

**Before the Independent Hearing Commissioner  
for Selwyn District Council**

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**Under** the Resource Management Act 1991

**In the matter** a hearing on Private Plan Change 79 to the Operative  
Selwyn District Plan by Birchs Village Limited

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**Legal submissions on behalf of Selwyn District Council in response  
to Minute 3**

**Date: 29 May 2023**

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## INTRODUCTION

1 In Minute 3, dated 18 May 2023, the Commissioner requested Selwyn District Council (**SDC**) provide legal submissions in relation to the 'area in red',<sup>1</sup> and whether that area contains land which should be treated as highly productive under the National Policy Statement for Highly Productive Land (**NPS-HPL**).

2 The question from the Commissioner<sup>2</sup> is whether the Urban Growth Overlay in the Proposed District Plan, which requires a further plan change to establish an urban zone, is sufficient to meet the requirements of the exemption in clause 3.5(7) of the NPS-HPL:

Ms Booker at para 49 of her reply submission states that the land has been notified as General Rural subject to an urban growth overlay in both the Proposed Selwyn District Plan and Variation 1. Both predate the commencement of the NPS HPL. The question is whether in terms of Clause 3.5(7) an urban growth overlay which requires a further plan change to establish an urban zone is sufficient to meet the requirements of the exemption which requires a plan change to rezone to urban or rural lifestyle.

3 In summary, it is submitted that the 'area in red' should not be treated as highly productive land under the NPS-HPL, because it is 'identified for future urban development' in the Rural Residential Strategy 2014 (**RRS2014**), and therefore is excluded from being highly productive land by clause 3.5(7)(b)(i) of the NPS-HPL.

4 On that basis, there is no reason to determine whether the application of an Urban Growth Overlay is the equivalent of 'rezoning' under clause 3.5(7)(b)(ii) of the NPS-HPL.

5 Both parties accept that the 'area in red' is not highly productive land (under the interim definition in the NPS-HPL).

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<sup>1</sup> Identified on page 8 of Mr Cleese's Summary of the Section 42A report

<sup>2</sup> At paragraph 13 of Minute 3

## BACKGROUND

### Plan Change

- 6 On 9 June 2021, Birchs Village Limited (**BVL**) lodged a private plan change request (**PC79**) to the Operative District Plan (**ODP**) with SDC seeking to rezone approximately 37 hectares of rural land (zoned Rural (Inner Plains) in the ODP)<sup>3</sup> to residential land. This would enable approximately 400 residential sites. The application was amended prior to being accepted for public notification to give effect to MDRS. PC79 was publicly notified on 7 September 2022.

### The NPS-HPL

- 7 The NPS-HPL commenced on 17 October 2022, after PC79 was notified but it is still a relevant consideration for PC79. The NPS-HPL was considered in the section 42A report.<sup>4</sup> The PC79 land is primarily LUC2 with small pockets of LUC1.
- 8 To avoid the restrictions on rezoning in the NPS-HPL, the applicant either needs to demonstrate that the PC79 land is not highly productive land under clause 3.5(7) of the NPS-HPL, or if it is, that all three of the clause 3.6 requirements are met.

### Clause 3.5(7) of the NPS-HPL

- 9 Clause 3.5(7) of the NPS-HPL states:

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:

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<sup>3</sup> Section 42 report at [51].

<sup>4</sup> Section 42 report at [192].

(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.

### **'Area in Red'**

10 The 'area in red' is LUC1/LUC2 land, and Zoned Rural (Inner Plains) in the ODP. Given this, it meets the tests under clause 3.5(7)(a)(i) and(ii), as it is zoned a general rural equivalent zone (as per prior advice) and is LUC 1, 2 or 3 land.

11 However, in order to be considered highly productive land it also must not be:<sup>5</sup>

11.1 identified for future urban development; or

11.2 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.

### ***Identified for future urban development***

12 This term 'identified for future urban development' is defined in the NPS-HPL as:

identified for future urban development means:

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<sup>5</sup> Clause 3.5(7)(b)(i) and (ii) of the NPS-HPL

- (a) identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or
- (b) identified:
  - (i) in a strategic planning document as an area suitable for commencing urban development over the next 10 years; and
  - (ii) at a level of detail that makes the boundaries of the area identifiable in practice

13 'Strategic planning document' is defined as:

strategic planning document means any non-statutory growth plan or strategy adopted by local authority resolution

### ***Future Development Strategy***

14 The first consideration is whether the 'area in red' is identified in a published Future Development Strategy (**FDS**). Our Space 2018-2048 is the Greater Christchurch FDS.<sup>6</sup> The 'area in red' is not identified as a growth area, a future development area or a greenfield priority area for residential development.<sup>7</sup> Given this, the 'area in red' is not identified in an FDS.

### ***Strategic planning document***

15 The second consideration is whether there are any strategic planning documents that identify the 'area in red'.

16 The 'area in red' is identified in the Rural Residential Strategy 2014 (**RRS2014**). The RRS2014 was adopted by SDC on 25 June 2014.<sup>8</sup> Its purpose is to provide guidance and policy

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<sup>6</sup> [Our-Space-2018-2048-WEB-FINAL.pdf \(greaterchristchurch.org.nz\)](#)

<sup>7</sup> Our Space at page 2 and 30

<sup>8</sup> [Selwyn District Council - Rural Residential Strategy 2014](#)

direction on how best to manage rural residential development within the eastern portion of the Selwyn District that is generally recognised as the commuter belt with Christchurch City,<sup>9</sup> and was prepared to assist with implementing the Land Use Recovery Plan (**LURP**) and Canterbury Regional Policy Statement (**CRPS**).<sup>10</sup> The CRPS includes a definition of 'rural residential strategy' as 'a strategy or plan developed for the purpose of identifying a territorial authority's approach to management of rural residential development in its district, using the special consultative procedure under the LGA'.<sup>11</sup>

- 17 The RRS2014 is listed in the Proposed District Plan (**PDP**) as a 'Development Plan'. A Development Plan is defined in the PDP as '[s]patial plans that have been adopted by Council where urban growth areas have been identified'.<sup>12</sup>
- 18 It is submitted that the RRS2014 is a 'strategic planning document', as it is a strategy adopted by SDC, produced in accordance with the LGA, and developed in order to give effect to CRPS direction. It is also a non-statutory document.

### ***Area suitable for commencing urban development***

- 19 In terms of whether the RRS2014 identifies the 'area in red' as 'suitable for commencing urban development'. In Chapter 6 of the RRS2014, rural residential areas were identified as being suitable for rural residential development, subject to being confirmed through District Plan amendments.<sup>13</sup>

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<sup>9</sup> RRS2014 at [1.1] and [1.2]. See also the section 42A report at [129] – [132]

<sup>10</sup> RRS2014 at [1.6] and [1.7], and [2.14]. See also LURP Appendix 1 Policy 6.3.9. This included the requirement under Policy 6.3.9 of the CRPS that 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 LGA 2002

<sup>11</sup> Canterbury Regional Policy Statement at page 251

<sup>12</sup> PDP - Part 1 – Introduction and General Provisions / Interpretation / Definitions

<sup>13</sup> Section 42A Report at [6.1]

- 20 The 'area in red' was identified as Area 9 as an area suitable for rural residential development, with a yield of 44.<sup>14</sup>
- 21 To determine whether 'rural residential' development is captured by the phrase 'urban development' in the NPS-HPL, it is submitted that first it is important to understand what the reference to 'rural residential' in the RRS2014 means in current planning terminology.
- 22 Mr Cleese identifies that after the RRS2014 was adopted, the ODP was amended to provide for a rural residential zone, identified as Living 3.<sup>15</sup> Given this, it is submitted that references in the RRS2014 to 'Rural Residential' can be read as reference to 'Living 3'.
- 23 The section 32 report for the PDP states that the Living 3 zone is to be replaced with the Large Lot Residential zone.<sup>16</sup> Again, given this, it is submitted that references in the RRS2014 to 'Rural Residential' can be read as reference to 'Large Lot Residential'.
- 24 Accordingly, the assessment is whether 'Large Lot Residential' allows for urban development. The definition of 'urban' in the NPS-HPL is relevant (there is no definition of 'urban development'). It states that:

urban, as a description of a zone, means any of the following zones:

low density residential, general  
residential, medium density residential,

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<sup>14</sup> Section 32A Report for the PDP at [6.17] Table 4. It states at [6.65] – [6.67]: Area 9 is zoned Rural (Inner Plains) and is bordered by Living Z zoned land to the north-west, Living 1A zoned land to the south-west and Rural (Inner Plains) zoned land to the east and south. The Christchurch City boundary lies nearby to the north-east and east. Area 9 is located outside the "Preferred Urban Form" identified on Map 24 of Appendix 2 of this Strategy. The plan change (PC14) request demonstrates that Area 4 could sustain approximately 14 rural residential section. Note again the substantive merits of the rezoning proposal and the optimum yield are yet to be determined.

<sup>15</sup> Section 42A Report at [131]

<sup>16</sup> [Section 32 Residential \(selwyn.govt.nz\)](#) at page 24. It goes on to state that The Large Lot Residential Zone provides an opportunity for people to enjoy a spacious living environment while being close to an urban centre. The Large Lot Residential Zone is typically located on the fringe of townships and provides a transition to the surrounding rural area.

large lot residential, and high density residential: ...

- 25 Large lot residential is specifically listed as an urban zone. Given this, it is submitted that the 'area in red' is identified in a 'strategic planning document' as an area as 'suitable for commencing urban development'.

***Commencing over the next 10 years***

- 26 The next consideration is whether the strategic planning document identifies the 'area in red' as an area suitable for commencing urban development over the next ten years.
- 27 The NPS-HPL presumably provides this pathway for land which is not yet rezoned (or it would be able to proceed through the clause 3.5(7)(b)(ii) pathway). Instead, it must be earmarked for such development in the next 10 years (presumably to prevent more speculative plans preventing the application of the NPS-HPL).
- 28 The RRS2014 was to provide direction as to where rural residential development is anticipated for the next 10 – 15 years (or sooner, depending on housing uptake and monitoring reviews).<sup>17</sup>
- 29 Accordingly, it is submitted that this meets the requirement of identifying the 'area in red' as suitable for starting development in the next 10 years as it anticipates urban development on this land between 2014 and 2029, well within the next ten years.

***Level of detail***

- 30 The final part of the test for 'identified for future urban development' is that the land is identified at a level of detail that makes the boundaries of the area identifiable in practice. The

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<sup>17</sup> RRS2014 at [6.3]



'area in red' is identified in Figure 37 of the RRS2014, with very clear boundaries (extract below):

**Figure 37: Rural Residential Area 9 aerial**



- 31 Accordingly, it is submitted that the 'area in red' is 'identified for future urban development' and therefore, it is not highly productive land for that reason.

***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.***

- 32 The second exclusion from being highly productive land is where the land is 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. The 'area in red' is clearly subject to a Council initiated plan change, as it is included in the PDP. However, there is a question as to whether it is being rezoned to 'urban or rural lifestyle'.
- 33 It is proposed to be zoned General Rural Zone in the PDP (and under Variation 1, the IPI), subject to an urban growth overlay (and the SCA-RD1 Inner Plains overlay, which is not relevant to this assessment).

34 In relation to the 'Urban Growth Overlay', the PDP states:<sup>18</sup>

The Urban Growth Overlay maps the spatial locations identified in Development Plans that have been adopted by SDC. These assist in determining where new urban areas can locate around townships and delivering the outcomes that are anticipated to be achieved within these environments. Any urban development or subdivision of land outside of the existing township boundaries is precluded unless the urban growth policies have been fulfilled through the zoning process under Schedule 1 of the RMA.

The General Rural Zone activity-based rules apply to the land that is subject to the Urban Growth Overlay to enable the majority of rural land uses to continue. Additional rules apply to ensure that land use and subdivision development does not undermine the future zoning or development of the land that will assist in meeting the growth needs of the district. All other site-specific rules to achieve the urban growth outcomes will be determined through the zoning process.

35 The PDP (in Schedule 1 to the Urban Growth Chapter) then goes on to require that Outline Development Plans be prepared for each new residential growth area and incorporated into the Planning Maps and relevant Development Area.<sup>19</sup>

36 The question is whether being subject to an urban growth overlay is the same as being 'rezoned' to urban. On face value, to 'rezone' means to change the zoning. Based on the above, this is imminent, but has not yet occurred. A further plan change process is required before the underlying **zoning** does change, and there is still an assessment of whether the 'urban growth policies have been fulfilled through the zoning process under Schedule 1'.

37 However, it also appears that the rezoning is imminent, and there are rules in the PDP which will prevent the undermining of the future zoning or development of that land. Given this, arguably there is a clear intention by SDC to rezone this land. As noted in

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<sup>18</sup> PDP - UG-Overview

<sup>19</sup> PDP - UG-SCHED1

the guide to implementation, the intention of the NPS-HPL is not to undermine the work undertaken by territorial authorities.<sup>20</sup>

38 It is submitted that this issue does not need to be determined in this case because of the fact that the 'area in red' is 'identified for future development' and therefore, excluded under clause 3.5(7)(b)(i) of the NPS-HPL. On that basis, there is no reason to determine whether the application of an Urban Growth Overlay is the equivalent of 'rezoning' under clause 3.5(7)(b)(ii) of the NPS-HPL.

**Date:** 29 May 2023



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<sup>20</sup> [National-Policy-Statement-Highly-Productive-Land-Guide-to-implementation-March-2023.pdf \(environment.govt.nz\)](#) at page 18