

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

**IN THE MATTER OF**

The Resource Management Act 1991 (**RMA** or  
**the Act**)

**AND**

**IN THE MATTER OF**

Hearing of Submissions and Further  
Submissions on the Proposed Waimakariri  
District Plan (**PWDP** or **the Proposed Plan**)

**AND**

**IN THE MATTER OF**

Hearing of Submissions and Further  
Submissions on Variations 1 and 2 to the  
Proposed Waimakariri District Plan

**AND**

**IN THE MATTER OF**

Submissions and Further Submissions on the  
Proposed Waimakariri District Plan by Mark  
and Melissa Prosser and Mike Greer Homes  
NZ Ltd

**AND**

**IN THE MATTER OF**

**Hearing** of submissions on the Proposed  
Waimakariri District Plan and Variations 1 and  
2

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**LEGAL SUBMISSIONS IN RESPONSE TO COUNCIL MEMORANDUM REGARDING  
NATIONAL POLICY STATEMENT ON HIGHLY PRODUCTIVE LAND**

Dated: 2 October 2023

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## LEGAL SUBMISSIONS IN RESPONSE TO COUNCIL MEMORANDUM REGARDING NATIONAL POLICY STATEMENT ON HIGHLY PRODUCTIVE LAND

### INTRODUCTION

1. This memorandum is filed on behalf of submitters that have an interest in land zoned Rural Lifestyle Zone (**RLZ**) in the Proposed District Plan (**PDP**). The submitters' land is potentially affected by the National Policy Statement on Highly Productive Land (**NPS-HPL**).
2. On 30 June 2023 the Council filed a memorandum regarding the implications of the NPS-HPL. In response to a question from the Hearing Panel<sup>1</sup>, the Council filed a second memorandum on the NPS-HPL on 22 July 2023 (amended on 26 July 2023) (**Council memorandum**).
3. Minute 7 of the Hearing Panel advised that submitters with an interest in this matter will have an opportunity to comment on the Council memorandum in Hearing Stream 6.
4. The purpose of this memorandum is to provide comment on the Council memorandum on behalf of the following submitters (**submitters**):
  - (a) Mark and Melissa Prosser (submitter 224) who own land at Mandeville in the name of Ohoka Farm Holdings Ltd; and
  - (b) Mike Greer Homes NZ Ltd (submitter 332 on the PDP and submitter 13 on Variation 1) which has an interest in land at south Kaiapoi.
5. Mark and Melissa Prosser seek to rezone 73 ha of land that abuts the Mandeville urban area from RLZ to Large Lot Residential Zone. The subject land is detailed in **Figure 1** at **Appendix A**.
6. Mike Greer Homes NZ Ltd seeks to rezone 14 ha of land immediately south of the Kaiapoi urban area from RLZ to Medium Density Residential Zone. The subject land is detailed in **Figure 2** at **Appendix A**.

### NATIONAL POLICY STATEMENT FOR HIGHLY PRODUCTIVE LAND 2022

7. The NPS-HPL was introduced to ensure the availability of New Zealand's most favourable soils for food and fibre production, now and for future generations.

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<sup>1</sup> Minute 5 – Variation 1, Momentum, Rezonings and NPS-HPL at [15]

The policy statement provides direction to improve the way highly productive land (**HPL**) is managed under the Resource Management Act 1991 (**RMA**).

### **Highly productive land and the transitional definition at clause 3.5(7)**

8. Highly productive land (**HPL**) means land that has been mapped<sup>2</sup> and is included in an operative regional policy statement.<sup>3</sup>
9. Clause 3.5(7) provides a 'transitional definition' of what should be treated as HPL land before the maps are included in an operative regional policy statement as follows (underlining added):

**Clause 3.5.7** *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.*

### **APPLICATION OF THE NPS-HPL TO LAND ZONED RLZ IN THE PDP?**

10. The Council Memorandum records Mr Buckley's view that:<sup>4</sup>

*Under clause 3.5.7 the NPS-HPL provisions on highly productive land would not apply to the RLZ zone. My position is that based on the plain and ordinary wording of Clause 3.5.7, a district plan review is a plan change (or collection of changes) and that the notified Rural Lifestyle Zone is excluded from the NPS-HPL. Although it should be noted that in notifying this change, the Rural Lifestyle Zone in the PDP was made in advance of the NPS-HPL and therefore it was not decision cognisant of the final NPS-*

<sup>2</sup> In accordance with clause 3.4 NPS-HPL

<sup>3</sup> As required by clause 3.5 NPS-HPL

<sup>4</sup> Council memorandum at [8]

*HPL. Despite this, I note that the RLZ in the PDP was prepared under the rural lifestyle zone descriptor in the National Planning Standards.*

11. The submitters agree with the view expressed by Mr Buckley for the reasons detailed below.

**Council memo is consistent with the Guide to Implementation of the NPS-HPL**

12. The Ministry for the Environment has published a Guide to Implementation of the NPS-HPL (**MfE Guide**). The Guide addresses the purpose of clause 3.5(7)(b)(ii) as follows:

*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.<sup>5</sup>*

13. It's clear from the Guide and the wording of clause 3.5(7) that the exclusion of RLZ land from the transitional definition of HPL is deliberate.

**The PDP is a Council initiated notified plan change**

14. The NPS-HPL does not define the phrase underlined above in 3.5(7)(b)(ii) "Council initiated, or adopted, notified plan change". However section 43AA of the 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

15. Clause 2 of Schedule 1 deals with preparation of a proposed policy statement or plan. It follows that the PDP is a "Council initiated ...notified plan change" for the

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<sup>5</sup> National Policy Statement for Highly Productive Land: Guide to Implementation, at [17]

purposes of clause 3.5(7)(b)(ii). Accordingly, the exemption provided by this subclause applies to land notified as RLZ in the PDP.

### **The Council has aligned the PDP with the National Planning Standards**

16. It is also apparent that the Council has deliberately selected rural lifestyle zone as the most appropriate zone for the land identified in the PDP as RLZ, taking into account the three available definitions for rural land in the National Planning Standards (**NPS**).
17. The term "Rural Lifestyle" is not defined in the NPS-HPL. Instead the NPS-HPL states that a reference to a zone is a reference to a zone as described in Standard 8 (Zone Framework Standard) of the National Planning Standards 2019 (**NPS**).<sup>6</sup>
18. The purpose of the NPS is described as being to provide national consistency for the structure, form, definitions and electronic accessibility of Resource Management Act 1991 plans and policy statements to make them more efficient and easier to prepare and use.<sup>7</sup>
19. The NPS are prescriptive with respect to the Zone Framework Standard. The first mandatory direction provides that (underlining added):<sup>8</sup>

*A district plan, and a combined plan with a district plan component (for areas landward of mean high water springs), must only contain the zones listed in table 13 consistent with the description of those zones.*

20. Table 13 of the NPS defines rural lifestyle zone as follows:

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

21. As the Panel will be aware the PDP separates the rural part of the district into two parts; the western part is zoned General Rural Zone and the eastern part is zoned RLZ. The difference between the two zones is discussed in the section 32 report and the PDP itself.

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<sup>6</sup> National Planning Standards clause 1.3(4)

<sup>7</sup> Ministry for the environment website on National Planning Standards

<sup>8</sup> Supra at Section 8 – Zone Framework Standard

22. The section 32 report for the Rural Zones of the PDP discusses the difference in character between the east and west of the district as follows (underlying added):

*The objectives recognise that the predominant character is different between the east of the district and the west. While there are a number of smaller lots within both areas the overall character of the western area of the District is larger lots*

*The objectives recognise and address the importance of the rural areas of the District both as a lifestyle choice location but also as a working and productive environment on which a large proportion of the District's population is reliant on.*

*Given this, the approach is to recognise the more dominant lifestyle character in the east of the District, but also provide for a range of rural activities and activities reliant on a rural environment within this zone.*

*Within the western part of the District, greater emphasis is placed on maintaining the potential for land to be used for a range of rural productive uses and retain larger site sizes while also providing for a range of activities reliant on the natural resources in the rural areas. The difference in these two zones is related to managing further fragmentation of land into small rural sizes. This is restricted in the General Rural Zone by Objective GRZ-O1, but recognised as being the dominant character within the Rural Lifestyle Zone in Objective RLZ-O1.*

23. This evaluation is given expression in the PDP at Part 1, Introduction and General Provisions, which states the following regarding zone names and descriptions (underlining added):

*The National Planning Standards provide the District Council with a suite of zones from which to select a zone type that best reflects an area's environmental characteristics... The zones used in the District Plan and their intended purpose are as follows:*

#### *Rural Zones*

*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.*

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

24. The zone definitions above are word-for-word the same as the definitions for General Rural Zone and Rural Lifestyle Zone in the NPS.
25. The zone descriptions in the rural zone chapter are similar and recognise the predominant character of the RLZ is derived from smaller sites and density of settlement pattern, as follows (underlining added):

*The key difference between the General Rural Zone and the Rural Lifestyle Zone is the density of residential units and subdivision that is enabled. This recognises the different predominant character that exists within the two zones. Provision is also made for activities that are compatible with the Rural Zones and do not detract from the function of other zones.*

*The Rural Lifestyle Zone, recognises that this area comprises the densest rural settlement pattern in the District. This rural area is defined by its fine grained pattern of settlement and human induced characteristics. The zone provisions retain the focus of the zone by providing for primary production activities and other rural activities, while recognising that the predominant character is derived from smaller sites.*

*The General Rural Zone, while containing a range of site sizes, has retained the prominent character of an open large scale productive landscape. The character is rural with open grassland, pastoral farming, horticulture and areas of forestry with an overall low intensity of built form throughout the zone. The zone provisions retain the focus of this zone being for primary production activities and other rural activities, while retaining the current open rural character. In response, the subdivision and residential unit density standards that apply within this zone are larger than those that apply in the Rural Lifestyle Zone.*

26. A similar distinction between the western and eastern rural parts of the district is expressed in rural objective RURZ-01 which provides as follows (underlining added):

*Rural Environment*

*An environment with a predominant land use character comprising primary production activities and natural environment values, where rural openness dominates over built form, while recognising:*

- 1. the east of the District has a predominant character of small rural sites with a pattern of built form of residential units and structures at more regular intervals at a low density compared to urban environments; and*

*2. the remainder of the District, while having a range in the size of rural sites, has a predominant character of larger rural sites with a corresponding density of residential units and built form.*

27. Although there are some differences in the descriptions used for RLZ within the PDP, the descriptions are broadly consistent with the NPS definition of RLZ and any differences are immaterial.
28. The PDP has been prepared in accordance with NPS conventions and the selection of rural zones is aligned with the NPS. In these circumstances the use of "rural lifestyle zones" in the PDP is not open to re-evaluation or interpretation, except insofar as permitted by a lawful submission on the PDP.

### **Interim protection of HPL via the transitional definition**

29. The NPS-HPL already contemplates and provides for the interim protection of HPL via the transitional definition of HPL. The MfE Guide states that:

*Until such time as HPL has been mapped as part of the regional policy statement and these maps have been made operative (mapping is covered in Part 2 of this guidance), the 'transitional definition' of HPL in Clause 3.5(7) applies.*

30. It is important to note that the transitional definition is of limited duration. The NPS-HPL requires regional councils to identify and map HPL and incorporate HPL into the Regional Policy Statement (**RPS**) in accordance with clause 3.4 of the NPS-HPL.
31. The provisional timetable included in the Council memorandum illustrates that this work is already underway and that the Canterbury Regional Council expects to notify a change to the RPS in December 2024. There appears to be no reason why this mapping exercise would prevent the Regional Council from including land as HPL in its mapping if it is decided that RLZ is inappropriate in some parts of the Waimakariri District.

### **Plan Change 31 and application of NPS-HPL to RLZ**

32. Plan Change 31 to the Waimakariri Operative District Plan is a private plan change request to rezone approximately 156 ha of rural zone land at Ohoka. The subject site is zoned RLZ under the PDP. Application of the NPS-HPL to the RLZ was traversed in considerable detail during the hearing of PC31.



33. In this regard, it is noteworthy that legal submissions for the applicant<sup>9</sup>, the Canterbury Regional Council<sup>10</sup>, and the Waimakariri District Council (as submitter on PC31)<sup>11</sup> were all in agreement on application of the NPS-HPL to land zoned RLZ in the PDP (i.e. that the NPS-HPL does not apply to RLZ). Further, planning evidence for the Waimakariri District Council (as consenting authority) also supported this approach as being the most defensible interpretation of the application of the NPS-HPL.<sup>12</sup>

### **Recent Environment Court decision**

34. Given the relative infancy of the NPS-HPL there is limited case law guidance on its application. In the recent decision of *Drinnan v Selwyn District Council*<sup>13</sup> the Environment Court considered a plan change request to the Selwyn Operative District Plan to rezone 2.2 ha for residential development on the outskirts of Prebbleton.
35. The issue in *Drinnan* was whether development of the land was precluded by the NPS-HPL. The Court considered (among other matters) whether the subject site was located in a rural lifestyle zone as defined by the National Planning Standards.
36. The factual context was quite different from the present case in two important respects. First, the Court needed to consider the Operative District Plan as well as the notified Selwyn Proposed District Plan. Because the Selwyn ODP did not implement the NPS, the Court was required to determine the nearest equivalent zone.<sup>14</sup> The Court concluded that the applicable equivalent zone was general rural zone.<sup>15</sup>

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<sup>9</sup> Opening legal submissions for the applicant at [117] – [137] and closing submissions for the applicant at [85] – [99]

<sup>10</sup> Legal submissions for the Canterbury Regional Council at [51] and Memorandum for the Canterbury Regional Council dated 10 August at [8]

<sup>11</sup> Legal submissions for the Waimakariri District Council at [34]

<sup>12</sup> Waimakariri District Council (as consenting authority) supplementary evidence of Andrew Willis dated 9 August 2023 at [39]

<sup>13</sup> *Drinnan v Selwyn District Council* [2023] NZEnvC 180 issued on 25 August 2023

<sup>14</sup> As required by NPS clause 1.3 Interpretation of “zone” at [4]

<sup>15</sup> *Drinnan v Selwyn District Council* at [110]

37. Further, the site was zoned rural zone under the Selwyn PDP. The Court concluded that the notified plan utilised the NPS zone labelling, and the notified plan did not include any rural lifestyle zone.<sup>16</sup>
38. The present case can be distinguished from the *Drinnan* decision because zoning of rural land under the ODP is irrelevant to application of the NPS-HPL when determining submissions on the PDP and, secondly, the PDP expressly adopts the rural lifestyle zone from the NPS. Consequently, the *Drinnan* decision is of limited assistance in this case.

Dated: 2 October 2023



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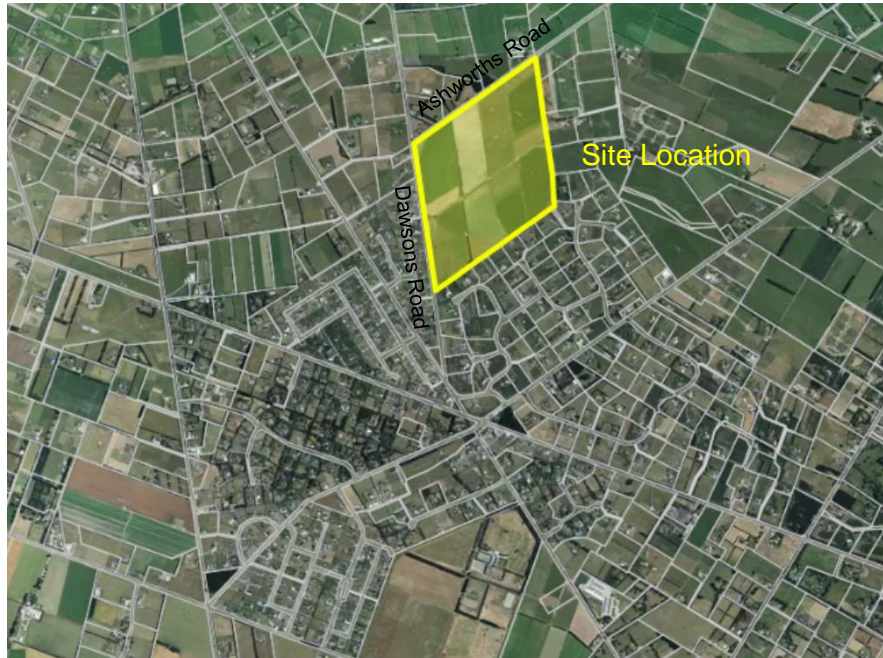
Chris Fowler  
Counsel for Mark and Melissa Prosser and Mike Greer Homes NZ Ltd

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<sup>16</sup> *Supra* at [107]

## APPENDIX A

## Site location plans



**Figure 1:** Land that is the subject of a submission by Mark and Melissa Prosser in the Rural Lifestyle Zone at Mandeville that abuts the Mandeville urban area



**Figure 2:** Land that is subject of the submissions by Mike Greer Homes NZ Ltd in the Rural Lifestyle Zone south of the Kaiapoi urban area