

**BEFORE THE INDEPENDENT HEARING PANEL APPOINTED BY
THE WAIMAKARIRI DISTRICT COUNCIL**

UNDER the Resource Management Act 1991 (RMA)

AND

IN THE MATTER OF Proposed Private Plan Change 31: Rolleston Industrial
Developments Limited 535 Mill Road, Ohoka (Residential 3,
4A and Business 4, New Residential 8 Zone)

**LEGAL SUBMISSIONS FOR JANET HADFIELD
SUBMITTER #260**

7 AUGUST 2023

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MAY IT PLEASE THE PANEL:

Introduction

- 1 These legal submissions are made on behalf of Janet Hadfield (**Mrs Hadfield**), submitter number S260, in respect of her submission on proposed Private Plan Change 31 – Rolleston Industrial Developments Limited (**PC31**). These submissions address the following:
 - 1.1 National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**);
 - 1.2 National Policy Statement on Urban Development 2020 (**NPS-UD**);
 - 1.3 Amenity lost if PC31 is approved; and
 - 1.4 Expert evidence supported.

Summary of relief sought

- 2 As a resident of Ohoka and an immediately affected person to the development proposed in PC31, Mrs Hadfield opposes PC31 in its entirety. Mrs Hadfield's property at 511 Mill Road has been included as part of PC31 which is vehemently opposed.
- 3 We seek that the NPS-HPL be given effect to and applied by the Panel to an assessment of PC31 for the reasons set out below.

The issues

NPS-HPL

- 4 The Applicant's legal opinion¹ is the NPS-HPL does not apply to PC31 because it is exempt under clause 3.5.7(b)(ii). This is because the Waimakariri District Council (the **Council**) in their District Plan Review (**DPR**) is proposing to rezone the site from Rural Zone to Rural Lifestyle Zone (**RLZ**).
- 5 We disagree for the following reasons.
- 6 The meaning ascribed to the interpretation of words and phrases in a plan must follow the principles set out in the Interpretation Act 1999.
- 7 Section 5 of that Act sets out that the meaning of any term must be ascertained from its **text, and in light of its purpose**.
- 8 The focus of the Applicant's opinion is restricted on giving a particular meaning based on the name given to a particular zone. It does not look beyond the heading to give context to the

¹ PC31 - Application of NPS-HPL memorandum by Chapman Tripp, 30 May 2023.

zone from the text and spatial plans, and it does not seek out the purpose of the zone which is to give primacy to its predominant rural purpose.

9 The definition of RLZ in the proposed Waimakariri District Plan (**pWDP**) is not the same definition the NPS-HPL is using. In the pWDP the RLZ is listed as a Rural Zone (**RURZ**) in the definitions. The zone covers a very broad area of the more coastal parts of Waimakariri's Rural zone between the urban centres of Rangiora and Kaiapoi. It is used to distinguish between the "outer" General Rural Zone (**GRUZ**), and the broad "inner" rural zone where lifestyle properties are located in a predominantly rural setting. This is shown in Figure 1 under paragraph 22.

10 The NPS-HPL does not define RLZ, however, any reference to a zone in the NPS-HPL is a reference to a zone as described in the National Planning Standard (**NP Standard**).² The NP Standard's description of RLZ is:

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

11 Whereas the RLZ in the pWDP is a subset under the definition of Rural Zones. Rural zones means any of the following:

11.1 Rural Lifestyle Zone;

11.2 General Rural Zone.

12 The section 32 assessment (**s32**) for the Rural chapter in the DPR confirms the above definition³ and goes on to state:

12.1 The **Rural Lifestyle Zone is a Rural Zone**, not a rural residential zone. Rural residential activities are provided for in the Large Lot Residential Zone. [emphasis added]

13 The RLZ purpose is also described as:

13.1 (...) to **provide for primary productive activities**, those activities that support rural activities and those that rely on the natural resources that exist in the zone, while recognising that the predominant character is derived from smaller sites. [emphasis added]

² Clause 1.3(4)(a), NPS-HPL.

³ "Within the Rural chapters there are two zones, being the General Rural Zone and the Rural Lifestyle Zone."

- 14 The pWDP has General Rural Objectives and Policies that apply to all Rural Zones which are GRUZ and RLZ. One of the objectives being for a rural environment “(...) with a **predominant land use character comprising primary production activities** and natural environment values, where rural openness dominates over built form, (...)”.⁴
- 15 Policy RURZ-P2 Rural land is to “Maintain the availability and life supporting capacity of land in recognition of its importance for undertaking primary production (...)”
- 16 The objective to the RLZ, Objective RLZ-O1 – Purpose of the Rural Lifestyle Zone states:
- 16.1 **Primary production activities** and activities reliant on the natural and physical resources of the rural environment occur while recognising that the predominant character is small rural sites with a more intensive pattern of land use and buildings than the General Rural Zone. [emphasis added]
- 17 It is clear the RLZ is a Rural Zone where the purpose and objective is for primary production activities primarily, rather than the NP Standard’s definition where residential lifestyle is the predominant focus. There is very little to distinguish between the purpose of the GRUZ and RLZ.
- 18 On that basis, it is submitted that the Applicant’s opinion is superficial, and is reliant solely on a heading term which is inconsistent with the pWDP intended purpose and objective for RLZ as it was notified.
- 19 By way of further support, we note the NP Standard zone descriptions for General Rural Zone and Rural Production Zone are:
- 19.1 **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.
- 19.2 **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 activities, including associated rural industry, and other activities that require a rural location.
- 20 These are described as being “predominantly for primary production activities” in line with the RLZ purpose and objective in the pWDP. We consider the key to the RLZ as described in the

⁴ Objective RURZ-O1, pWDP.

NP Standard and as referenced in the NPS-HPL in the exemption clause, is the predominance of residential lifestyle.

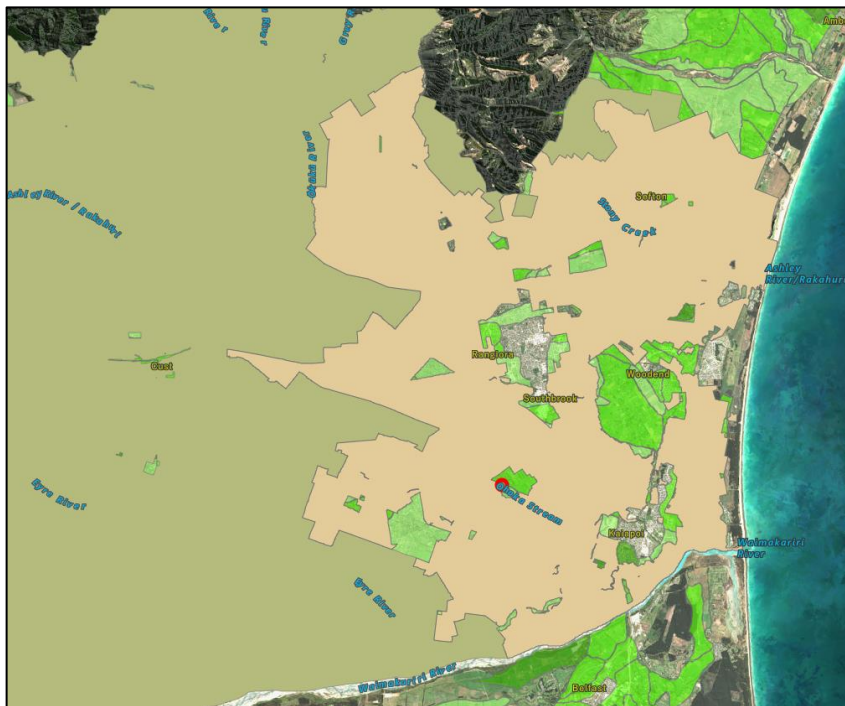




Figure 2: Canterbury Maps showing Waimakariri District land classed LUC 1 – 3 (light green, green, dark green)

- 24 As illustrated above, most, if not all of the areas zoned RLZ is classed as LUC 1-3 which would be lost.
- 25 Therefore, we consider the NPS-HPL does apply to PC31 and the land has not been rezoned from a rural zone as it is still a rural zone at its core and the exemption under clause 3.5.7(b)(ii) does not apply.
- 26 The PC31 site must be treated as HPL and the NPS-HPL must be given effect to. NPS-HPL Objective 2.1 ensures that sufficient HPL is available for primary production use, both now and for future generations. The policies promote the prioritisation and support of HPL for land-based primary production⁵; for urban rezoning of HPL to be avoided⁶; and HPL is to be protected from inappropriate use and development.⁷
- 27 We also submit that the intention of the exemptions in clause 3.5(7)(b) 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.⁸ We contend that “new urban growth areas” does not equate to the RLZ. The s32 addresses future areas for rural residential development through providing Large Lot Residential Development Overlays.

⁵ Policy 4, NPS-HPL.

⁶ Policy 5, NPS-HPL.

⁷ Policy 8, NPS-HPL.

⁸ NPS-HPL: Guide to Implementation, p14.

- 27.1 *“Rural residential development is addressed in the pWDP through the Large Lot Residential Zoning. New areas that may be suitable for Large Lot Residential Zones are addressed in the Rural Chapter in the context of identifying overlay areas. These are in locations that are identified in the Waimakariri Rural Residential Development Strategy.”*
- 28 The overall purpose of the NPS-HPL on highly productive soils, is to protect land from indiscriminate development. It is to avoid urban spread, where the highly productive soil capacity would be lost by that development.
- 29 Even if PC31 is exempt under the NPS-HPL, it does not necessary mean that intense urban development for the site is appropriate. We understand the Applicant has made a submission to the DPR seeking to have the PC31 site zoned General Residential Zone as it recognises the proposed RLZ does not allow or support the development proposed in PC31.
- 30 The proposed RLZ and its effects that are being proposed in the DPR, is significantly different to what PC31 proposes. RLZ proposes a minimum lot size of 4ha, whereas PC31 proposes 12 households per hectare. The Panel must assess the application and determine whether PC31 is the most appropriate way of achieving the purpose of Resource Management Act.

Giving effect to the NPS-HPL

- 31 For the PC31 site to be rezoned urban it must be assessed under the NPS-HPL. The key policies relating to plan changes are Policies 5⁹ and 6¹⁰. The key implementation clauses are clause 3.6 (restricting urban zoning of highly productive land), clause 3.7 (avoiding rezoning of highly productive land for rural lifestyle) and clause 3.10 (exemptions for land subject to permanent or long-term constraints).¹¹
- 32 Clause 3.6 has been drafted to align with the National Policy Statement on Urban Development 2020 (**NPS-UD**) and provides a pathway for territorial authorities to consider the rezoning of HPL to an urban zone if the specified tests in clause 3.6(1) are met. A range of reasonably practicable options for providing the required development capacity on non-highly productive land must be considered as part of the process, and the benefits of the rezoning must outweigh the costs. We do not believe PC31 is able to meet these tests.
- 32.1 The rezoning is not required to provide sufficient development capacity to meet demand for housing. There is already sufficient land as discussed further in this submission.

⁹ **Policy 5:** The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.

¹⁰ **Policy 6:** The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement.

¹¹ NPS-HPL: Information for councils and planners.

- 32.2 There are 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 as developed by the Council in their Development Strategy.
- 32.3 The environmental, social, cultural and economic benefits of rezoning do not outweigh the long-term environmental, social, cultural and economic costs associated with the loss of HPL.
- 33 Clause 3.7 provides very clear direction that highly productive land should not be rezoned for rural lifestyle purposes unless the tests set out in clause 3.10 can be met. The first hurdle of clause 3.10 is not met as shown in the evidence by the Mr Ford in the s42A Report. Mr Ford considered clause 3.10 of the NPS-HPL, the exemption for HPL subject to permanent or long-term constraints and concluded the PC31 site is able to be economically viable for at least 30 years,¹² and therefore is not exempt under clause 3.10.
- 34 The evidence by Joanne Mitten on behalf of Environment Canterbury (**ECan**) also set out some of the requirements for HPL land to be rezoned.¹³ If it were not for the incorrect interpretation of the applicability of the NPS-HPL, it is our opinion that Ms Mitten and others would find that PC31 should not be rezoned urban.

NPS-UD

- 35 The Applicant considers there would be demand for housing and development proposed by PC31 and it delivers the development capacity required under NPS-UD. Their view is the NPS-UD encourages the zoning of additional land above what might be considered 'sufficient' development capacity. We refute this as it would lead to the premature loss of HPL to urban rezoning. This rezoning over and above what is sufficiently required in the short to medium term, is to be avoided to ensure the maximum amount of HPL remains available for land-based primary production until it is actually needed to be rezoned to provide sufficient development capacity.¹⁴ Once you lose HPL you cannot get it back.
- 36 We argue that housing capacity is already afforded, and the Council has considered future development areas and identified the locations for these in the Waimakariri 2048 District Development Strategy and Rural Residential Development Strategy. We note Ohoka's small settlement character is to be retained under the Strategy.¹⁵

¹² Section 42A Report, Appendix 3: Rural Productivity Evidence, The AgriBusiness Group, section 4.

¹³ Statement of evidence of Joanne Mitten on behalf of the Canterbury Regional Council, paragraphs 40-50.

¹⁴ NPS-HPL: Guide to implementation, page 42.

¹⁵ 2.5 Our Rural area and Small settlements, Waimakariri 2048 District Development Strategy.

- 37 The District Plan has already struck out Ohoka for intensification and makes plenty of allowance for development on borders of Rangiora, Woodend and Pegasus which are better suited to arterial transportation infrastructure and public transport.
- 38 We note the Christchurch City Council and other submitters made a submission opposing PC31 outlining it does not give effect to NPS-UD and must either be declined or amended significantly. There is no public transport infrastructure existing or planned to be serviced. It does not create a significant employment opportunity for the scale of residential development which will increase private vehicle use and greenhouse gas emissions. The “well-functioning urban environment” described in Policy 1 of the NPS-UD would not be met.
- 39 The number of sections to be built and the number of people proposed to live in this development are such that would lead to capacity issues on roads, infrastructure, and the three water systems which the Council and ECan’s expert evidence shows is a significant issue that calls for PC31 to be declined.
- 40 Urban sprawl should be prevented to avoid development outside infrastructure nodes. Future urban development growth should be located around public transport, facilities and amenities.
- 41 The proposed retirement village in PC31 is irrational given the isolation of Ohoka to commercial and healthcare facilities provided in Rangiora and Kaiapoi. We also note there are plenty of retirement villages already in Rangiora, Kaiapoi, Woodend and at the Ravenswood site which has a retirement freedom lifestyle village.
- 42 Therefore, we do not consider PC31 to be necessary given there is plenty of other sites that are more appropriate, and housing capacity that has already been identified that have yet to be fully developed. Council evidence shows there is sufficient capacity to meet the expected demands. Even if the Panel agrees with the Applicant that there is not sufficient capacity, it does not mean that the PC31 site is the most appropriate location to provide for housing demand.

Amenity lost if PC31 approved

- 43 Mrs Hadfield lives at 511 Mill Road and the property has been included in PC31. The landscape and visual effects of PC31 would be detrimental to the rural environment Mrs Hadfield currently enjoys as shown in below Google map photos.



Figure 3: Mrs Hadfield's property at 511 Mill Road which is included in the PC31 site as can be seen by the farmland on the right.



Figure 4: Mrs Hadfield's outlook to the farmland and primary production activities that is to the south and west of her home.

44 This is also evidenced in the Council's expert Landscape evidence¹⁶ that concludes PC31 is not consistent with the rural village character of Ohoka and considers the proposed amenity enhancements by the Applicant are insufficient to protect the rural character of Ohoka.

45 The intention of the Rural Chapter in the s32 assessment in the DPR proposes to:

¹⁶ Statement of evidence of Kim Thomas Goodfellow on behalf of Waimakariri District Council (as Submitter) – Landscape.

45.1 Clearly identify activities that will not **maintain the character** within rural areas [and] **are not compatible** with activities sought within the rural areas, **such as retirement villages** and multiple residential unit developments. [emphasis added]

46 As we have established in paragraph 11, RLZ is a rural zone and therefore, the proposed retirement village in PC31 is clearly expressed as not being compatible in the rural areas.

47 We also note that it is explicit that rural residential development is provided for within the Large Lot Residential Zone, not the RLZ. This is stated throughout the s32.



Figure 5: ODP showing Mrs Hadfield's home and surrounds being zoned Residential 3 with 12 households per hectare.

48 The considerable difference in outlook from Mrs Hadfield's home currently, to what it would look like if PC31 were to be approved, it does not equate to a rural character as proposed in the pWDP.

Expert evidence supported

49 Overall, we agree with and support the expert evidence provided by the Council and ECan in relation to transport/ traffic, three waters infrastructure and planning. We note there are grave concerns about the appropriateness of PC31.

50 I have not covered the evidence that we support in further detail as the evidence speak for themselves.

Conclusion

51 The NPS-HPL does apply to PC31 site and therefore the development on HPL should be assessed against the objective and policies. The policies in the NPS-HPL are very directive towards avoiding urban rezoning of HPL and protecting it from inappropriate subdivision, use

and development. The NPS-HPL ensures there are multiple hurdles to go through before rezoning can be considered. In this instance PC31 does not meet the necessary requirements for the site to be rezoned.

- 52 PC31 is not required as there is sufficient development capacity identified for the district required under the NPS-UD. PC31 should be declined as it is not appropriate for the location and community of Ohoka.
- 53 We support the numerous submitters who oppose PC31 and agree with the Council's s42A Report and expert evidence and that of ECan's evidence that PC31 is not appropriate for this site. The s42A Report along with the Council's expert evidence demonstrate PC31 does not achieve the purpose of the RMA and cost benefit analysis does not show the benefits (if any) to outweigh the detrimental costs to the District and community, including wider effects to Kaiapoi, Rangiora and Christchurch.
- 54 PC31 will adversely affect the rural village environment of the community. The sheer size and the infrastructure required for the development is incompatible with the rural village character which Ohoka is known for and which is intended to be retain in the pWDP.
- 55 It is my submission that the issues raised in Mrs Hadfield's original submission and the 93% of submissions opposing PC31 demonstrates PC31 should be declined.
- 56 Therefore, the relief sought is to decline the plan change in its entirety and approve the recommendation by the s42A Report to decline the plan change.

Dated 7 August 2023



L D Scully

Solicitor for Janet Hadfield