BEFORE THE WAIMAKARIRI DISTRICT COUNCIL HEARINGS PANEL

IN THE MATTER of the Proposed Waimakariri District Plan

AND

IN THE MATTER of a submission by Survus Consultants Ltd on the Waimakariri Proposed District Plan (#250) Hearing Stream 12C

LEGAL SUBMISSIONS ON BEHALF OF SURVUS LTD

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1 INTRODUCTION

1.1 These submissions relate to land situated at 25 Ashley Gorge Road and 650 Bay Road, Oxford (the Property). The Property is identified within the North Oxford Large Lot Zone Overlay in the Proposed District Plan (PDP).

1.2 The submission by Survus (#250) sought that all LLLRZ Overlays, North Oxford included, be rezoned to LLRZ in the PDP. [1]

1.3 These submissions address issues arising out of the s 42A Report prepared on behalf of the Council and the subsequent response to the Panel's questions by Mr Buckley. In the s 42A Report, Mr. Buckley recommended that the rezoning of the Property be declined, essentially on the basis that it would not give effect to the National Policy Statement on Highly Productive Land (NPS-HPL).

1.4 In his subsequent response to the Panel's questions, the recommendation has changed to approval of the zoning. This is on the basis that the land included within the LLRZ Overlay has been identified for future urban development in the Council's Rural Residential Development Strategy (RRDS or the Strategy). As such he concludes that the exemption in Clause 3.5.7 (b)(i) of the NPS-HPL applies.

1.5 Unfortunately, a confusion arises however as Mr. Buckley also states that because the boundaries of properties within preferred growth directions are not evident in the RRDS it can be assumed that it (i.e. a rezoning of the Property) doesn't meet the definition of having been "*identified for future urban development*". This advice appears to rely on legal advice provided by the Council's lawyers, as included within Appendix M to the s 42A Report.

1.6 Accordingly, these submissions firstly address the question of whether the exemption in Clause 3.5.7 (b)(i) of the NPS-HPL applies to the Property. In other words, has the land within the Oxford LLRZ Overlay been identified for future development?

1.7 Should the Panel **not** accept that the NPS-HPL exemption applies, these submissions address the alternative pathway to a rezoning of the Property to LLRZ, noting this has been addressed in substantial detail in Ms Aston's evidence.

1.8 Finally, these submissions address the issue of scope, in particular whether there is scope within the submission of Federated Farmers to remove the LLRZ Overlay from the Property.

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[1] In the Summary of Submissions, the Survus submission is attributed to Fiona Aston. However the Submitter List confirms that the submission is on behalf of Survus.

1.9 The issues to be addressed in these legal submissions aside, there is no dispute of substance amongst the experts regarding the merits of rezoning the Property to LLRZ. Nor is there any apparent dispute that a rezoning is consistent with, or will give effect to, the National Policy Statement on Urban Development 2020(NPS-UD), the Canterbury Regional Policy Statement (RPS) or the relevant policies of the Proposed District Plan (PDP).

2 IS THE PROPERTY EXEMPT FROM THE NPS-HPL?

2.1 The Property contains soils within the LUC 2 & 3 categories. As a starting point therefore, the Property is deemed to be highly productive land for the purposes of Clause 3.5.7 (a)(i) of the NPS-HPL given that it is proposed to be zoned as General Rural under the PDP, notwithstanding the LLRZ Overlay and supporting Policy UFD-P3 (1).

2.2 The Submitter's position however is that the land has been *"identified for future urban development"* and is therefore exempt from an application of the NPS-HPL.

2.3 As a preliminary observation, there must be a reason for inclusion of exemptions in the NPS-HPL. It seems more than logical to suggest their inclusion is recognition of the fact that, prior to gazettal of the NPS-HPL, many local authorities would have expended considerable effort in conjunction with their communities to identify areas that are suitable for future urban development. This very point is directly referred to in the submission by the Waimakariri District Council itself on the then Proposed NPS-HPL **(attached)**. This submission highlights the work undertaken by the Council in its planning for growth of the District, and seeks that areas identified for this purpose be excluded from the operation of the NPS-HPL.

2.4 The submission also highlights that the RRDS explicitly included an analysis of versatile soils as: *"part of a wider mix of environmental constraints that helped identify growth locations for further rural residential development. This is an example of where this District has already accounted for the protection of highly productive land in setting its strategic direction. Since approximately 43% (91,819 ha) of the Waimakariri District's total land area is comprised of HPL, this valuable and finite resource is not under threat in this District.*

2.5 And:

> *"… The Waimakariri Rural Residential Development Strategy (June 2019) for example has already given consideration to HPL and has adopted a strategic direction through a publically* [sic] *consulted process. In fact one of the objectives of the strategy is to help protect the balance of rural land for primary production, by enabling clustered locations for rural residential development. This responds to growing anecdotal evidence that suggests a greater market demand for the more manageable size of rural residential lots (typically 0.5 to 1.0ha), as the more traditional 4ha small holding are increasingly considered too much work for those seeking a semi-rural lifestyle.*

2.6 Ms Aston in her evidence succinctly states that the NPS cannot be engaged to "wind back the clock" on what was quite a rigorous public and evidential process to provide for future growth at Oxford. This is an opinion which echoes the Council's own submission.

2.7 Going then to the definition of "*identified for urban development*" in the NPS-HPL, this reads:

> ***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*

2.8 The words "*future urban development*" within the above cannot sensibly be read as meaning that land must have an urban zoning in either a future development strategy or a strategic planning document. As is plain, such documents do not rezone land, rather that step must be undertaken in accordance with a First Schedule RMA process, a point explicitly anticipated by the RRDS. In the present case, the Council has chosen the approach of an Overlay and a directly supportive policy in the PDP (UFD-P3(1)) as the means of implementing the RRDS, leaving it to submitters to provide the necessary technical evidence to support a rezoning, including the preparation of an Outline Development Plan (ODP). This is of course what has occurred in the present case with respect to the Property.

2.9 As it is accepted that the RRDS is not a Future Development Strategy, part (a) of the definition does not apply to the Property. The supplementary legal advice from Buddle Findlay dated 26 June 2024 states that the PDP is neither a future development strategy, nor a strategic planning document, advice that is not disputed.

2.10 Reliance is therefore placed by the Submitter on the second, alternative, part of the definition i.e. b(i)– (ii), with both components needing to be met for this separate exemption to apply.

2.11 Breaking down the words used in b(i) – (ii) of the definition, the first question to ask is whether the RRDS is a strategic planning document?

2.12 Here, the relevant definition provides:

> ***strategic planning document*** *means any non-statutory growth plan or strategy adopted by local authority resolution*

2.13 The RRDS meets the above definition, it being a growth strategy adopted by the District Council in 2019. This is accepted by Mr. Buckley.

2.14 Turning next to the word "*suitable*" for commencing urban development in b(i), the plain ordinary meaning of that word would be appropriate or fit for purpose. Ms Aston's evidence examines the robust analysis undertaken as part of the development of the RRDS, analysis which concluded that four separate areas or locations within the District were suitable for rural-residential development. This included North Oxford.

2.15 The legal opinion provided by Buddle Findlay in Appendix M to the S 42A Report references MFE Guidelines[2] on the meaning of suitable for commencing urban development over the next 10 years. This Guidance document opines that there should be a *high level of certainty* that land will be developed for urban use in the next 10 years.

2.16 Not mentioned in Buddle Findlay's advice is the decision of *Gray v Dunedin City Council* [2023] NZEnvC 45, where the Environment Court stated in respect of the exact same Guidelines:

> [206] *However, we are not prepared to give any weight to the discussion of the NPS-HPL in the MfE guidelines. We refer to the High Court's observation on the relevance of the Guidance Notes published by MfE for the NZCPS 2010 which we respectfully agree with and are in any event bound by:*
>
> > *The first question is what status should be given to the Department of Conservation's Guidance Notes. It is clear that they have no statutory basis, and that whilst helpful, they are not legal binding on the Court as necessarily properly interpreting the provisions of either the Act or the NZCPS. Whilst the Supreme Court may have referred to the Guidance Notes, not surprisingly it did not determine that the Guidance Notes are determinative, and indeed the Guidance Notes themselves include a disclaimer that they are not a substitute for legal advice, neither are they official government policy.*[3]
>
> [207] *This position is further reflected in subsequent decisions of the Environment Court, including in Federated Farmers of New Zealand v Northland Regional Council*[4]

2.17 See also *Wakatipu Equities v Queenstown Lakes District Council* [2023] NZ EnvC 188 where the Environment Court stated [9] that: *The MfE Guide does not have any formal statutory force for interpretative purposes.*

2.18 In accordance with *Gray,* it is submitted that no weight should be given to the MFE Guideline's purported interpretation of part b (i) of the definition of identified for future

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[2] At para 18 (c)(i)
[3] *Oputere Ratepayers and Residents Association v Waikato Regional Council* [2015] NZ EnvC 105, at [97]
[4] [2022] NZ EnvC 016

urban development. The Guidelines themselves explicitly state that they have no official status and do not constitute legal advice[5]:

However, users of this publication are advised that:

- *the information provided has no official status and so does not alter the laws of New Zealand, other official guidelines or requirements.*
- *it does not constitute legal advice, and users should take specific advice from qualified professionals before taking any action as a result of information obtained from this publication*

2.19 That aside, part b(i) of the definition does not employ the word certainty and it is not a word that can reasonably be inferred into an interpretation or application of the definition in the context of the RRDS. The RRDS essentially analysed a range of locations to determine which were suitable to meet the predicted demand for rural residential/large lot development in Oxford and elsewhere over the 10-year timeframe of 2019-2029, a timeframe specifically incorporated into the NPS-HPL definition. The RRDS is part of the background work undertaken by the Council in preparation for the impending notification of the PDP via the required First Schedule process. By adopting the Overlay approach in the notified PDP, the Council essentially confirmed the suitability of each of the identified locations.

2.20 As Ms Aston correctly points out, in any First Schedule process there is inevitably a degree of uncertainty as to whether any rezoning process will be approved. That is simply the inherent nature of the process and is an additional reason why any measure of certainty should not be read into part b(i) of the definition. It is more than reasonable to expect that the drafters of the NPS-HPL were acutely aware of the function of non-statutory growth documents such as the RRDS, and the further steps required under the RMA to realise urban development in locations identified for that purpose.

Part b(ii) - at a level of detail that makes the boundaries of the area identifiable in practice

2.21 Mr Buckley states in his response that:

On the basis that the LLRZ Overlay identifies areas for future urban development, then 25 Ashley Gorge Road is not subject to the avoid aspect of Policy 7. The proposed rezoning meets the exemption requirements under Clause 3.5(7)(b)(i) as having been identified for future urban development and is exempt from being considered as HPL. However, the NPS-HPL definition of "Identified for future urban development" notes that the strategic planning document should be at a level of detail that makes boundaries of the area identifiable in practice. The RRDS did not identify specific boundaries, but deliberately used 'growth directions' as insufficient information was available to identify specific properties. On the basis that boundaries of properties are not evident in the RRDS it can

[5] *National Policy Statement for Highly Productive Land – Guide to Implementation* at p.2

be assumed that it doesn't meet the definition of having been "Identified for future urban development". [Emphasis added]

2.22 The test to apply is whether the level of detail is such that boundaries of an area of land are ***identifiable in practice*** **–**these are the words used.

2.23 Adoption of the words " in practice" make it explicit that it is not necessarily a requirement that the boundaries of an area are clearly identified in a strategic planning document, for example, at a cadastral level. Again, if it were, then it is reasonable to assume that drafters of the NPS-HPL would have worded the definition to incorporate such a requirement.

2.24 In my submission, the meaning of the words "in practice" are to be interpreted by having regard to the relevant context. Here, the relevant context is a strategic growth document the Council has sought to directly implement through a process under the RMA.

2.25 In developing the PDP, the Council pursued the option of identifying the locations previously chosen in the RRDS within an LLRZ Overlay. In so doing, this must mean that **in practice** the Council has identified the boundaries of the area of land that are suitable for rezoning as LLRZ. In my submission, it is both inconsistent and absurd to, on the one hand, identify the boundaries of the LLRZ Overlay in a proposed plan and then subsequently assert that those boundaries are not capable of identification in practice.

2.26 That the location of new LLRZ areas are identified in practice by reference to the RRDS is made explicit by Policy UFD-P3 (1):

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.

2.27 What this Policy essentially says is that the Overlays correspond with the areas or locations identified in the RRDS for future LLRZ development.

2.28 Furthermore, in her rebuttal evidence Ms Aston highlights parts of the s 42A Report where Mr. Buckley confirms the link between the Overlays and the identification of properties in the RRDS, Ashley Gorge Road included, as being suitable for urban development:

> *4.39 Mr Buckley seems to accept this point as he confirms at para 54 of his s 42A Report that as an outcome of the RRDS, "those properties that were identified in the RRDS were included in the Proposed Plan as LLRZ Overlay Zones."*

4.40 Also at his para 417, he specifically says with respect to the Ashley Gorge Road site: "[a] general growth direction was identified in the RRDS, which could be reasonably assumed to include the property.

2.29 In sum, it is submitted that the land at 25 Ashley Gorge Road and 650 Bay Road has been identified for future urban development as that term is defined in the NPS- HPL. Accordingly, it is exempt from an application of the NPS-HPL.

3 AN ALTERNATIVE PATHWAY TO REZONING THE PROPERTY TO LLRZ

3.1 Ms Aston's rebuttal evidence outlines an alternative pathway to rezoning the Property as LLRZ should the Panel not agree that the exemption applies. Ms Aston has also undertaken this analysis because it is largely absent from the s 42A Report.

3.2 While Policy 5 of the NPS-HPL contains an avoidance policy for the urban rezoning of highly productive land, this is not without exception. That is, urban rezoning can be justified where it meets the requirements of Clause 3.6 of the NPS-HPL, as they apply to Tier 1 local authorities such as the Waimakariri District Council:

> *3.6* ***Restricting urban rezoning of highly productive land***
>
> *Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:*
>
> (a) *the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and*
>
> (b) *there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and*
>
> (c) *the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*

3.7 The evidence of MS Aston addresses each of the criteria in Clause 3.6 in some detail.

3.8 The first criteria refers to the requirement in the NPS-UD 2020 to provide sufficient development capacity for housing, as that term is defined in Clause 3.2 of the NPS UD:

3.2 Sufficient development capacity for housing

(1) *Every tier 1, 2, and 3 local authority must provide at least sufficient development capacity in its region or district to meet expected demand for housing:*

(a) in existing and new urban areas; and

(b) for both standalone dwellings and attached dwellings; and

(c) in the short term, medium term, and long term.

(2) *In order to be **sufficient** to meet expected demand for housing, the development must be:*

(a) plan-enabled (see clause 3.4(1)); and

(b) infrastructure-ready (see clause 3.4(3)); and

(c) feasible and reasonably expected to be realised (see clause 3.26); and

*(d) for tier 1 and 2 local authorities only, meet the expected demand plus the appropriate competiveness margin (see clause 3.22) [*Emphasis in original]

3.3 The above implements Policy 2 of the NPS-UD:

***Policy 2:** Tier 1, 2 and 3 local authorities, at all times provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.*

3.4 As a minimum therefore, there is a requirement to provide capacity to meet expected demand plus a competitiveness margin within tier 1 local authorities such as the Waimakariri District Council. This is not a "just enough and no more" requirement – it is a "at least sufficient" development capacity requirement.

3.5 It is noted that the response to the Panel's questions references the High Court decision in *Southern Cross v Eden and Epsom Residential Protection Society* [2023] NZHC 948 , which addresses the application of clause 1.3 of the NPSUD[6]. This case, which is binding on the Panel, confirms that the NPS-UD applies regardless of the type of decision being made by Tier 1 local authorities:

*[78] The structure of cl 1.3(1) is important. Clause 1.3 (1)(a) applies the NPS-UD to specified local authorities, **regardless of the type of decision being made by the local authority.** Clause 1.3 (1)(b) applies the NPS-UD to specified decisions by local authorities, regardless of the type of local authority making the decision.* [Emphasis added]

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[6] ***1.3 Application***
(1) This National Policy Statement applies to:
(a) all local authorities that have all or part of an urban environment within their district or region (i.e. tier 1, 2 and 3 local authorities); and
(b) planning decision by any local authority that affect an urban environment.

3.6 Accordingly, the NPS-UD applies to all decisions of this Council on the PDP as they relate to the supply of housing and business capacity in accordance with Policy 2 set out above.

3.7 At least in terms of giving effect to Policy 2 of the NPS-UD, the question of whether Oxford is an urban environment is likely to be moot given the High Court's decision in *Southern Cross*. However, this question has been addressed in Ms Aston's evidence, her conclusion being that Oxford qualifies as such.

3.8 By reference to the Council's own analysis (WCGM 2023 and Livingstone), Ms. Aston identifies a demand for housing at Oxford which a rezoning of the Property to LLRZ (an urban rezoning) is needed to satisfy. Ms Aston properly acknowledges, as an independent expert should, that there is some capacity in Oxford within an existing LLRZ, however this land has remained undeveloped for a significant period of time and, in any event, is unlikely to provide sufficient capacity to meet demand at Oxford.

3.9 In terms of Clause 3.6 (1)(b), this requires an analysis of whether there are any other reasonably practicable and feasible options for providing at least sufficient development capacity which achieving a well-functioning environment. Clause 3.6 (2) specifically outlines options to be considered, being:

(a) Greater intensification in existing urban areas; and

(b) Rezoning of land that is not highly productive land as urban; and

(c) Rezoning different highly productive land that has a relatively lower production capacity.

3.10 The evidence is that there are no reasonably practicable alternatives. There is no intensification proposed within the existing urban footprint of Oxford in the PDP, nor is there an alternative of rezoning other land surrounding Oxford which does not contain LUC 1-3 land. Further, the expert evidence from Mr Ford is that the Property has very low production capacity, evidence that is fully supported by the Council's peer reviewer, Mr. Walton.

3.11 Clause 3.6 (1)(c) requires an analysis of whether the environmental, social, cultural and economic benefits of rezoning outweigh the equivalent costs associated with the loss of highly productive land. Again, the expert evidence by Ford and Walton points to a rezoning as being consistent with this Clause. It is noted that Clause 3.6 (c) refers to intangible values, values that are difficult, if not impossible, to monetise. In that respect, it would be expected that any intangible values of note would have been identified in the development of the RRDS – none have. Further, to the extent that there are environment features of value within the Property, including waterways, the ODP has been designed with the protection and enhancement of these values in mind.

3.12 In reliance on the evidence of Ms Aston, it is submitted overall that a rezoning of the Property to LLRZ achieves the criteria in Clause 3.6 and will accordingly give effect to the NPS-HPL.

4 THE ISSUE OF SCOPE

4.1 The Panel posed the following question of Mr. Buckley:

Please explain how you consider that you have scope under the Federated Farmers submission on UFD-P3 to recommend the removal of the LLRZ Overlay from 25 Ashley Gorge Road.

4.2 The response was as follows:

Across a number of the Federated Farmers submission points, they opposed the loss of LUC Classes 1 to 3 land. This is reflected in their submission on UFD-P2 and UFD-P3 requesting that "avoid where practicable any development on LUC 1-3 soils".

However, as detailed in my answers above, I consider that the property should be rezoned to LLRZ, given that it is considered to having been identified for future urban development in the RRDS when using the interpretation for urban in the NPS-HPL.

4.3 The legal test to apply in the present circumstances is well summarised in *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59

[58 In relation to amendments proposed to plan changes, the Court in Countdown Properties formulated the following test at 166:

"The local authority or Tribunal must consider whether any amendment made to the plan change as notified goes beyond what is reasonably and fairly raised in submissions on the plan change. … It will usually be a question of degree to be judged by the terms of the proposed change and of the content of the submissions."

[59] In Royal Forest and Bird Protection Society Inc, Pankhurst J at 413 adopted the Countdown Properties test and went onto comment as follows:

" … it is important that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions, should be approached in a realistic workable fashion rather than from the perspective of legal nicety."

[60] This approach requires that the whole relief package detailed in submissions be considered when determining whether or not the relief sought is reasonably and fairly raised in the submissions — see Shaw v Selwyn District Council [2001] 2 NZLR 277 at [44].

4.4 Reading the Federated Farmer's submission in its entirety, in parts it does refer to the loss of productive soils. However nowhere within the submission can it be detected that

Federated Farmers has sought to wind back the clock on the strategic approach taken in the RRDS to identify growth locations for LLR development. The submission does not mention this approach at all.

4.5 Relevant to the Federated Farmers sought an amendment to Policy UFD P3 (2), which currently sets out a range of criteria against which new large lot residential development other that within the identified LLRZ Overlays is to be tested:

*(2) "new Large Lot Residential development, **other than addressed by (1) above**, is located to that it:*

(a) occurs in a form that is attached to an existing Large Lot Residential Zone or Small Settlement Zone and promotes a coordinated pattern of development;

(b) is not located within and Identified Development Area of the District's main towns of Rangiora, Kaiapoi and Woodend identified in the Future Development Strategy;

(c) is not on the direct edges of the District's main towns of Rangiora, Kaiapoi or Woodend, or on the direct edges of these town's identified new development areas as identified in the Future Development Strategy:

(d) occurs in a manner that makes use of existing and planned transport infrastructure and the wastewater system, or where such infrastructure is not available, upgrades, funds and builds infrastructure as required, to an acceptable standard; and

(e) is informed through the development of an ODP.

4.6 Federated Farmers sought that a new (f) be added to read:

(f) Avoid where practicable any development on LUC 1-3 soils

4.7 In my submission, this relief is fundamentally distinct to seeking the deletion of the Overlays identified in the PDP, as notified. Accordingly, it is not a legal nicety to say that the removal of LLRZ Overlays such as North Oxford can cannot fairly and reasonably be said to identified as an outcome sought by Federated Farmers either specifically or otherwise.

4.8 Even accepting that specifically seeking the deletion of the Overlays is not required in order for the Panel to do so, the approach of using Overlays has not in substance been challenged by Federated Farmers anywhere in its submission, either directly or indirectly. Nor has it been challenged in the evidence provided on behalf of Federated Farmers it's evidence for Hearing 6.[7] Indeed, the Overlay approach receives no mention whatsoever in that evidence.

[7] Statement of evidence of Lionel Hume and Karl Dean on behalf of the North Canterbury Province of Federated Farmers of New Zealand.

4.9 There is also a fundamental issue of fairness here in the sense that if Federated Farmers had sought the deletion of, or substantial amendments to, UFD-P3(1), affected landowners would have had the opportunity to respond by way of further submissions and evidence. On any objective reading of the Federated Farmers' submission and the subsequent summary of the same, no prospective submitter could possibly have gleaned an intention to delete the LLRZ Overlays identified in the PDP.

4.10 Accordingly, in my submission to delete the Overlays goes well beyond the scope of the specific relief sought by Federated Farmers in its submission.

G Cleary

12 July 2024

To the Ministry for Primary Industries

Submission by

Waimakariri District Council

In the matter of the *Proposed National Policy Statement on Highly Productive Land*

1 October 2019

Person for Contact: Geoff Meadows, Policy Manager

WAIMAKARIRI DISTRICT COUNCIL

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Introduction

The Waimakariri District Council considered the proposed National Policy Statement on Highly Productive Land (NPS) at a Council briefing session on 17 September 2019, and approved this submission to the draft NPS at a Council meeting on 1 October 2019.

The lack of clarity on how highly productive land should be managed under the *Resource Management Act 1991* is not improved through this proposed NPS. As a national direction instrument, this NPS does not provide very much direction for local governments. While there is no intention to have absolute protection of highly productive land (HPL), the proposed NPS still leaves the onus of responsibility for considering HPL on land use decision-makers. This proposed NPS has the stated objective of giving more weight to HPL, but is not helpful in outlining how that greater weight will be used in balancing competing land use priorities.

A key consideration of protecting HPL in this District is its proximity to Christchurch, a city that has significant demand for primary production that is produced on HPL. The important role that the agricultural sector has in this District in providing food to the community that live in Christchurch and the rest of New Zealand, has long been taken into account in planning and strategic documents.

In June 2019, this District adopted a Rural Residential Development Strategy, to inform the District Plan Review. This Rural Residential Development Strategy took into consideration highly versatile soils land (Land Use Classification (LUC) Class 1 and 2 soils) as part of a wider matrix of environmental constraints and opportunities that helped to identify growth locations for further rural residential development. This is an example of where this District has already accounted for the protection of highly productive land in setting its strategic direction. Since approximately 43% (91,810 ha) of the Waimakariri District's total land area is comprised of HPL, this valuable and finite resource is not under threat in this District.

Similarly, this District is a participant in the Urban Growth Agenda work programme, and have been focused on making room for cities to grow. The strategic partnership through this District's involvement in the Greater Christchurch Partnership provides a future development framework for urban growth that already gives weight to protecting HPL. In this regard, the NPS-HPL should recognise those areas that have been through the Future Development Strategy (FDS) process and are identified in an adopted FDS should be excluded from the scope of the NPS-HPL. This would require changes to the relevant draft objectives and policies and the draft definition of 'highly productive land'.

Objectives

The objectives of the NPS-HPL are supported, however Objective 3 of the proposed NPS - the "Protection from Inappropriate Subdivision, Use and Development" proposes to avoid subdivision and land fragmentation that impinges on HPL, but "inappropriate" is ill defined. In attempting to give more weight to HPL in land use planning decisions, this objective needs greater clarity. The word "inappropriate" is not helpful when balancing urban growth priorities, protection of freshwater management objectives, and HPL competing priorities.

Policies

1. Identification of HPL by Regional Councils through a mapping exercise is supported, but the time frame of within 3 years of gazettal of the NPS is too long. In the meantime, adopting classes 1 to 3 of the Land Use Classification as a default definition of HPL is too blunt and impractical of an instrument in this District, since the vast majority of urban areas and rural residential zones are surrounded by LUC Classes 1 to 3, leaving little opportunity for expansion if these are to be avoided.

This is coupled with the tension that this is a high growth District (as identified in the NPS for Urban Development) and planning for population growth is critical.

2. Proposed policy 2(c) once again uses the term “inappropriate”, this time referring to subdivisions, but does not provide clear direction about what inappropriate means.

3. In balancing competing priorities between urban expansion and protecting HPL, a cost-benefit analysis will almost always favour urban development. At a macro level, it is relatively easy to prove that providing for urban development is the highest and best use for each single parcel of land. It is important that the cost-benefit framework considers the development alternatives from a broad strategic perspective (Proposed Policy 3(b) refers).

4. The wording of Proposed Policy 4(c) – directing new rural lifestyle development away from areas of HPL – may be too strong when there has already been consideration of protecting HPL through other strategic planning processes. The Waimakariri Rural Residential Development Strategy (June 2019) for example has already given consideration to HPL, and has adopted a strategic direction through a publically consulted process. In fact one of the objectives of the strategy is to help protect the balance of rural land for primary production, by enabling clustered locations for rural residential development. This responds to growing anecdotal evidence that suggests a greater market demand for the more manageable size of rural residential lots (typically 0.5 to1.0 ha), as the more traditional 4 ha small holding are increasingly considered too much work for those seeking a semi-rural lifestyle.

   According the Canterbury Regional Policy Statement, further rural residential lifestyle development is to be located with existing rural residential zones or small settlements, and there are very few existing rural residential zones in the District outside of LUC Class 1 to 3 soils. It would be more appropriate to separate genuine rural residential development (1 to 2 lots per hectare) from the definition of “rural lifestyle development” which is defined by lots sizes of between 0.2 ha and 8.0 ha.

   Rules pertaining to rural residential development should then have similarities to those proposed under Policy 3 for urban expansion and allow encroachment of HPL where there is a shortage of development capacity to meet demand, and it is demonstrated that this is the most appropriate option based on considerations including the feasibility of alternative locations.

5. Reverse sensitivity provisions are supported, and these matters already contribute to the Council’s strategic planning considerations

6. Consideration of private plan changes and resource consent applications already give consideration to HPL as a matter of course.

Timing

Proposed time frames are for Regional Councils to identify highly productive land within three years of gazettal of the NPS, and territorial authorities are to implement the policies within five years of gazettal. This Council proposes a more truncated time frame, so that Regional Councils identify HPL within 12 months of gazettal of the NPS, and territorial authorities implement the policies within 2 years of gazettal. This truncated time frame would enable Regional Councils to incorporate the NPS-HPL into their reviews of their Regional Policy Statements.

Thank you for the opportunity to submit on the proposed NPS.