential activities, and ...

...

#### **The Plains**

...The different characteristics of the Plains have resulted in different land uses and intensity of subdivision and settlement. These differences are reflected in the division of the Plains into Inner and Outer Plains for the management of subdivision and residential density in the Plan.

The single most significant resource management issue on the Plains is the demand for small allotments (less than 4 hectares) for residential development. The demand is greatest within an area up to 30km from Christchurch City. This demand affects:

- Natural resources such as groundwater and soil;
- Farming activities and potential 'reverse sensitivity' issues;
- The character of the rural area.

These issues are addressed in Part B, Sections: 1.1, 1.2, 3.4 and 4.1 of the Plan.

...

#### **Use of Zones**

There is only one zone in the rural area, though the zone is split into areas to manage specific activities, for example subdivision and residential density, dairy processing activities and buildings, plantations and outstanding landscapes. The boundaries of these areas are shown on the Planning Maps.

### **B1 Natural Resources**

#### **B1.1 Land and Soil – Issues**

...

##### **Irreversible Use of Versatile Soils**

The Regional Policy Statement identifies the irreversible use of versatile soils as an issue in Canterbury. Irreversible use is defined as including urban expansion or development and versatile soil as land with a land use Capability Class I or II (MOWD 1971)<sup>1</sup>. The provisions of the Regional Policy Statement are to minimise the irreversible use of versatile soil, through a case by case assessment of the effects of urban expansion on versatile soils (see Objective 2 and Policy 6, Chapter 7 of the Regional Policy Statement).

When land is used to erect houses and associated infrastructure, the land and soil is no longer available for other uses. This effect is perceived as an issue by some people because the amount of versatile soil in the District is finite. Whether it is a real issue depends on several factors:

- The rate at which versatile soil is used for urban expansion.
- Whether versatile soils are needed for other uses.



- If a shortage of versatile soils occurs, whether social and economic systems will adjust without regulations.
- Whether other factors limit the potential of particular land containing versatile soils for use for primary production.

Between 5% and 10% of New Zealand's stock of versatile soils is located on that part of the Canterbury Plains in Selwyn District. Selwyn District has one of the highest projected population growth rates in New Zealand for the next 10 and 20 years. Most of that growth demand is projected to occur in areas containing most of the versatile soils in the District. The irreversible use of versatile soils is thus an issue that needs further investigation. There is insufficient information at present to determine the extent of that issue. Therefore, the Council has adopted the approach of consolidating urban expansion around townships, with the intention that it will carry out further research in to and monitor the rate and effects of the irreversible use of versatile soils.

...

- Encourage urban expansion to occur in or adjoining townships.

...

### **Land and soil – objectives**

Objective B1.1.1 Adverse effects of activities on the District's land and soil resources are avoided, remedied or mitigated.

...

Any potential effects of urban expansion on versatile soils are addressed through managing residential density in the Rural zone. Residential density is managed in the Rural zone to address several effects of activities. As a result, the ratio of land to buildings will be low enough over most of the Rural zone to retain versatile soils for other uses.

...

### **VERSATILE SOILS**

#### **Policy B1.1.8 Encourage residential development to occur in and around existing townships.**

##### **Explanation and Reason**

The District Plan policies encourages residential development to occur in and around existing townships in the District. Residential density in the Rural zone is kept low to manage several effects. As a result, versatile soils in the Rural zone will not be used for residential development.

Residential development means subdividing and erecting houses at a higher density than 1 house per 4 hectares.

##### **Methods**

##### **District Plan Rules**

- Residential density

...

#### **B1.4 Outstanding Natural features and landscapes**

...

##### **Policy B1.4.12**

Recognise that the land between the Christchurch City and a line extending from West Melton to Tai Tapu is identified in the RPS as providing a significant 'rural' landscape in contrast with the 'urban' landscape of the City.

##### **Explanation and Reasons**

Objective 3 and Policy 5 of Chapter 12 of the RPS identify land lying between Christchurch City and a line from West Melton to Tai Tapu as a 'rural' landscape that provides an important contrast to the 'urban' landscape of the City. The RPS states that this land should remain in "rural or recreational" uses.

There are a number of townships within and bordering the area so identified in the RPS. Policies in this volume dealing with residential density and the growth of townships and policies in the Townships volume on township growth are relevant to this issue. These are relevant matters to be considered in any plan change that seeks to rezone land within or bordering on the identified area for Living or Business purposes.

...

#### **4 Growth of Rural area**

##### **B4.1 RESIDENTIAL DENSITY AND SUBDIVISION IN THE RURAL AREA — ISSUES**

- The manner in which demand for a variety of living opportunities in the rural area might be met.
- Adverse effects of erecting houses in the rural area can affect natural or physical resources, the character of the rural area or create reverse sensitivity effects with other activities.
- Problems caused by managing residential density solely through subdivision.
- ...

##### **Residential Density**

Residential density is the ratio of houses to land area. Residential density of an area indicates the concentration of buildings, people and their activities; and thus, the likely effects on the environment.

The Plan has a separate section dealing specifically with subdividing land and residential growth in the rural area, because it is the most significant resource management issue in the District.

People have houses in the rural area for a variety of purposes. For example:

- Custodial houses and worker's accommodation associated with many agricultural and horticultural activities, occurring on a range of property sizes.
- Houses on small allotments for a rural lifestyle.
- Holiday homes, baches and other forms of visitor accommodation.
- Papakainga housing on Māori land at Taumutu.

There is a steady demand for more houses in the rural area. The latest population growth projections from Statistics New Zealand show Selwyn District a fast growing area (refer: Barber, 2000, "Revised Population Projections for Selwyn District"). Most of this demand will be for allotments in that part of the rural area within 30 km radius of Christchurch City. This area is within the area shown as the Inner Plains, on the Planning Maps.

...

##### **RESIDENTIAL DENSITY AND SUBDIVISION IN THE RURAL AREA — STRATEGY**

The Rural Volume of the District Plan uses the following basic strategy to address issues of residential density and subdivision:

- Manage residential density (the ratio of houses to land area) in the rural area. Residential density varies over the rural area.
- Allow houses to be erected on small allotments in the rural area, provided the allotment is surrounded by open space to maintain the residential density for the area.
- Manage subdivision to ensure allotments are created which are appropriate for the intended use of the land.

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##### **RESIDENTIAL DENSITY AND SUBDIVISION IN THE RURAL AREA — OBJECTIVES**

Objective B4.1.1 The provision of a variety of residential section sizes in the rural area, while maintaining a low overall residential density.



Objective B4.1.2 Residential density is low enough to maintain the character of the rural area and to avoid adverse effects on natural and physical resources or reverse sensitivity effects.

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#### **Explanations and reasons**

The District Plan manages potential adverse effects of residential development in the rural area by maintaining residential density at levels which are considerably lower than those in townships. The levels differ throughout the rural area, reflecting the differences in effects, particularly effects on the rural character and landscape values of each area.

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Policy B4.1.2 does not apply to the Inner Plains. The residential density standards in the Inner Plains is sufficiently high that:

- A minimum allotment size of 4 ha is needed to avoid adverse effects on adjoining properties; and To avoid creating clusters of houses.

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Policy B4.1.1 Avoid residential density greater than those shown below where these are outside the areas identified in Policies B4.1.3 to B4.1.6.

Inner Plains – 1:4

#### **RESIDENTIAL DENSITY AND SUBDIVISION IN THE RURAL AREA – ANTICIPATED ENVIRONMENTAL RESULTS**

The following results should occur from implementing Section B4.1:

- Residential development remains lower in rural areas than in townships.
- Dwellings built on small allotments in the rural area, are surrounded by land without buildings.

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- There is variety in the size and shape of allotments subdivided in the District.
- Residential density varies across the rural area.

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### **10 RURAL RULES – SUBDIVISION**

#### **Notes**

- 1 The subdivision of any land is not a permitted activity. (This means that subdivision requires a resource consent).

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#### **10.1 Controlled activities – Subdivision General**

10.1.1 Any subdivision of land shall be a controlled activity if all of the following standards and terms are met:

...

10.1.1.12 Any allotment created complies with the minimum allotment areas set out in Table C10.1.

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#### **Table C10.1 – Minimum Allotment size**

Inner Plains – 4 ha minimum

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10.1.2 Under Rule 10.1.1, the Council shall reserve control over all of the following matters:



### **Allotment Shape**

- 10.1.2.1 The shape of the allotment, including (but not limited to) whether it has sufficient breadth and depth to: contain the zones of influence from water abstraction or effluent disposal; and reduce potential 'reverse sensitivity' effects with surrounding land uses, if applicable;
- 10.1.2.2 The boundaries of the allotment, including (but not limited to) whether they follow natural or physical features where practical;
- ...

## **10.11 SUBDIVISION OF LOTS SMALLER THAN THE MINIMUM SIZE**

### **Restricted Discretionary Activities — Subdivision of Lots Smaller than the Minimum Size**

- ....
- 10.11.1 Any subdivision of land which does not comply with Rule 10.1.1.12 shall be a restricted discretionary activity if:
- 10.11.1.1 Any allotment created is located outside the area shown on the Planning Maps as the Inner Plains;
- ...

### **Non-Complying Activities — Subdivision of Lots Smaller than the Minimum Size**

- ...
- 10.11.3 Any subdivision of land which does not comply with Rule 10.11.1 shall be a non-complying activity, unless it complies with Rule 10.12.