

**Before the Hearings Panel
At Waimakariri District Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Waimakariri District Plan

Between **Various**

Submitters

And **Waimakariri District Council**

Respondent

**Council Officer's Preliminary Response to written questions on Subdivision
Rural on behalf of Waimakariri District Council**

Date: 15 April 2024

INTRODUCTION:

- 1 My full name is Mark Thomas Buckley. I am employed as a Principal Policy Planner for Waimakariri District Council. I am the Reporting Officer for Subdivision Rural topic and prepared the s42A Report.
- 2 I have read the evidence and tabled statements provided by submitters relevant to the Section 42A Report – Subdivision Rural.
- 3 I have prepared this Council reply on behalf of the Waimakariri District Council (**Council**) in respect of matters raised through Hearing Streams 1 and 6.
- 4 Specifically, this statement of evidence relates to the matters in the Section 42A Report – Subdivision Rural.
- 5 In preparing these preliminary question responses, I note that I have not considered any of the hearing evidence presented to the panel at the hearing.
- 6 I am authorised to provide this evidence on behalf of the District Council.
- 7 I note that I am not recommending any changes to Subdivision Chapter I have not included an updated Appendix A.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

- 8 Appendix D of my section 42A report sets out my qualifications and experience.
- 9 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023.

ANSWERS TO QUESTIONS POSED BY THE PANEL

Paragraph or Plan reference	Question
Para 87	Could the ability to construct a new minor residential unit not be restricted by the plan rules in these circumstances? With that issue addressed, what are the additional environmental effects of creating a new

Paragraph or Plan reference	Question
	<p align="center">boundary around existing dwelling? Is s7(b) not relevant here?</p>
	<p>The response in paragraph [87] addresses the issue of creation of undersized lots within the rural environment, where surplus farm houses or minor residential units that are not required are subdivided off. While I can understand this may be an issue for those GRUZ properties less than 40ha, it will not be an issue for larger properties above 40ha as GRUZ-R3(1) enables residential units where there is a subdividable area of 20ha.</p> <p>The Operative Plan required that minor residential units be located within 30m of the main dwelling, with the intent that they share services such as driveways, septic tanks and water supply connections. This ensured that minor residential dwellings were tied into the primary dwelling. With removal of the 30m siting restriction, minor residential dwellings could be located anywhere on the property, making it more attractive to subdivide off should there be a change in circumstances.</p> <p>Environment effects associated with increased subdivision within the Rural Zones include reverse sensitivity effects on primary production which has been discussed in Section 3.21 of the Rural Zones Officer Report. Other environmental effects associated with the subdivision of existing minor residential units would be an increase in vehicle access points onto rural roads, and potential increase in the number of structures, affecting character and amenity values of the zone.</p> <p>While Section 7(b) RMA natural and physical resources includes structures, the ability to subdivide surplus houses from a rural property does not preclude its ability to be used for primary production.</p>
<p>Para 96</p>	<p align="center">Please provide an assessment to tie into your recommendation to reject the McAlpines submission point.</p>
	<p>Any reverse sensitivity effects are likely to occur with the establishment of a sensitive activity within the land identified by the Proposed McAlpine Noise Contour. Reverse sensitivity effects were addressed in the Rural Zones and Noise Right of Reply with respect to sensitive activities. The subdivision of land by itself is not a sensitive activity, it is the subsequent land use component that subdivision facilitates that enables sensitive activities to become established. Despite this, as with other provisions in the Subdivision Chapter, subdivision within the district commonly includes the construction of residential dwellings.</p> <p>With respect to whether McAlpine has the scope to include amendments or new subdivision standards to constrain development on adjoining land the following points have been considered:</p> <ul style="list-style-type: none"> • The potential that McAlpines has an existing use right has not been tested as there is insufficient evidence to demonstrate that the noise

Paragraph or Plan reference	Question
	<p>generated at the establishment of the plant is the same as that which occurs now,</p> <ul style="list-style-type: none"> • If the sawmill met the existing noise limits in Table NOISE-2 then there may not be a reverse sensitivity effect, if they don't then there potential for an effect to arise despite them being in non-compliance with the noise limit, • I agree with Mc Manhire that there is no scope in the noise submission to include a noise contour within the Proposed Plan as part of their original submission, • I do not consider that there is sufficient scope within their submission to include a specific rule for the McAlpine site and adjacent land to constrain development of the property at No 42 Townsend Road.
<p>Para 109</p>	<p>Does the current subdivision policy framework adequately address Policy 7 and clause 3.8 of the NPS-HPL? If not, does the Federated Farmers submission provide scope?</p>
	<p>While Policy 7 NPS-HPL is not captured in SUB-O1, it is captured in SD-O4, which should be read in conjunction with SUB-O1. Policy 7 is only applicable to the GRUZ zone rather than across all other zones.</p> <p>Clause 3.8 of the NPS-HPL include a list of exemptions where subdivision can occur on highly productive land. The inclusion of Federated Farmers addition to SUB-O1 would be inconsistent with those exemptions listed in Clause 3.8, as it would apply across all subdivision, including those within the RLZ, Commercial, Industrial, and Residential Zones. Given my view that the NPS-HPL only applies to the GRUZ within the district, it is more appropriate that any consideration of HPL is in the Rural Zones objectives and policies, such as the amended RURZ-O1(3), RURZ-P2(2)(a), and GRUZ-P2(6).</p> <p>While I consider the Federated Farmers submission [414.206] does have the scope to include Policy 7 within SUB-O1, I do not consider that it is necessary as the issue is appropriately addressed in RURZ and GRUZ chapters.</p>
<p>Para 122</p>	<p>You state that “Policy SUB-P1 is intended to provide guidance on design and amenity for subdivisions and is not intended to control reverse sensitivity.”</p> <p>If that is correct, then is clause 2 in the wrong policy, i.e. “2. Minimises reverse sensitivity effects on infrastructure”?</p>

Paragraph or Plan reference	Question
	<p>Having read the question I do consider that SUB-P1 does provide policy direction to 'minimise' reverse sensitivity effects, which is given effect to by way of SUB-R6.</p>
<p>Para 129</p>	<p>Para 129 partly answers the question posed above (i.e. on para 122).</p> <p>It appears you have supported clause 2 because it relates specifically to protecting infrastructure and the National Grid from the effects of reverse sensitivity, and that expanding this clause is not necessary as wider consideration of reverse sensitivity effects is provided in the SD and UFD chapters. However, the E&I Chapter similarly provides consideration of reverse sensitivity effects on infrastructure (EI-P6), and so why have you recommended that it is only reverse sensitivity effects on infrastructure that require inclusion in the SUB chapter.</p> <p>Can you please assist the Panel to rationalise why the SUB chapter should contain a provision on reverse sensitivity but only for protecting infrastructure and the National Grid.</p>
	<p>The intent of SUB-P1 is to ensure that consideration is given to a range of matters in subdivision design. While subdivision under the National Grid Subdivision Corridor is controlled through rule SUB-R6, the policy link is in SUB-P1(2), SD-O3(2)(b)(ii) and EI-P6(2)(b). In designing a subdivision, consideration should be given to the layout of the lots to ensure that sensitive activities, which may cause reverse sensitivity effects, are able to be located on a site that ensures that the subdivision is effective. This would prevent a lot being created that cannot be used due to its size or design or proximity to infrastructure where adverse reverse sensitivity effects may arise. Given the inter-relatedness of the various design matters in SUB-P1, I consider that it would be more effective to continue to include clause 2.</p> <p>With regards to other reverse sensitivity matters my opinion is that these should be considered under the appropriate zone policies, in contrast to the National Grid Subdivision Corridor assessment which is likely to be more uniform.</p> <p>I note that Ms McClung has made amendments to SUB-P1.</p>
<p>Para 163</p>	<p>The Panel is confused. The Federated Farmers submission point talks to SUB-P8 – Subdivision to create a bonus allotment; however, this policy relates to infrastructure. Are you able to provide context.</p>

Paragraph or Plan reference	Question
	<p>The Federated Farmers submission states:</p> <p><i>“Support in part as the submitter has already noted that incentives to create additional allotment on where Significant Natural Areas (SNA) are created is unfair to people who do not subdivide. Support for SUB-P8 is limited to the incentives package requested the significant indigenous biodiversity chapter for SNAs.”</i></p> <p>It is my understanding the submission looked at the link between ECO-R5 bonus allotment and the reference in that rule to SUB-R8, and not SUB-P8. This is the reason why para [164] addresses the issue relating to bonus allotments and residential units.</p>
<p>Paras 176 and 183</p>	<p>We are unclear on why the Rural Subdivision report is addressing a submission point specific to residential subdivision, given the commentary in both s42A reports of their scope. Does the author of the Residential Subdivision s42A report agree with your assessment and recommendation?</p> <p>You refer to policies SUB-P2(1) and SUB-P5 providing flexibility. How does SUB-P5 provide this flexibility, when it says “while achieving minimum residential site sizes that are no smaller than specified for the zone”? Is this not an absolute?</p>
	<p>The other submissions requesting new policies relate to the rural environment or natural hazards. Given that the s42A Subdivision Urban reporting officer was responsible for the Hort NZ submission and has a declared conflict, it was decided that all new policy submissions would be addressed it the s42A Subdivision Rural officers report. The substance of the submission and the response was discussed with the s42A Subdivision Urban reporting officer.</p> <p>SUB-P5 enables a range of site sizes that are larger than the minimum residential site size, this policy does not specify a maximum site size. While there is an overall average of 15 households per hectare for areas subject to an ODP (SUB-S3), this does not apply to existing residential development that do not require an ODP. The average household requirement can be achieved with terrace housing or multi-unit residential developments in the Medium Density Residential Zone as notified under the Proposed Plan.</p>
<p>Para 180</p>	<p>You refer to a new policy being proposed. What is the new policy proposed?</p>
	<p>This should read ‘a new clause in the policy is proposed’. The reference to the new policy is the new clause (6) added to GRUZ-P2.</p>

Paragraph or Plan reference	Question
Para 203	<p>You say SUB-R1 provides for boundary adjustments when they meet the minimum lot size for the zone. Is that correct? SUB-S1 does not seem to apply to SUB-R1.</p> <p>And why do the properties need to comply with minimum lot size to use this mechanism? Boundary adjustments are often used to address a range of issues/constraints around the practical use of land rather than facilitating new development.</p>
<p>My report was drafted before Ms McClung’s report was finalised, we had discussed her proposed change that SUB-R1 be amended to include SUB-S1, and I agree with Ms McClung’s recommendation to amend SUB-R1.¹ I acknowledge that my report will need updating.</p> <p>While I agree boundary adjustments are often used to resolve minor boundary matters/ to resolve issues and constraints. However, in my opinion the term ‘boundary adjustments’ can, if not defined include larger adjustments to boundaries or a rearrangement of multiple titles where new lots are not being created. Council has had a recent resource consent applications² granted by a commissioner that created two undersized rural lots within the GRUZ zone, as a boundary adjustment, where the amalgamated lots met the minimum standards given the existing title arrangement, as those proposals were not considered subdivisions. In those circumstances boundary adjustments may facilitate new development. In my opinion boundary adjustments are still subdivisions and therefore could be captured SUB-R2, however, I do not consider there is scope to delete SUB-R1.</p>	
Para 209 - 215	<p>Not all subdivision is for the purpose of establishing a building platform. If no building platform is required, the subdivision appears to be a non-complying activity. Is that appropriate?</p>
<p>SUB-R3 amongst other matters deals with subdivision within the liquefaction overlay. I acknowledge that not all subdivision will involve the construction of a building within the Liquefaction Overlay; where it does, then a building platform should be identified where it aligns with geotechnical investigations. The reasoning behind this provision is that any large-scale residential subdivision should provide liquefaction mitigation at the time of development and earthworks given the potential technical complexity and high-cost implications. Such mitigation may not be affordable to property owners once the section has been sold f not undertaken by the developer.</p>	

¹ Section 3.16.2

² RC225164 and RC225283

Paragraph or Plan reference	Question
	<p>For context, my understanding that the Operative Plan requires building platforms to be identified on a subdivision plan to determine that a dwelling, if otherwise not permitted could be built on the site (unless the consent application identified that subdivision was for another purpose). The purpose of such a platform is to ensure that activities that may permitted can occur on the site, particularly as the purpose of many rural subdivisions is to include provision for dwelling development.</p> <p>A potential issue could occur where land is subdivided and is not intended to be built on i.e. stormwater reserves, esplanade reserves, and parks. In trying to balance when liquefaction investigations and mitigation are undertaken for large scale land development, against the liquefaction risk when no natural hazard sensitive activities are proposed for the subdivision.</p> <p>However, the issue is that someone at the time of subdivision could say no building is contemplated, in order to get subdivision consent to sell off some land, but the new owner could well intend to build on it with no prior consideration of hazard mitigation at subdivision stage. I have taken advice from the Council's Consents Manager who has advised that it is standard custom and practice for surveyors to include theoretical building platforms within consent applications, and consequently not showing building platforms does not commonly result in a change to the activity status of the application.</p>
<p>Para 223</p>	<p>It is assumed that this will apply to an allotment that will contain land that is both within and outside the corridor. If the platform is outside the corridor, why can the subdivision not be a controlled activity?</p> <p>And this rule would also appear to have the same issue as SUB-R3 and R4 where the subdivision does not need to identify a building platform.</p>
	<p>While building platforms need to be identified with any subdivision application, there are other activities that may impact upon the network utility operator's ability to maintain, repair and upgrade the electricity transmission lines. Having a RDIS consent application will enable consideration of activities that are proposed on the property that may impact their operation, such as, fences, earthworks, trees, structures.</p> <p>While a subdivision can include land both inside and outside of a National Grid Subdivision Corridor, where a sensitive activity, such as a residential unit, is proposed then it would be appropriate to identify where a building platform is to be located. Where this is not done, there is a potential that a subdivided lot could be wholly within the National Grid Subdivision Corridor and not be able to be safely built on.</p>

Paragraph or Plan reference	Question
Para 240	What is the intended process to remove the rule once the plan is operative?
<p>The s42A report author acknowledges there is risk that should the Hearings Panel accept the recommendation to delete the rule while there is an appeal on the SUB-Table 1 that undersized rural subdivision could occur contrary to the intent of the Proposed Plan. On this basis I recommend that submission point [367.4] is rejected. The duplicate rule can be removed in any subsequent plan change after any appeals on the Proposed Plan are settled.</p>	
Para 284	How would allowing development under 4ha be inconsistent with the NPS-HPL, when you have said previously that the NPS-HPL does not apply to the RLZ?
<p>Subdivision below 4ha within the RLZ would not be inconsistent with the NPS-HPL. While 4ha properties may have limited primary production potential, subdivision of those properties would greatly reduce any residual primary production potential, increase potential reverse sensitivity effects on existing primary production activities and be inconsistent with the objectives and policies within the Proposed Plan.</p>	
Para 294	Again, in the Panel's experience not all rural allotments are created to accommodate a building, particularly on the larger, extensively grazed properties. For example, subdivision could be created for sale to production forestry companies, or for sale to neighbouring property owners. By not showing a building platform, the subdivision becomes non-complying. There are simple mechanisms available to restrict buildings on allotments that have not been created for them at the original subdivision. Is there scope to address this issue?
<p>SUB-S2 requires the identification of a building platform and disposal area associated with a new allotment in a rural environment. While there may be circumstances where the subdivision of rural land may not result in the construction of a dwelling, the district has very few rural subdivisions that do not result in a new residential dwelling. Despite this there may be situations where this can occur. I agree that there are mechanisms to restrict buildings however these mechanisms are sometimes difficult to resolve where later land use changes.</p>	

Paragraph or Plan reference	Question
Para 309	<p>You state that <i>“New subdivisions will be required to meet TRANS-S5”</i>. Is there any merit in including a cross reference in SUB-S6 to TRANS-S5 so that readers of the Plan are aware that there are additional access rules (i.e. additional to SUB-S6) that will be relevant?</p>
<p>Yes there is potential merit however the introduction to the chapter does already direct plan users that other chapters that may be relevant including the Transport Chapter specifically.</p>	
Para 327 & 330	<p>The Panel questions whether it is necessary to add this Advice Note as it will be a matter of common law that a subdivider cannot expect to connect to a State Highway drain without the prior approval of Waka Kotahi, and Council will in any event not grant a subdivision approval unless it connects to a drain that the Council as consent authority is satisfied is in fact a public drain?</p> <p>Rather than including an Advice Note, would you consider it may be more efficient to simply add in the word “an available” before “public drain”, i.e.</p> <p>1. Any new allotment in Rural Zones shall connect to an available public drain</p>
<p>The suggestion does have some merit, however, would potentially not resolve what makes the drain ‘available’. The advice note does attempt to clarify how public drains are generally defined, noting that it is not a defined term in the plan</p>	
Para 340	<p>How does SUB-MCD5 require an assessment under the natural hazards chapter?</p>
<p>While natural hazards may not necessarily be considered an issue for a boundary adjustment, other subdivision applications where they are located within a liquefaction overlay, flood hazard area, within a fault awareness or fault avoidance overlay will require consideration of natural hazards. Where this involves the construction of a natural hazard sensitive activity, then consideration is given to the natural hazards rules and policies.</p>	
Para 373	<p>Please articulate how Hort NZ’s concerns are addressed through SUB-MCD10, if you say that it does not address the effects on HPL and versatile soils?</p> <p>It would appear that the Hort NZ submission has incorrectly referred to SUB-MCD10 when discussing ‘productive potential of rural resources’. This submission point does, however, refer to ‘Subdivision</p>

Paragraph or Plan reference	Question
	<p>Design', which is dealt with in SUB-MCD2. Do you consider there is scope to address the issue in that provision?</p>
	<p>In my opinion SUB-MCD10 addresses the substantive part of the submission with respect to reverse sensitivity. As detailed in para [373] of the s42A Subdivision Rural officers report Hort NZ's concerns [295.100] is also addressed elsewhere in the Proposed Plan (UFD-P10(2) and RURZ-P8(1)).</p> <p>Consideration of "potential reverse sensitivity effects with rural production" is a concept difficult to quantify. Impacts on rural production potential can arise from matters that are outside of the scope of neighbouring land use i.e. climate change, social, local and export markets and government policy³. Some neighbouring land use activities such as land prices can be considered as having a positive and negative effect upon rural production. Hort NZs submission does not clarify how reverse sensitivity effects from residential development impacts upon rural production.</p> <p>The impacts of subdivision on HPL and versatile soils are discussed in section 3.20 of the s42A Rural Zones officer report.</p>
<p>Para 385</p>	<p>Are the matters traversed in this requested amendment covered by the matter of discretion? If so, how?</p>
	<p>The intent of the Kainga Ora [325.188] proposed amendment No 10 requests a new provision which "...extent to which reasonably possible, manage activities to avoid reverse sensitivity effects..." is already addressed in SUB-MCD11(2), (3) and (4), which addresses the effects of subdivision, buildings, structures and earthworks have the potential to impact the ongoing efficient operation, maintenance, development and upgrade of the National Grid.</p> <p>While Policy 10 of the NPSET uses the term "avoid" and "reasonably possible manage" the intent is reasonably clear, in that decision makers must manage activities to avoid reverse sensitivity effects on the transmission infrastructure. This is done in the Proposed Plan by making subdivision non-compliant where there is a building platform in the National Grid Subdivision Corridor.</p>

Date: 12/4/2024

³ Lopez, R. A. Adelaja A.O. and Andrews M. S., 1988. The effects of suburbanisation on Agriculture. American Journal of Agricultural Economic, Vol 70, No. 2, pp. 346-358.
 Becker V. et al, 2020. The impacts of urbanisation on agricultural dynamics: a case study in Belgium. Journal of Land Use Science, Vol 15, No. 5 pp. 626-643.
 Wadduwage S, 2021. Drivers of peri-urban farmers' land-use decisions: an analysis of factors and characteristics. Journal of Land Use Science, Vol. 16, No. 3, pp. 273-290.

ms ally

.....