

## NATIONAL POLICY STATEMENT ON HIGHLY PRODUCTIVE LAND

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## 1 Scope of Report

- [1] This Recommendation Report relates to the National Policy Statement for Highly Productive Land 2022 (NPS-HPL). The Hearing Panel members were:
- Malcolm Lyall
  - Raewyn Solomon
  - Rob van Voorthuysen (Chair)
- [2] At our request<sup>1</sup> the Council produced a Section 42A Report addressing amendments to give effect to the NPS-HPL that were considered to be within the scope of submissions. That Report was:
- Section 42A Report, Report on submissions and further submissions, National Policy Statement - Highly Productive Land, Jon Trewin, 16 December 2022.
- [3] Mr Trewin provided a fulsome summary of the provisions of the NPS-HPL and the obligations it imposes on the Council.<sup>2</sup> We adopt that summary but do not repeat it here for the sake of brevity.
- [4] All submitters on the PDP who raised issues relating to the protection of highly productive land were afforded the opportunity to provide written comments on Mr Trewin's Report on or before 10 February 2023. We received comments from:
- Davina Penny DPR-0033;
  - Graeme & Virginia Adams DPR-0481;
  - Ivan Thomson on behalf of Saunders Family Trust DPR-0166;
  - Ivan Thomson on behalf of various submitters<sup>3</sup>;
  - Jeremy Phillips on behalf of the 'Carter Group'<sup>4</sup>;
  - Lynette Wharfe on behalf of Horticulture New Zealand DPR-0353;
  - Nicola Rykers on behalf of Ceres Professional Trustee Company Limited and Sally Jean Tothill DPR-0436;
  - Serena Orr on behalf of the Canterbury Regional Council DPR-0260;
  - Susannah Tait on behalf of Fonterra Limited DPR-0370; and
  - Teri Cairns on behalf of the New Zealand Pork Industry Board DPR-0142.
- [5] We also received a legal submission from Andrew Schulte of behalf of 'Lincoln Voice Incorporated' which we addressed in Minute 39<sup>5</sup>.

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<sup>1</sup> Minute 30 titled "All Chapters of PDP – NPS-HPL" and dated 17 October 2022

<sup>2</sup> Section 42A Report, paragraphs 4.3 and 4.4.

<sup>3</sup> Dally Family Trust & R McIlraith DPR-0488, Stewart & Townsend DPR-0136, WM Holdings DPR-0399, Four Stars & Gould Developments DPR-0456, Gulf Central DPR-0399, P & C Bond DPR-0180, B Nakhies DPR-0436 and Keith Jenkins DPR-0140

<sup>4</sup> DPR-0358, DPR-0384, DPR-0374, DPR-0363 and DPR-0392.

<sup>5</sup> Where we concluded "We understand that LVI are party to Private Plan Change 69. However, LVI are not a submitter or a further submitter on the PDP and so we decline to consider counsel's legal submission. We understand that LVI have submitted on Variation 1, however that matter will be considered by the intensification Independent Hearing Panel in due course."

- [6] Having reviewed the above comments we resolved that no hearing was necessary as the comments were clearly expressed and we had no questions of clarification for their authors.
- [7] Where the comments addressed specific changes to the PDP provisions, we include our assessment of them in sections 2.1 to 2.4 below. We discuss other matters raised in the comments in section 3 of this Recommendation Report.
- [8] Our consideration of the NPS-HPL occurred at a stage in the PDP process where hearings had already been held on all of the chapters, but no Hearing Panel Recommendation Reports had been provided to the Council. Consequently, Mr Trewin understandably based his recommendations for amendments on the versions of the provisions that were contained in the various chapter-based officer Reply Reports.
- [9] We have instead considered his recommended amendments in light of the amended PDP provisions that are contained in the various Hearing Panel Recommendation Reports for each PDP chapter. For the purposes of this NPS-HPL Recommendation Report we have shown earlier Hearing Panel recommendations in black font, strike out and underlining. We have shown further or different amendments recommended by us to give effect to the NPS-HPL in strike out, underlining and red font.
- [10] The amendments we recommend to the PDP provisions are shown in Appendix 1. We are satisfied that all recommended amendments contained within this Report are within the scope of submissions lodged on the PDP.
- [11] We have recommended amendments to two existing provisions:
- UG-P9
  - GRUZ-Overview
- [12] We have recommended new provisions as follows:
- EI-P2.6
  - TRAN-P13.7
  - GRUZ-O1.5
  - GRUZ-P1A
  - GRUZ-P5A
  - GRUZ-P8.3

- [13] Recommended amendments to the notified planning maps are also described in Appendix 1.

## **2 Chapter Recommendations**

- [14] Mr Trewin adopted a chapter-by-chapter assessment of potential amendments to the PDP. We generally adopt the same approach.
- [15] There were a number of PDP chapters for which Mr Trewin recommended no further amendments. We adopt his assessments of those chapters and his recommendations. Those chapters were:
- Activities on the Surface of Water
  - Coastal Environment

- Commercial and Mixed Use Zones (NCZ, LCZ, LFRZ, TCZ)
- Contaminated Land
- Designations
- Development Areas
- Earthworks
- Ecosystems and Indigenous Biodiversity
- Hazardous Substances
- Historic Heritage
- Industrial Zone
- Light
- Natural Character
- Natural Features and Landscapes
- Natural Hazards
- Noise
- Notable Trees
- Public Access
- Residential Zones (LLRZ, LRZ, GRZ, SETZ)
- Signs
- Sites and Areas of Significance to Māori.
- Special Purposes Zones (DPZ, GRAZ, KNOZ, MPZ, PORTZ, SKIZ and TEZ)
- Strategic Directions
- Subdivision
- Temporary Activities

## 2.1 Definitions

- [16] Jeremy Phillips suggested that the PDP should contain a definition of ‘highly productive land’. We note that the term ‘highly productive land’ is clearly defined in the interpretation section of the NPS-HPL itself:

**Highly Productive Land** means land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land)

- [17] We consider that a definition in the PDP would be helpful. However, there is no need to duplicate the NPS-HPL wording and we find the following PDP definition will suffice:

Land classified as Land Use Capability classes 1, 2 or 3 as determined in accordance with the National Policy Statement for Highly Productive Land 2022.

- [18] We note that the above definition differs from that recommended by the Urban Growth chapter Hearing Panel. The above definition supersedes the one recommended by that Panel.

[19] Mr Phillips also suggested that the PDP definition of ‘versatile soils’ should be deleted. We agree with that suggestion and we observe that the Hearing Panel for the Urban Growth chapter had already recommended deleting that term in favour of the term ‘highly productive land’.

[20] We note Lynette Wharfe echoed Mr Phillips’ suggestions.

## **2.2 Energy, Infrastructure and Transport chapters**

[21] For these chapters Mr Trewin concluded that EI-P2 and TRAN-P13 should be amended to require infrastructure providers to demonstrate an operational and functional need to locate on highly productive land. He also considered that EI-P2 and TRAN-P13 should be amended to require the infrastructure providers to minimise or mitigate any actual loss or potential cumulative loss of highly productive land and avoid or mitigate reverse sensitivity effects on land based primary production.

[22] Serena Orr recommended that:

- the wording of EI-P2 be amended to ensure any reference to important infrastructure is not capturing infrastructure that would otherwise not be referenced to under the NPS-HPL definition of specified infrastructure; and
- the insertion of the word ‘and’ at the end of EI-P2.6a. to clarify that both subclauses are to be achieved concurrently.

[23] Ms Orr did not provide any wording suggestions in relation to her first point and having reviewed EI-P2 we are satisfied its meaning is already clear. We agree with Ms Orr’s second suggestion.

[24] Other than as outlined above, we generally adopt Mr Trewin’s assessments and his recommended amendments to the EI and TRAN provisions, subject to simplifying some of the wording he recommended. We also adopt Mr Trewin’s s32AA assessment of those amendments.<sup>6</sup>

## **2.3 Urban Growth**

[25] Mr Trewin considered that the Urban Growth objectives and policies were generally consistent with the NPS-HPL. He advised that NPS-HPL Policy 1 was reflected in UG-O1.11 and NPS-HPL Policy 9 was reflected in UG-P11.

[26] Mr Trewin recommended that UG-O2 be amended by the addition of a new third clause that would read ‘*Greater intensification of existing areas*’. We were not persuaded that amendment could reasonably be required to give effect to the NPS-HPL. It also impinges on matters more properly considered in relation to Variation 1 and the imposition of the Medium Density Residential Standards. We therefore do not recommend an amendment to UG-O2.

[27] We note that Jeremy Phillips also opposed Mr Trewin’s suggested amendment for UG-O2, stating “... greater intensification is one outcome that may result from the objective to ‘*maintain a consolidated and compact urban form*’, rather than an objective in its own right.” We agree with Mr Phillips.

[28] Ms Orr commented on UG-O2, but she did not recommend any amendments to it.

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<sup>6</sup> Section 42A Report, section 20.

- [29] Mr Trewin recommended that to give effect to NPS-HPL Policy 5, UG-P9 should be changed to be an *'Avoid, unless'* provision. He suggested the *'unless'* caveats could be sourced from clause 1 of Section 3.6 of the NPS-HPL.
- [30] Jeremy Phillips agreed with the use of the word *'avoid'* in UG-P9, but he suggested that the policy should be redrafted with specific reference to clause 3.6 of the NPS-HPL. He was concerned that Mr Trewin's recommended wording did not fully align with or reflect the wording of clause 3.6 and it resulted in a more stringent test for rezoning than was required under the NPS-HPL. We understand Mr Phillips' concern, but note that the assessment of the use and development highly productive land is not limited to clause 3.6 of the NPS-HPL. Clauses 3.7, 3.8 and 3.10 are also relevant. We therefore find that UG-P9 should refer to the NPS-HPL in its totality.
- [31] Ms Orr was similarly concerned that Mr Trewin's wording did not capture all of the elements of clause 3.6(2) of the NPS-HPL. She recommended some alternative wording for the sub-clause of UG-P9. We consider that our finding outlined above in response to Mr Phillips addresses the matter raised by Ms Orr.
- [32] We note that the recommended amendment of UG-P9 is Appendix 1 of this Recommendation report differs from that recommended by the Urban Growth chapter Hearing Panel. The version of UG-P9 recommended in this Recommendation Report supersedes the one recommended by the Urban Growth chapter Hearing Panel.
- [33] Other than as outlined above, we adopt Mr Trewin's assessments of the Urban Growth provisions. We also adopt Mr Trewin's s32AA assessment of the amendment to UG-P9.<sup>7</sup>

## 2.4 Rural Zones

- [34] Mr Trewin undertook a thorough assessment of the GRUZ provisions, together with an assessment of the original submissions lodged by Horticulture NZ, Barry Moir, Graeme and Virginia Adams, Davina Penny and the Saunders Family Trust. He recommended:
- Amending the GRUZ-Overview to include a reference to the need to protect highly productive land;
  - Amending GRUZ-O1 to include an additional clause on protecting highly productive land;
  - Inserting a new policy that specifically requires the avoidance of adverse effects on highly productive land;
  - Inserting a new policy that enables the maintenance, operation and upgrading of existing activities whilst minimising adverse effects on highly productive land;
  - Amending GRUZ-P1 to specifically identify effects from typical rural activities;
  - Amending GRUZ-P8 to include highly productive land as a consideration when locating mineral extraction activities;
  - Amending GRUZ-R21 to require that mineral extraction on highly productive land is assessed as a discretionary activity; and

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<sup>7</sup> Section 42A Report, section 20.

- Amending the boundary of SCA-RD11 (Greendale) to exclude land undeveloped or unconsented for development with the balance to be reclassified as SCA-RD2<sup>8</sup>.

- [35] We agree with amending the GRUZ-Overview and GRUZ-O1.
- [36] Ms Orr suggested amending 'primary production to 'land-based primary production' so that GRUZ-O1.5 would read as "protects the resource potential of highly productive land for land-based primary production." We do not consider that to be necessary as we have instead recommended more concise wording for clause 5.
- [37] We agree that it is appropriate to insert a new policy (which we title GRUZ-P1A to denote its location immediately following GRUZ-P1) that requires the avoidance of inappropriate development on highly productive land and minimises or mitigates the loss of highly productive land from other development. We have however simplified the wording to refer to the NPS-HPL in its totality.
- [38] We agree that it is appropriate to insert a new policy (which we title GRUZ-P5A to denote its location immediately following GRUZ-P5) that enables the maintenance, operation and upgrading of existing activities whilst minimising adverse effects on highly productive land.
- [39] Ms Wharfe suggested qualifying that new policy (GRUZ-P5A) with the addition of the phrase "to the extent reasonably possible". We do not consider that to be necessary as the word 'minimising' in the new policy adequately encapsulates that concept.
- [40] We do not consider it necessary to further amend GRUZ-P1 because the GRUZ Hearings Panel has recommended similar wording to that recommended by Mr Trewin. Ms Orr suggested that clause 6 of GRUZ-P1 be amended to include the phrase 'land-based primary production.' We do not consider that to be necessary.
- [41] We agree that GRUZ-P8 should be amended to refer to mineral extraction, but we have simplified the wording Mr Trewin recommended so as to avoid 'parroting' the wording of section 3.9(2)(j)(iii) of the NPS-HPL.
- [42] Mr Trewin recommended amending GRUZ-R21 such that mineral extraction on highly productive land would default from a restricted discretionary activity (RDIS) to a discretionary activity (DIS). We are not persuaded that is necessary and instead have added effects on highly productive land into the matter for discretion for this provision (GRUZ-R21.2.a).
- [43] We agree with Mr Trewin's recommendation to amend the boundary of SCA-RD11 (Greendale).
- [44] Other than as outlined above, we adopt Mr Trewin's assessments and his recommended amendments to the GRUZ provisions. We also adopt Mr Trewin's s32AA assessment of those amendments.<sup>9</sup>

### 3 Other Matters

- [45] Davina Penny's comments were solely focussed on introducing further restrictions on mineral extraction activities. We consider her suggested amendments to GRUZ-P8 and GRUZ-R21 are necessary in principle to ensure that the PDP gives effect to the NPS-HPL. Mr Trewin

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<sup>8</sup> SCA-RD2 has a 20-hectare minimum lot size.

<sup>9</sup> Section 42A Report, section 20.

recommended accepting Ms Penny's amendments. We have however recommended simplified wording for the new GRUZ-P8.3.

- [46] Teri Cairns discussed the nature of indoor and outdoor pig farming, and the activities ancillary to that farming (such as growing grain to feed the pigs), but her comments did not include any suggested amendments to the PDP provisions.
- [47] We understood Ivan Thomson to be suggesting that land within the 'Inner Plains Area' categorised as GRUZ SCA-RD1 should not be classified as highly productive land. He referred to the land owned by the Saunders Family Trust as an example. We addressed that general proposition in the Prebbleton and Lincoln rezoning hearings based on legal submissions from submitters and a legal opinion that we requested from counsel for SDC<sup>10</sup>. Readers should therefore refer to the Recommendation Reports for those townships for our findings on that matter. Suffice to say, we found Mr Thomson's proposition would not apply other than on rare occasions where intensely subdivided rural land was being predominantly used for residential activities as opposed to primary productive activities.
- [48] We note that many of the submitters represented by Mr Thomson also lodged submissions seeking the urban rezoning of their GRUZ zoned properties. Those specific rezoning requests have been dealt with in the respective rezoning hearings.
- [49] Ms Rykers provided an assessment of the NPS-HPL that related to the submission of the Ceres Professional Trustee Company Limited and Sally Jean Tothill (the Trust). The Trust made a submission (DPR-0346) to the PDP seeking to establish a Rural Services Precinct over land at the intersection of Shands Road and Marshs Road. The GRUZ Hearing Panel addressed that submission and recommended that it be accepted so we do not discuss Ms Rykers' comments further.
- [50] Lynette Wharfe referred to Horticulture NZ's submission requesting a Strategic Objective addressing highly productive land. She suggested that any such objective should refer to 'highly productive land' instead of 'versatile soil'. The Hearing Panel for the Strategic Directions chapter has recommended a new objective SI-DI-O6 which we consider adequately encapsulates Ms Wharfe's suggestion.
- [51] Ms Wharfe also suggested that the provisions in the Noise chapter should be reconsidered to ensure that they gave effect to the NPS-HPL. However, Ms Wharfe did not bring any specific Noise provisions to our attention and we are not aware of any that should be addressed in terms of the NPS-HPL.
- [52] Ms Wharfe suggested that it was important for there to be clear policy direction in the PDP that limited rural lifestyle developments on highly productive land. We are satisfied the PDP does that and in any case clause 3.7 of the NPS-HPL requires that territorial authorities must avoid rezoning of highly productive land as rural lifestyle, except as provided in clause 3.10 of the NPS-HPL. Decision-makers must give effect to that superior national instrument regardless of what the PDP says about 'rural lifestyle' development. Having said that, we observe that the PDP includes Special Control Areas that set density controls across the GRUZ. We consider that will assist with achieving the outcome sought by Ms Wharfe.

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<sup>10</sup> See Minute 38, Request for Legal Opinion, Rezoning Requests NPS-HPL.



- [53] Susannah Tait advised that Fonterra opposed the UGO in northwest Darfield that was sited adjacent to their effluent disposal field. We note that matter was effectively considered in response to their submission DPR-0377.007 on the Urban Growth chapter that requested that UG-P11 be amended to require Dairy Processing Zones to be avoided when zoning land to extend township boundaries to establish new urban areas. The Urban Growth Hearing Panel recommended amendments to UG-P11.1 that we consider will achieve that outcome and so no further amendments are required.
- [54] Graeme & Virginia Adams supported the amendments to the provisions recommended by Mr Trewin. They also expressed concern about lifestyle blocks and suggested a wider application of the density controls embodied in SCA-RD3 in the Outer Plains. In our view that particular suggestion goes beyond the scope of amendments to the provisions required to give effect to the NPS-HPL.
- [55] The recommended amendments to the PDP provisions contained in Appendix 1 are those that result from this Hearing Panel's assessment of submissions and further submissions. However, readers should note that further or different amendments to these provisions may have been recommended by:
- Hearing Panels considering submissions and further submissions on other chapters of the PDP;
  - the Hearing Panels considering rezoning requests, and
  - the Independent Hearing Panel (IHP) considering submissions and further submissions on Variation 1 to the PDP
- [56] Any such further or different amendments are not shown in Appendix 1 of this Recommendation Report. However, the Chair<sup>11</sup> and Deputy Chair<sup>12</sup> of the PDP Hearing Panels have considered the various recommended amendments and have ensured that the overall final wording of the consolidated version of the amended PDP is internally consistent.
- [57] In undertaking that 'consistency' exercise, care was taken to ensure that the final wording of the consolidated version of the amended PDP did not alter the intent of the recommended amendments contained in Appendix 1 of this Recommendation Report.
- [58] No other matters were brought to our attention.

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<sup>11</sup> Who is also the Chair of the IHP.

<sup>12</sup> Who chaired one stream of hearings.

## Appendix 1: Recommended Amendments

**Note to readers:** Only provisions that have recommended amendments are included below. All other provisions remain as notified. Amendments recommended by the Section 42A Report author that have been adopted by the Hearing Panel are shown in strike out and underlining. Further or different amendments recommended by the Hearing Panel are shown in strike out, underlining and red font.

### Amendments to the PDP Maps

Map Layer	Description of recommended amendment
<b>Rural Density Overlay</b>	Amend the boundary of SCA-RD11 (Greendale) to exclude land undeveloped or unconsented for development with this balance reclassified as SCA-RD2. The legal description of the land is Lot 6 DP 539597.

### Amendments to the PDP Text

#### Part 1 – Introduction and General Provisions

##### Interpretation

Definitions	
<b><u>HIGHLY PRODUCTIVE LAND</u></b>	<u>Land classified as Land Use Capability classes 1, 2 or 3 as determined in accordance with the National Policy Statement for Highly Productive Land 2022.</u>
<del><b>VERSATILE SOIL</b></del>	<del>Land classified as Land Use Capability I or II in the New Zealand Land Resource Inventory.</del>

Replace the term ‘**versatile soil**’ with the term ‘**highly productive land**’ throughout the PDP along with any consequential amendments required in terms of correct grammatical use of that term.

## Part 2 – District Wide Matters

### Energy, Infrastructure and Transport

#### EI – Energy and Infrastructure

##### EI-Objectives and Policies

EI-Policies	
<b>EI-P2</b>	<p>Minimise the adverse effects of important infrastructure, and renewable electricity generation on the physical and natural environment by:</p> <p>...</p> <p><u>6. providing for the maintenance, operation, upgrade or expansion of important infrastructure on highly productive land where there is a functional or operational requirement to locate the infrastructure on that land whilst:</u></p> <p>a. <u>minimising or mitigating any actual or potential cumulative loss of highly productive land; and</u></p> <p>b. <u>avoiding if possible, or otherwise mitigating, any actual or potential reverse sensitivity effects on land-based primary production activities.</u><sup>13</sup></p>

#### TRAN – Transport

##### TRAN-Objectives and Policies

TRAN- Policies	
<b>TRAN-P13</b>	<p>Minimise the adverse effects of <u>the development of new land transport infrastructure and corridors</u> on the physical and natural environment by:</p> <p>...</p> <p><u>7. providing for the maintenance, operation, upgrade or expansion of land transport infrastructure and corridors on highly productive land where there is a functional or operational requirement to locate the infrastructure or corridor on that land whilst:</u></p> <p>a. <u>minimising or mitigating any actual or potential cumulative loss of highly productive land; and</u></p> <p>b. <u>avoiding if possible, or otherwise mitigating, any actual or potential reverse sensitivity effects on land-based primary production activities.</u><sup>14</sup></p>

#### General District Wide Matters

#### UG – Urban Growth

<sup>13</sup> DPR-0033.003 and DPR-0279.003

<sup>14</sup> DPR-0033.003 and DPR-0279.003

## UG-Objectives and Policies

UG-Policies	
<b>UG-P9</b>	<del>Recognise and provide for the finite nature of the versatile soil resource when zoning land to extend township boundaries to establish new urban areas.</del> <u>Avoid the zoning of highly productive land for urban growth, except as provided for by the National Policy Statement for Highly Productive Land 2022.</u>

## Part 3 – Area Specific Matters

## Zones

## Rural Zones

## GRUZ – General Rural Zone

Overview	
Generally, character and amenity within the General Rural zone is characterised by a landscape dominated by openness and vegetation, and with significant visual separation between neighbouring residential buildings. <u>Rural landscapes include rural production activities, including plantation forestry, mineral extraction, farming (including research farming and associated facilities) and associated structures and buildings as well as rural support services and rural industry. These activities may have associated levels of noise, dust and odour.</u>	
<u>The General Rural Zone also has large areas of highly productive land which are important for primary production purposes.</u> <sup>15</sup> While residential activities are part of the General Rule Zone, they should not ...	
...	

## GRUZ-Objectives and Policies

GRUZ-Objectives	
<b>GRUZ-O1</b>	Subdivision, use, and development in rural areas that: ... <u>5. protects highly productive land.</u> <sup>16</sup>

<sup>15</sup> DPR-0353.287<sup>16</sup> DPR-0033.003 and DPR-0279.003

GRUZ-Policies	
<b>GRUZ-P1A</b>	<u>Avoid the inappropriate use and development of highly productive land, except as provided for by the National Policy Statement for Highly Productive Land 2022.</u> <sup>17</sup>
<b>GRUZ-P5A</b>	<u>Enable the maintenance, operation or upgrade of any existing activity on highly productive land, while minimising the loss of highly productive land.</u> <sup>18</sup>
<b>GRUZ-P8</b>	<p>Provide for mineral extraction in the General Rural Zone to meet the District's and region's supply needs, <u>including by recognising the need to locate where the mineral resource exists</u>, while:</p> <p>...</p> <p>3. <u>avoiding mineral extraction on highly productive land unless there is a functional or operational need to locate it on that land and the mineral extraction provides either:</u></p> <p>a. <u>a significant national public benefit; or</u></p> <p>b. <u>in the case of aggregate extraction, a significant national or regional public benefit.</u><sup>19</sup></p>

## GRUZ-Rules

GRUZ-R21 Mineral Extraction	
	<p>...</p> <p><b>Matters for discretion:</b></p> <p>2. The exercise of discretion in relation to GRUZ-R21.1 is restricted to the following matters:</p> <p>a. Effects on amenity values, <u>rural character and highly productive land</u> during the establishment ...</p> <p>...</p>

<sup>17</sup> DPR-0033.003 and DPR-0279.003<sup>18</sup> DPR-0033.003 and DPR-0279.003<sup>19</sup> DPR-0033.003 and DPR-0279.003