

29 June 2023

To

Mark Buckley
Waimakariri District Council
215 High Street
Rangiora 7400

Copy to

Matthew Bacon

From

Jenna Silcock
Cedric Carranceja

By Email

Dear Mark

Application of National Policy Statement for Highly Productive Land to the Large Lot Residential Zone Overlay

1. You have sought advice regarding the application of the National Policy Statement for Highly Productive Land (**NPS-HPL**) to the "Large Lot Residential Zone Overlay" (**LLRZ Overlay**) in the General Rural Zone in Proposed District Plan (**PDP**). Whether the NPS-HPL applies turns on whether the land within the LLRZ Overlay is properly classified as highly productive land (**HPL**).
2. We understand our advice is going to inform aspects of your memo to the Hearing Panel in response to Minute 4.¹
3. In summary, our view is that, notwithstanding available arguments to the contrary, land within the LLRZ Overlay is HPL for the purpose of the NPS-HPL such that the NPS-HPL is relevant to considering the PDP provisions for the LLRZ Overlay and submissions on the LLRZ Overlay or land within it. Our reasons are summarised below.
4. As discussed, we anticipate that there will be submitters who seek to argue that the NPS-HPL does not apply to the LLRZ Overlay. However, we prefer the view it does apply and accordingly, Council's s42A report(s) addressing the LLRZ Overlay should assess the relevant provisions of the NPS-HPL. Council can address any contrary arguments raised by submitters during the hearing process as required. We touch on potential arguments below and can provide further advice in response to submitter's positions if that would assist.

Background to the LLRZ Overlay

5. We set out our understanding of the salient background below.
6. The PDP proposes a Large Lot Residential Zone Overlay (**LLRZ Overlay**) in different parts of the Waimakariri District.

¹ Minute 4, Matters and questions arising from Hearing Streams 1 and 2, 23 May 2023 at paragraph (7).

7. The LLRZ Overlay is proposed to be located over land that is zoned "General Rural" and "Rural Lifestyle" in the PDP. , This advice only addresses the areas of LLRZ Overlay where the underlying zoning is "General Rural". We have summarised the relevant statutory interpretation principles in earlier advice and we do not repeat those here.
8. We understand the relevant areas are the LLRZ Overlays to the East and North of Oxford as shown on the map in **Appendix A (Oxford LLRZ Overlays)**.
9. You have advised that the Oxford LLRZ Overlays contain land which is Land Use Capability Class (LUC) 2 and 3 land.
10. The Waimakariri Rural Residential Development Strategy (**Strategy**) identifies and seeks to manage and enable growth locations for further rural residential development over a 10 year timeframe from 2019. The Strategy implements Policy 6.3.9 of the Canterbury Regional Policy Statement. The Strategy covers the Oxford area and the direction for growth in Oxford is identified in Figure 6 of the Strategy.² The Strategy confirms that the District Plan review will be the "*vehicle for implementation*"³ of rezoning for rural residential development.
11. The Strategy has been incorporated in the PDP through the identification of overlay areas where future large lot residential zones may be appropriate – being (relevantly) the LLRZ Overlay.
12. The section 32 report for the Rural Chapter of the PDP notes that:
 - (a) the LLRZ Overlay identifies land within the Rural Zones⁴ with "*the potential for land use change from rural use and zoning to future rural residential development in the form of a Large Lot Residential Zone.*"⁵
 - (b) "*Any change in zoning will need to occur by a different process other than the District Plan as notified and will need to be developed in accordance with an Outline Development Plan that is developed for the Overlay areas*";⁶ and
 - (c) "*until such time as a change in zoning occurs these areas are managed under the Rural Chapter*".⁷
13. The provisions of the PDP relevant to the LLRZ Overlay are UFD-P3, RESZ-P14, LLRZ-P5 and SUB-P6. There are no rules for the LLRZ Overlay. As such, the PDP says activities in the LLRZ Overlay can be assessed under Part 3: Area-Specific chapters and/or Part 2: District wide matters chapters.⁸
14. The PDP uses the National Planning Standard definitions for zones and the description of an overlay.⁹

² Figure 6 at page 16.

³ Waimakariri Rural Residential Development Strategy at page 4.

⁴ Being the General Rural and Rural Lifestyle zones.

⁵ Section 32 report, Whaitua Taiwhenua / Rural, Section 1, page 4.

⁶ Ibid at Section 5, page 35.

⁷ Ibid at Section 4, page 30.

⁸ PDP, Overview section, page 5.

⁹ See table showing relationship between spatial layers.

Highly productive land

15. As you know, the NPS-HPL only applies to land that is properly classified as highly productive land (HPL). The identification of HPL is provided for in clause 3.5 of the NPS-HPL.
16. As HPL has not yet been mapped in Canterbury in accordance clause 3.5(1) to (5) of the NPS-HPL, clause 3.5(7) is the operative interim definition of HPL. Clause 3.5(7) of the NPS-HPL provides:

"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."

[our underlining for emphasis]

17. The commencement date of the NPS-HPL was 17 October 2022.¹⁰
18. Clause 3.5(7)(b) provides exceptions for land that is prima facie considered HPL under clause 3.5(7)(a). Accordingly, land that satisfies sub-clause (a) will not be HPL if it is:
- (a) "identified for future urban development"; or
 - (b) "subject to a Council initiated, or adopted plan change to rezone from general rural or rural production to urban or rural lifestyle".
19. "Identified for future urban development" is defined in the NPS-HPL as:¹¹
- (a) *identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or*
 - (b) *identified:*
 - (i) *in a strategic planning document as an area suitable for commencing urban development over the next 10 years; and*
 - (ii) *at a level of detail that makes the boundaries of the area identifiable in practice.*

Is the LLRZ Overlay HPL?

20. We prefer the view that the Oxford LLRZ Overlay land is HPL and the NPS-HPL is relevant to the PDP provisions for that Overlay and submissions. Our reasons include:
- (a) As at 17 October 2022, the land beneath the Oxford LLRZ Overlay was zoned "General Rural" in the Operative Waimakariri District Plan. The PDP retains that zoning, with the

¹⁰ Clause 1.2(1) of the NPS-HPL.

¹¹ Clause 1.3 of the NPS-HPL.

additional spatial mapping of the Oxford LLRZ Overlays. In our view, the LLRZ Overlay is distinct from and does not change the underlying zoning. The NPS-HPL is concerned with zoning, not overlays (or precincts or development areas). The terms overlays, precincts and development areas are not used in the NPS-HPL¹² even though those terms were introduced by the National Planning Standards as spatial layers for District Plans prior to the commencement of the NPS-HPL. Accordingly, we consider clause 3.5(7)(a)(i) is satisfied.

- (b) You have advised the Ohoka LLRZ Overlays contain LUC 2 and 3 land so clause 3.5(7)(a)(ii) is also satisfied.
- (c) The exception in clause 3.5(7)(b)(i) does not, on balance, apply because the Oxford LLRZ Overlays are not "identified for future urban development" in terms of:
 - (i) Part (a) of the definition of "identified for future urban development" because the Strategy is not a Future Development Strategy (**FDS**) on Council's and our assessment. Even if it was a FDS, we have reservations about whether the Oxford LLRZ Overlay land was identified within the Strategy as being "*suitable for commencing urban development*" over the next 10 years. The MFE Guidance on Implementation of the NPS-HPL says that "*suitable*" "*should be based on whether the area has been clearly identified for urban development/rezoning in the short to medium term (up to 10 years). The intent is to ensure future urban development areas are only excluded from the NPS-HPL (transitional definition and mapping) when there is a high level of certainty the land will be developed for urban use in the next 10 years.*"¹³ There is room for different views on this point but we do not explore those further given our conclusion on the nature of the Strategy.
 - (ii) Part (b) of the definition of "identified for future urban development" because, while the Strategy is a strategic planning document, it only identifies the direction of growth not the "area" "*at a level of detail that makes the boundaries of the area identifiable in practice*".¹⁴
- (d) The exception in clause 3.5(7)(b)(ii) is not applicable either because the PDP does not rezone the land within the Oxford LLRZ Overlays. We have explained our view about the differences between a zone and an overlay in paragraph (a) above. We can foresee an argument that the Oxford LLRZ Overlays are "urban" (or possibly rural lifestyle) and captured by this exception. Such an argument would likely be premised on the basis clause 3.5(7)(b)(ii) uses the term "urban" not "urban zone" and the definition of "urban" in the NPS-

¹² Overlay and precinct are only referred to once in the Guide to implementation of the NPS-HPL, December 2022, by the Ministry for the Environment and in a different context. Development area (as defined in the National Planning Standards) is not referred to once.

¹³ The Ministry for the Environment's *Guidance to Implementation of the NPS-HPL* at page 15, under the heading "Interpreting clause 3.5(7)(b).

¹⁴ The Ministry for the Environment's *Guidance to Implementation of the NPS-HPL* says (at page 17):

For future urban development land identified in a strategic planning document to be excluded from the transitional definition of HPL, it must include mapping that is specific enough to identify the boundaries of the future urban area and know with certainty whether a particular parcel is included or excluded. Territorial authorities will need to make the assessment of whether the area is identified at a level of detail to meet the definition of 'identified for urban development' in the NPS-HPL based on their detailed knowledge and own strategic planning document.

HPL¹⁵ includes reference to "*large lot residential*". However, having regard to the context of clause 3.5(7) in particular and the fact the "*urban*" definition is specifically confined to "*as a description of a zone*" (not an overlay), we prefer the view that clause 3.7(5)(b)(ii) does not apply.

Concluding comments

21. We trust the above advice is of assistance. Please do not hesitate to contact us if you have any questions or require any further assistance at this time.

Yours sincerely



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¹⁵ See clause 1.3.