

Before the Independent Hearings Panel
at Waimakariri District Council

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions to the Proposed
Waimakariri District Plan and submissions and further
submissions on Variations 1 and 2 to the Proposed
Waimakariri District Plan

and: **Rolleston Industrial Developments Limited**
Submitter 160 and 326; Submitter 60 in Variation 1

and: **Carter Group Property Limited**
Submitter 237

Legal submissions on behalf of Rolleston Industrial Developments
Limited and Carter Group Limited regarding Hearing Stream 6:
Rural Zones

Dated: 2 October 2023

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LEGAL SUBMISSIONS ON BEHALF OF ROLLESTON INDUSTRIAL DEVELOPMENTS LIMITED AND CARTER GROUP LIMITED REGARDING HEARING STREAM 6: RURAL ZONES

INTRODUCTION

- 1 These legal submissions are filed on behalf of Rolleston Industrial Developments Limited and Carter Group Limited (*Submitters*) in response to Minute 7 of the Panel which provides submitters with an opportunity to comment on the Council's position that the National Policy Statement for Highly Productive Land 2022 (*NPS-HPL*) does not apply to the notified Rural Lifestyle Zone (*RLZ*) in the Proposed Waimakariri District Plan (*Proposed Plan*).

THE COUNCIL'S POSITION

- 2 We understand the Council's position with respect to the RLZ to be:¹
 - 2.1 The NPS-HPL requires the Regional Council to identify and map highly productive land within three years of the commencement of the NPS-HPL. In the interim, clause 3.5.7 of the NPS-HPL defines highly productive land for the purposes of the NPS-HPL until the Regional Council mapping occurs.
 - 2.2 Based on the plain and ordinary wording of clause 3.5.7 of the NPS-HPL, the NPS-HPL would not apply to the RLZ.
 - 2.3 The notification of the RLZ in the Proposed Plan was made in advance of the NPS-HPL and therefore it was not decision cognisant of the final NPS-HPL. Despite this, the RLZ in the Proposed Plan was prepared under the RLZ descriptor in the National Planning Standards.
 - 2.4 Despite the NPS-HPL not applying to the RLZ, the RPS provisions related to versatile soils would still apply.
 - 2.5 A variation to the Proposed Plan is not required to give effect to the NPS-HPL unless the Regional Council mapping of highly productive land occurs in the meantime and includes RLZ land.

¹ As set out in the Memoranda to the Hearings Panel from Mark Buckley, Council's s42A Reporting Officer for Rural Zones, dated 30 June 2023 and 22 July 2023.

- 3 The Submitters agree with the Council’s position, and we elaborate on the reasons why in full below.
- 4 For completeness we advise that the Submitters have recently put forward the same argument in the hearing for private plan change 31 to the Operative Waimakariri District Plan (*Operative Plan*), where the Regional Council agreed with both the Submitters and the Council that the NPS-HPL does not apply to land notified as RLZ under the Proposed Plan. We understand the Regional Council is taking the same position for the Proposed Plan hearing.²

THE SUBMITTERS’ INTERPRETATION

- 5 The NPS-HPL came into force on 17 October 2022. It sets out a regime for the protection of highly productive land for use in land-based primary production, both for now and for future generations.³
- 6 In considering whether the NPS-HPL applies to any particular piece of land, it is necessary to first determine what is ‘highly productive land’ as defined in the NPS-HPL.
- 7 Clause 3.5 of the NPS-HPL deals with the identification of highly productive land. Regional councils are required to map highly productive land in their regional policy statements within three years of the NPS-HPL coming into force.⁴
- 8 In the interim period before mapping occurs, land is highly productive land for the purposes of the NPS-HPL if, at the NPS-HPL commencement date, it:

8.1 is:

- (a) *clause 3.5(7)(a)(i)* – zoned general rural or rural production; and
- (b) *clause 3.5(7)(a)(ii)* – LUC 1, 2 or 3 land; but

8.2 is not:

² Evidence of Serena Orr (Hearing Stream 6) on behalf of Canterbury Regional Council dated 25 September 2023, at Appendix 2.

³ NPS-HPL, policy 1.

⁴ NPS-HPL, clause 3.5(1).

- (a) *clause 3.5(7)(b)(i)* – identified for future urban development; or
 - (b) *clause 3.5(7)(b)(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.
- 9 At the NPS-HPL commencement date (being 17 October 2022), land zoned RLZ in the Proposed Plan generally:
- 9.1 was zoned Rural under the Operative Plan;
 - 9.2 was (where applicable) LUC 1, 2, or 3 land;
 - 9.3 was not identified for future urban development; **but**
 - 9.4 was subject to a Council initiated, or an adopted, notified plan change to rezone it to RLZ.

'Council initiated, or an adopted, notified plan change'

- 10 The Council notified its Proposed Plan on 18 September 2021.
- 11 Under the Proposed Plan, some land previously zoned rural was proposed to be zoned RLZ.
- 12 The NPS-HPL does not define a 'Council initiated, or an adopted, notified plan change' in clause 3.5(7)(b)(ii). However, section 43AA of the Resource Management Act 1991 (*RMA*) contains the following definitions:

change means

- (a) *a change proposed by a local authority to a policy statement or plan under clause 2 of Schedule 1, including an IPI notified in accordance with section 80F(1) or (2); and*
- (b) *a change proposed by any person to a policy statement or plan by a request under clause 21 of Schedule 1*

plan means a regional plan or a district plan

- 13 The Proposed Plan is plainly a 'Council initiated... notified plan change' for the purposes of clause 3.5(7)(b)(ii) of the NPS-HPL.

- 14 The rationale for land that is subject to a 'Council initiated, or an adopted, notified plan change' being excluded from the application of the NPS-HPL is set out in the Ministry for the Environment's NPS-HPL Guide to Implementation. The Guide explains:⁵

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 (defined in Clause 1.3(1) of the NPS-HPL) 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 territorial authorities and their communities to get to this point in the process.

- 15 The wording of clause 3.5(7) is clear that the NPS-HPL does not apply to land zoned RLZ in the Proposed Plan because that land is subject to a Council initiated notified plan change to rezone it from general rural to rural lifestyle.

Is it an issue that the Council may not have appreciated the implications of the NPS-HPL when it proposed to zone land RLZ in the Proposed Plan?

- 16 The fact the Council may not have appreciated whether the pending NPS-HPL would or would not apply when it proposed to zone land RLZ in the Proposed Plan is of no relevance to the interpretation of the NPS-HPL. As set out in paragraph 14 above, the very purpose of the clause 3.5(7) exception was to take into account those Councils who were already progressing rezonings without stopping them in their tracks.
- 17 Moreover, clause 1.3(4)(a) of the NPS-HPL states that a reference to a zone in the NPS-HPL is a reference to a zone as described in Standard 8 (Zone Framework Standard) of the National Planning Standards.
- 18 The Proposed Plan clearly applies the National Planning Standards and in particular the Zone Framework Standard. This required the Council to actively consider the list of zones and descriptions available in the National Planning Standards and choose the most appropriate name and descriptor for their zones. The Council made

⁵ Ministry for the Environment "National Policy Statement for Highly Productive Land: Guide to Implementation" (December 2022) ME 1726, p 17.

a decision that some of the rural land under the Operative Plan would best be described as RLZ under the Proposed Plan.

- 19 The RLZ is described in the National Planning Standards as follows:

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

- 20 This description of the RLZ is reflected throughout the provisions of the Proposed Plan.⁶

- 21 The Council was fully cognisant in notifying the RLZ that the new zoning would allow for a degree of urban development of land previously zoned rural. The Council was fully aware of the implications of this zoning (and the corresponding minimum lot size of 4 hectares) on the productive potential of land:

21.1 In its application to the Environment Court under section 86D of the RMA where the Council sought that certain rules relating to the General Rural Zone to be notified in the Proposed Plan have immediate legal effect:⁷

- (a) The Council advanced expert evidence from a farm consultant and agricultural specialist that:
- (i) The minimum productive land areas for different primary production systems within the Proposed Rural Zone ranged from 10 to 15ha up to 100ha.⁸
 - (ii) Small lifestyle properties (less than 8ha) are not usually capable of sustaining many rural production systems in the Proposed Rural Zone

⁶ How the Plan Works; Introduction to RLZ; RURZ-O1; and RLZ-P2.

⁷ The relevant information from this hearing has been included in appendices to the Rural Zones s 42A report.

⁸ Affidavit of Mr Gordon dated 13 July 2021 at [50]. Included as Appendix E to the Rural Zones s 42A report.

and will generally impact negatively on the rural production per hectare.⁹

(iii) On the other hand, an increase in minimum lot size to 20ha will generally provide sufficient size for land to be farmed in a manner that will maintain production and profitability and at the same time reduce the attractiveness of this land for lifestyle purposes.¹⁰

(b) The Council's evidence explained that the RLZ and General Rural Zone boundaries were determined on the basis of existing subdivision pressure, where the RLZ area comprises of the majority of the smaller lifestyle properties of the rural zone.¹¹

21.2 The above is also reflected in the Council's s 32 report for the Rural Zone for the Proposed Plan:¹²

"While the minimum land size required to maintain rural productivity is not solely determined by land area minimum scale is important to maintaining productive potential of land now and in the future. 4ha does not provide a property of a size that provides a range of longer term sustainable productive potential with a productive area (excluding buildings and curtilage areas) a minimum of between 10 to 15 - 100ha being needed for a range of productive activities."

"In the context of the Waimakariri District lots sized between 4-7.99ha do not typically sustain productive potential of land."

"Four hectares of land is not sufficient to provide for a range of primary productive activities."

⁹ Affidavit of Mr Gordon dated 13 July 2021 at [54]. Included as Appendix E to the Rural Zones s 42A report.

¹⁰ Affidavit of Mr Gordon dated 13 July 2021 at [48]. Included as Appendix E to the Rural Zones s 42A report.

¹¹ Affidavit of Ms Downie dated 12 July 2021. Included as Appendix E to the Rural Zones s 42A report.

¹² Proposed Waimakariri District Plan, Section 32 Report 'Rural' dated 18 September 2023 at 58, 41, and 66.

- 22 In summary, it is irrelevant that the Council when it notified the RLZ could not have appreciated that the pending NPS-HPL would not apply, as it clearly had already contemplated in its decision to notify the RLZ that the rural productive capacity of that land would be compromised by that zoning. This was justified given the area zoned RLZ in the Proposed Plan was already subdivided substantially into lots that could not sustain productive potential.
- 23 In addition, the situation in Waimakariri where the Council was already advancing rezoning of land in its Proposed Plan, was exactly the reason why the legislature included the exception in clause 3.5(7)(b)(ii) as it did not want to disrupt or reverse such processes.

CONCLUSION

- 24 Clause 3.5(7)(b)(ii) of the NPS-HPL expressly exempts from the definition of highly productive land, land that is subject to a council initiated notified plan change to rezone it to rural lifestyle as at the commencement date of the NPS-HPL.
- 25 The position is simple. The NPS-HPL provides a clear exclusion in the definition of highly productive land in the NPS-HPL.
- 26 The Council has implemented the National Planning Standards and notified an area of land as RLZ in the Proposed Plan. The NPS-HPL does not apply to the RLZ in the Proposed Plan.

Dated: 2 October 2023



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