

**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)

**FURTHER MEMORANDUM OF COUNSEL ON BEHALF OF
JANET HADFIELD SUBMITTER #260**

15 AUGUST 2023

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MAY IT PLEASE THE PANEL:

- 1 This memorandum is filed to provide further comments on questions asked by the Panel.
- 2 The Panel asked the question when the Rural Residential Development Strategy was adopted. I can confirm the Strategy was adopted on 4 June 2019.
- 3 It identifies growth locations for rural residential development across the whole District to meet a projected demand of approximately 385 rural residential households over **the next 10 years**.
- 4 For completeness, the Waimakariri District Development Strategy 2048 guides the District's anticipated residential and business growth over **the next 30 years**. This was released in July 2018.
- 5 I refer to Mr Buckley's memorandum of advice on the application of the NPS-HPL to the Waimakariri District Plan Review Hearings Panel.¹
- 6 The planning advice took the plain meaning approach and noted that the RLZ in the pWDP was prepared under the rural lifestyle zone descriptor in the NP Standard, however, the Court of Appeal has held that "*while 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*".² Relevant factors include purpose of the provision, the context and scheme of the plan, the history of the plan, the purpose and scheme of the RMA. Interpretation should also avoid creating injustice, absurdity, anomaly or contradiction.³
- 7 If the intention was for the RLZ definition in the pWDP to be the same as the description in the NP Standard, Council could have replicated its definition, purpose and objective to reflect this. This is not the case. There is clearly a difference between what is "*predominant*" in RLZ in the NP Standard and the RLZ in the pWDP. In the pWDP the focus is on "*primary production activities*" reflecting the General Rural Zone framework descriptor in the NP Standard. Zone descriptors in the NP Standard each begin with what the predominance is for each zone. Clearly, the predominance in RLZ is for "*residential lifestyle*". However, the predominance in the RLZ in the pWDP is on "*primary production activities*".
- 8 As my legal submissions stated, the RLZ and GRUZ are both rural zones and sit under the Rural Zones chapter where there are overarching objectives and policies that apply to both zones. It goes on to say the "*key difference*" between the two zones, and I would argue the

¹ Memorandum to Hearing Panel on NPS-HPL by Mark Buckley S42A Reporting Officer for Rural Zones, 30 June 2023.

² *Powell v Dunedin City Council* [2005] NZRMA 174 (CA).

³ *Waimairi County Council v Hogan* [1978] 2 NZLR 587 at 590 (CA).

only difference, is “*the density of residential units and subdivision that is enabled*”.⁴ I posit that if you were to redact the zone names in the RLZ and GRUZ chapters and read them side by side, they would both be very similar if not identical in their purpose, objective, policies and their rules. Both chapters would read as general rural zones rather than residential lifestyle.

- 9 It is my submission the Waimakariri District Council has used the wrong NP Standard descriptor as they were not cognisant of the NPS-HPL. If they were, I believe they would have zoned RLZ areas GRUZ with a precinct overlay instead.
- 10 In a planning context, headings are not determinative. Further analysis of the broad-scale nature of the zone, the objectives and rules trumps the name ascribed to the zone. Consistency of zone names, structure, format for plans should not trump the purpose, objectives and policies and the true meaning of the text in the pWDP.
- 11 The injustice cannot be and should not be overlooked just to give effect to the NP Standard which has a purpose for consistency. Should we be consistently wrong purely for the sake of being consistent?
- 12 I understand from the NPS-HPL Guideline to implementation⁵ states:
- 12.1 “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).” [emphasis added]
- 13 “*Implemented*” means a plan put into effect, in this case when it is operative. Since the pWDP is not yet operative, it is still at hearings stage, therefore, the nearest equivalent zone should be assessed by referring to the zone descriptions in the NP Standard and comparing them to the RLZ description, objectives and policies. In which case, the RLZ in the pWDP is equivalent to the General Rural Zone descriptor in the NP Standard.
- 14 I disagree with the memorandum of counsel on behalf of the Canterbury Regional Council⁶ at paragraph 9 that there would only be a policy gap. If the Panel does not address the RLZ to the nearest equivalent zone now, HPL will be irretrievably lost. The wide nature of the RLZ

⁴ Introduction to the General Objectives and Policies for all Rural Zones.

⁵ NPS-HPL Guide to implementation, page 14.

⁶ Memorandum of counsel on behalf of the Canterbury Regional Council, 10 August 2023.

area in the Waimakariri District will mean a considerably large area of HPL will not be mapped. It cannot be the intention to exclude such a significant area of the District simply because of a name a zone has been given rather than looking at the correct equivalent standard. Determination at PC31 hearing will form a precedent for the avoidance of HPL being lost through the zone.

- 15 If a face value interpretation is being used in the interpretation of RLZ, then Council has rezoned HPL which is to be avoided by Policy 6 in the NPS-HPL and therefore has not given effect to NPS-HPL which will need to be reconciled in this process as well as the DPR.
- 16 The NPS-HPL does not prevent rezoning, any rezoning just needs to meet the requirements of the NPS-HPL.

Dated 15 August 2023



L D Scully

Solicitor for Janet Hadfield