

**WAIMAKARIRI DISTRICT COUNCIL**

**MEMO**

**FILE NO AND TRIM NO:** DDS-14-08 / 240711113710

**DATE:** 11 July 2024

**MEMO TO:** Hearing Commissioners

**FROM:** Mark Buckley, Principal Policy Planner – Development Planning Unit

**SUBJECT:** Legal opinion regarding the application of NPS-HPL to UFD-P3

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1. The purpose of this memorandum is to provide the Hearing Panel with a copy of the legal opinion provided by Buddle Findlay on 26 June 2026 in response to the Hearing Panel questions in Minute 27 Appendix 1 regarding paragraph [429] from the S42A LLRZ<sup>1</sup> Rezoning Officer Report.

2. The hearing panels question was:

*We have reviewed the legal advice. We request the legal advisors provide updated advice that addresses the wording of UFD-P3, which states the new LLR development is located in the Future LLRZO, signalling that it is identified for urban development.*

*Also, if the NPS-HPL did not apply (or we did not agree with the legal advice regarding the application of it in these circumstances), what would be your recommendation?*

3. A planning response was provided in the preliminary questions reply.

4. However, the requested legal opinion was not attached to the reply. An opinion from Buddle Findlay is appended (Appendix A).

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<sup>1</sup> Large Lot Residential Zone  
DDS-14-08 / 240711113710

26 June 2024

**To**

Mark Buckley  
Waimakariri District Council  
215 High Street  
Rangiora 7400

**Copy to**

Matthew Bacon

**From**

Jenna Silcock  
Cedric Carranceja

**By Email**

Dear Mark

**Further advice on application of National Policy Statement for Highly Productive Land to the Large Lot Residential Zone Overlay – Urban Form and Development Policy 3**

1. We have previously provided 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 the Proposed District Plan (**PDP**).<sup>1</sup> That advice informed aspects of your memo to the Hearing Panel in response to Minute 4<sup>2</sup> and was attached as Appendix M to your s42A Officer's Report for Hearings Stream 12C (**s42A Report**).<sup>3</sup>

2. You are now seeking further advice on the application of the NPS-HPL to the East and North of Oxford LLRZ Overlays, with respect to policy UFD-P3 in response to the following question from the Hearings Panel on your s42A Report in the context of questions on the NPS-HPL:

We have reviewed the legal advice. We request the legal advisors provide updated advice that addresses the wording of UFD-P3, which states the new LLR development is located in the Future LLRZO, signalling that it is identified for urban development.

3. UFD-P3 relevantly states:

**Identification/location and extension of Large Lot Residential Zone areas**

In relation to the identification/location of Large Lot Residential Zone areas:

1. new Large Lot Residential development is located in the Future Large Lot Residential Zone Overlay which adjoins an existing Large Lot Residential Zone as identified in the RRDS and is informed through the development of an ODP.<sup>4</sup>

2. ...

4. We assume the Hearings Panel is asking whether the UFD-P3(1), which provides for new large lot residential development in the LLROZ, signals that the LLRZO is identified for urban development

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<sup>1</sup> Letter to Mark Buckley regarding Application of National Policy Statement for Highly Productive Land to the Large Lot Residential Zone Overlay dated 29 June 2023.

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

<sup>3</sup> Mark Buckley, "Officer's Report: Hearings Stream 12C Rezoning Large Lot Residential Zone" dated 23 May 2024.

<sup>4</sup> RRDS means "Rural Residential Strategy" and ODP means "Outline Development Plan" in the PDP.

such that relevant land does not fall within the interim definition of Highly Productive Land (**HPL**) in clause 3.5(7) of the NPS-HPL and the NPS-HPL does not apply. We address the Hearings Panel's question on UFD-P3, in the context of the Oxford LLRZ Overlays, below.

**Does UDF-P3 indicate the LLRZO is "identified for future urban development?"**

5. For context, clause 3.5(7) of the NPS-HPL provides an interim definition of Highly Productive Land (**HPL**). The interim definition applies until a regional policy statement containing maps of highly productive land in the region is operative. HPL land is 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]

6. The NPS-HPL defines "*identified for future urban development*" in clause 1.3:

**identified for future urban development** means

- (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.

[our underlying for emphasis]

- 7. To be "identified for future urban development" for the purpose of the NPS-HPL, it must fall within the definition of "*identified for future urban development*" in clause 1.3 of the NPS-HPL.
- 8. Future Development Strategy is not defined in the NPS-HPL but we consider it will be a Future Development Strategy required under, and prepared in accordance with, the National Policy Statement for Urban Development. The Greater Christchurch Spatial Plan 2023 is an FDS. Neither a policy in the PDP, nor the PDP itself, is a Future Development Strategy for the purpose of subpart (a) of the definition.
- 9. Turning to subpart (b) of the definition, "*Strategic planning document*" is defined in clause 1.3 as being "*any non-statutory growth plan or strategy adopted by local authority resolution*". Neither a policy in the PDP nor the PDP itself is a non-statutory growth plan or strategy adopted by local authority resolution. Subclause (b) of the definition is also not satisfied.

10. Accordingly, while policy UFD-P3 could be said to signal - for the purposes of the PDP - that the future LLRZO is identified for urban development in the future, the Oxford LLRZ Overlays are not land "*identified for future urban development*" for the purposes of the NPS-HPL.
11. 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

A handwritten signature in black ink, appearing to read 'Jenna Silcock', written in a cursive style.

**Jenna Silcock**  
Senior Associate

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