

# **Selwyn District Plan**

## **Private Plan Change 80**

**Request by Two Chain Road Limited to rezone 98.33 hectares of  
Rural Inner Plains to Business 2A Zone, 7-183 Two Chain Road,  
Rolleston**

### **Comments from Reporting Officer on NPS-HPL Guide to Implementation**

**25 January 2023**

**Report prepared by**

**Liz White**

**Consultant Planner**

## Further Comments in Relation to the NPS-HPL

1. In Minute No 6 issued by the Hearing Commissioner on Plan Change 80 (PC80), comments are sought on the relevant provisions within the recently published Guide to Implementation of the NPS-HPL<sup>1</sup> (Guide) as it relates to PC80. As the reporting officer on PC80, I have therefore set out my comments in relation to the Guide below.
2. In the Officers report, I identified that<sup>2</sup>:
  - a. The definition of the part of the PC80 Site that is LUC Class 3 land is, for the time being (i.e. prior to the mapping process outlined in the NPS-HPL being undertaken by the regional council), defined as highly productive land;
  - b. Policy 5 directs that rezoning of highly productive land is avoided, unless where otherwise provided for in the NPS-HPL;
  - c. Clause 3.6(1) then sets out the circumstances where such zoning is allowed; and
  - d. Clause 3.6(2) and 3.6(3) then provide further detail on how the criteria in 3.6(1) are to be assessed.
3. The difficulty I identified was that while I consider, when taking into account the most recent evidence, that the proposal meets the requirements of 3.6(1), the specific requirements in 3.6(3), relating to the Housing and Business Assessment (HBA) would not be met.<sup>3</sup> In reply, I did however accept the comments in the applicant's legal submissions that the Council's current HBA was prepared under the previous National Policy Statement on Urban Development Capacity and therefore was not an HBA prepared in accordance with the current previous National Policy Statement on Urban Development (NPS-UD).
4. The key question, in my mind, is whether or not the rezoning can be determined as meeting the requirement in Clause 3.6(1)(b) in relation to there being *"no other reasonably practicable and feasible options for providing at least sufficient development capacity **within the same locality and market** while achieving a well-functioning urban environment"* (my emphasis) despite the very specific way *"the same locality and market"* is defined in Clause 3.6(3). As I have previously noted, there is also the question, given the NPS-HPL does not include any reference to Policy 8 of the NPS-UD, of whether the tension with clause 3.6(3) is, in any case, overcome with reference back to Policy 8 in terms of the proposal being unanticipated but providing significant development capacity.<sup>4</sup>
5. The Guide indicates that the further tests/direction in Clause 3.6(2) and 3.6(3) are fundamentally about demonstrating that there are no reasonable practicable options, for providing at least sufficient development capacity within the same locality and market, while

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<sup>1</sup> Ministry for the Environment. 2022. *National Policy Statement for Highly Productive Land: Guide to implementation*. Wellington: Ministry for the Environment.

<sup>2</sup> Section 42A Report, *Private Plan Change 80*, at 125-128.

<sup>3</sup> *Ibid*, at 130.

<sup>4</sup> *Ibid*.

achieving a well-functioning urban environment. The locality and market questions are therefore a subset of what are identified and assessed as being reasonably practicable options.

6. The Guide recognises that there are often more limitations on options that can be assessed where a private plan change is involved. Notwithstanding this, it states:

*...However, consideration of the listed options in Clause 3.6(2) and any other reasonably practicable options is still required for private plan changes to meet the requirements of Clause 3.6(1)(b). Other key factors to consider when assessing reasonably practicable options for providing the sufficient development capacity include:*

- *the extent of HPL around the existing urban environment*
- *options for providing development capacity in surrounding suburbs/similar small settlements nearby*
- *infrastructure servicing and constraints*
- *the presence of other constraints, such as natural hazards and sensitive and valued natural environments to be protected*<sup>5</sup>

7. The following further comment is also made in the Guide in relation to private plan changes:

*For private plan changes, territorial authorities will need to ensure there is a robust assessment of reasonably practicable options for providing the required development capacity on non-HPL land and this assessment should not be limited to the preferred site for the developer.*<sup>6</sup>

8. In my view, the assessment undertaken in relation to PC80 included a robust assessment of other reasonably practicable options, including those matters listed above, and was not limited to the application site.
9. Specifically in relation to Clause 3.6(3), the Guide states that the clause provides additional “guidance” to applicants and decision-makers on how to determine whether reasonably practicable options are providing development capacity within the same locality and market as the proposed rezoning. The Guide indicates that it is about ensuring that a “like for like” assessment of other options is undertaken.<sup>7</sup> In discussing the “locality” aspect more specifically, the Guide indicates that the intent of the clause is to ensure that the options assessed “provide for the required development capacity are located as close as possible to where it is needed, to avoid situations where sufficient development capacity can be provided on non-HPL, but that capacity is not in the right locality to meet the identified demand.”<sup>8</sup> In discussing the “market” aspect, the guidance is limited and does not, in my view, assist further.
10. The difficulty I previously identified in relation to PC80 was not about whether the locality (and market) assessed by the applicant was appropriate (or not); it is more with the specific wording of Clause 3.6(3) in terms of its reference to the HBA. The Guide does not particularly address this aspect and seems to suggest the clause is more to guide the assessment under 3.6(1)(b). Notwithstanding this, and for the avoidance of doubt, I consider that the applicant’s assessment of the locality and market to be appropriate, and in line with what the Guide indicates is the intent of Clause 3.6(1)(b).

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<sup>5</sup> Guide, pages 44-45.

<sup>6</sup> Guide, page 46.

<sup>7</sup> Guide, pages 46-47.

<sup>8</sup> Guide, page 47.

11. Finally, I note that the Guide states that the intent behind Clause 3.6 is to allow territorial authorities to implement the NPS-HPL, when undertaking urban rezoning, to fulfil their obligations to provide sufficient development capacity to meet demand for land under the NPS-UD.<sup>9</sup> The Guide also refers to use of consistent terms across both documents, but I note that no mention is made of interplay with Policy 8 of the NPS-UD.
12. Overall, I consider that the Guide does not particularly assist further with the specifics of this plan change; except insofar as it indicates that the purpose of Clause 3.6(3) is to provide guidance on the identification and assessment of reasonably practicable options required in Clause 3.6(1)(b). As noted in my officer's report and confirmed earlier, I consider that the proposal meets the requirements of 3.6(1), when taking into account the most recent evidence, even if it does not align with the more specific requirements in 3.6(3), due to the reference to the HBA in those clauses. The Guide does not assist further with question of how Policy 8 of the NPS-UD relates to the NPS-HPL.

A handwritten signature in blue ink, appearing to read 'Liz White', with a stylized, cursive script.

**Liz White**  
**25 January 2023**

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<sup>9</sup> Guide, page 40.