

BEFORE THE WAIMAKARIRI DISTRICT PLAN REVIEW HEARINGS PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Waimakariri District Plan
Hearing Stream 6 (Rural)

SYNOPSIS OF LEGAL SUBMISSIONS FOR RICHARD AND GEOFF SPARK

(Submission No. 183)

(NPS-HPL Issue)

Dated 2 October 2023

MAY IT PLEASE THE PANEL

Introduction

1. These submissions are on behalf of Richard and Geoff Spark (Submission ID 183) (**the Submitter**).
2. The Submitter lodged primary submissions on both the Proposed District Plan (**PDP**) and Variation 1 to that Plan. The submissions primarily seek the rezoning of approximately 57.5 hectares of land in South East Rangiora for urban residential purposes.
3. The Submitter's further submission opposed a number of the submissions which sought greater policy restrictions on the use of HPL/Class 1 – 3 soil.¹

Context

4. Figure 4 of Ms Aston's evidence illustrates the land to be rezoned and the context is addressed in paragraphs [17] – [19] of that evidence.
5. Mr Ivan Thomson provided a statement of evidence on the Strategic Directions chapter.² This again describes the context. That evidence identified the site has two planning units: that which is north of Boys Road and is identified for future residential development in the CRPS and the PDP; and that south of Boys Road which is not so identified. That land is zoned RLZ.
6. The merits of the rezoning sought are of course not for consideration in this hearing stream. The rezoning submissions will be heard as part of Hearing Stream 12. It is anticipated that process will involve comprehensive submissions and evidence. It is that process which will ultimately determine the appropriate zoning for the site.

Submissions

7. In light of the above, the evidence in this hearing stream, and these submissions, are brief. In essence, the Submitter agrees with the officer's position and opinion in both the earlier memorandum,³ and the officer's report⁴ that the "interim requirement" does not apply where land, as of 17 October 2022, has been identified for future urban

¹ Richard & Geoff Spark Further Submission dated 21 November 2022: Environment Canterbury; Horticulture NZ; Federated Farmers; NZ Pork; Kainga Ora; Christchurch City Council; CSI Properties

² Statement of Evidence of Ivan Thomson on behalf of Richard and Geoff Spark (ID183) dated 28 April 2023

³ Memorandum of 30 June 2023 at paras [19] and [21]

⁴ Section 42A Report prepared by Mark Buckley dated 8 September 2023 at para [805]

development, or was subject to a Council initiated or adopted notified plan change to rezone from general rural or rural production to urban or rural lifestyle.

Reasoning

8. The NPS-HPL came into force on 17 October 2022 (**the commencement date**). It provides a policy framework for the protection of highly productive land (**HPL**).

9. Clause 3.4 addresses mapping. It provides, relevantly:

(1) *Every regional council must map as highly productive land any land in its region that:*

(a) *is in a general rural zone or rural production zone; and*

(b) *is predominantly LUC 1, 2, or 3 land; and*

(c) *forms a large and geographically cohesive area.*

(2) *However, despite anything else in this clause, land that, at the commencement date, is identified for future urban development must not be mapped as highly productive land.*

10. Clause 3.5 sets out the provisions relating to identifying HPL in regional policy statements and district plans. 3.5(7) addresses the interim or transitional period before mapping and associated changes to statutory documents are completed.

11. This provides, relevantly:

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:

(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.*

12. Land identified for future urban development pursuant to 3.4(2) must not be mapped as highly productive land.

13. Land within the RLZ, at the commencement date, was clearly subject to a *Council initiated, or adopted, notified plan change* to rezone it to rural lifestyle.
14. The officer's position that the plan review is a plan change⁵ is clearly correct. It would be a nonsense to find otherwise.
15. In *Balmoral Developments ((Outram) Ltd*,⁶ which concerned appeals on the second generation Dunedin City Plan (2GP), the Court addressed, as a preliminary matter, whether the NPS-HPL applied to the Court's consideration of the appeals, and particularly when the sites under appeal met the exemption under clause 3.5(7)(b) of the NPS-HPL.
16. The decision ultimately determined that the NPS-HPL was relevant as the land did not come within the exemptions in clause 3.5(7)(b) of the NPS-HPL. However the case provides a helpful discussion in relation to what is a plan change. The Court recorded that there was no definition of 'plan change' in the NPS-HPL but that reference can be made to the terms defined in the RMA as follows:
 - (a) 'Plan' is defined as meaning: "... a regional plan or a district plan";
 - (b) 'District plan' is in turn defined as: "... an operative plan approved by a territorial authority under Schedule 1 ...";
 - (c) 'Change' is defined as meaning: "a change proposed by a local authority to a policy statement or plan under clause 2 of Schedule 1 ..."; and
 - (d) 'Proposed plan' is defined as meaning: "... a proposed plan, a variation to a proposed plan or change, or a change to a proposed plan by a local authority that has been notified under clause 5 of Schedule 1 or given limited notification under clause 5A of that schedule, but has not become operative in terms of clause 20 of that schedule; and ...".
17. The Court stated the following:⁷

The commencement date of the NPS-HPL is the relevant point in time for considering whether the cl 3.5(7)(b) exemption applies to the outstanding appeals.
18. It is submitted that the PDP is clearly a *Council initiated ... notified plan change*. Section 43AA, in my view, makes that clear.

⁵ Memorandum of 30 June 2023 at para [19]

⁶ *Balmoral Developments ((Outram) Ltd & Ors v Dunedin City Council* Decision No [2023] NZEnvC 59

⁷ At para [78]

19. While the PDP was prepared and notified prior to the commencement date of the NPS-HPL, in my submission, clause 3.5(7)(b) (i) and (ii) are focused directly on a timing sequence such as has arisen.
20. While noting that it does not have any statutory force, the Ministry for the Environment's NPS-HPL Guide to Implementation, provides a useful explanation as to why this is. This provides:

Clause 3.5(7)(b)(ii) is intended to exclude land from the transitional definition of HPL if there is a council-initiated, or adopted, notified plan change to rezone the land to either an urban zone ... or to a rural lifestyle zone. If a territorial authority has progressed a plan change to rezone rural land to urban and this has already been notified, then the NPS-HPL does not undermine the work undertaken by the territorial authorities and their communities to get to this point in the process.

21. It is clear from the officer's report, s32 report and the various documents attached to it, including those relating to the legal effect decision for the General Rural Zone rules, that the Council has fully assessed matters.
22. It is also clear that the Council has adopted, as it is required to do, the zonings from Standard 8 (Zone Framework Standard) of the National Planning Standards 2019. The PDP clearly applies the National Planning Standards.
23. The Council clearly recognised that the minimum lot size proposed would impact on the productive potential of the land and clearly differentiated the RLZ from the GRUZ with its 20 hectare minimum lot size, while retaining the 4 hectare minimum in the RLZ.

Conclusion

24. The provisions of clause 3.5(7)(b)(i) and (ii) purposely exempt from the interim definition of highly productive land, land that is subject to a Council initiated plan change to rezone it to Rural Lifestyle at the commencement date. In the interim, until the mapping is completed and operative, the land in the Rural Lifestyle Zone is not highly productive land.
25. Clause 3.4(2) is highly directive. Land identified for future urban development must not (my emphasis) be mapped as highly productive land.
26. Land which, at the commencement date, is subject to WDC's initiated and notified plan change to rezone from rural to rural lifestyle is exempted from the interim definition of highly productive land.

27. In my submission, this issue is straightforward. The NPS-HPL provides a clear and directive exclusion. WDC purposely considered and adopted the RLZ zoning from the National Planning Standards, as it is required to do. The outcome is precisely that anticipated by, and provided for, within the NPS-HPL.

Dated this 2nd day of October 2023

A handwritten signature in blue ink, appearing to read "D C Caldwell", is written over a horizontal line.

D C Caldwell

Counsel for Richard and Geoff Spark