Before an Independent Hearings Panel
Appointed by Waimakariri District Council

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions on the Proposed Waimakariri District Plan

and: Hearing Stream 12D: Ōhoka rezoning request

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

and: **Rolleston Industrial Developments Limited**
(Submitter 160)

Supplementary statement of evidence of Victor Mthamo (Soils)

Dated: 13 June 2024

Reference: J M Appleyard (jo.appleyard@chapmantripp.com)
LMN Forrester (lucy.forrester@chapmantripp.com)

chapmantripp.com
T +64 3 353 4130
F +64 4 472 7111

PO Box 2510
Christchurch 8140
New Zealand

Auckland
Wellington
Christchurch

chapman tripp

SUPPLEMENTARY STATEMENT OF EVIDENCE OF VICTOR MTHAMO

INTRODUCTION

1 My full name is Victor Mkurutsi Mthamo.

2 My area of expertise, experience, and qualifications are set out in my statement of evidence dated 5 March 2024 for this hearing stream.

3 The purpose of this supplementary evidence is to respond to matters raised in the Officer's Report dated 31 May 2024 relevant to my evidence.

CODE OF CONDUCT

4 Although this is not an Environment Court hearing, I note that in preparing my evidence I have reviewed the Code of Conduct for Expert Witnesses contained in Part 9 of the Environment Court Practice Note 2023. I have complied with it in preparing my evidence. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

RESPONSE TO OFFICER'S REPORT

5 I have read through the section 42A Report prepared by Mr Andrew Willis and Appendix F of the report which is evidence on Farm Productivity prepared by Mr Stuart Ford. Below I provide comments on various statements made in these reports relating to my assessment of the site and the soils.

6 Mr Willis relies on Mr Ford's report to conclude that the land is productive and its use as proposed by the submitters would result in a loss of productive land.

7 By way of summary:

7.1 I do not agree with the evidence of Mr Ford as the constraints I highlighted are real and are being experienced by the current owners and will be even more significant in future under any farming system for a variety of reasons that include climate change, flow monitoring and associated restrictions for the existing consents.

7.2 In summary, I support the submitters' proposed rezoning on the basis that:

(a) There are multiple long-term constraints on the capacity of the site to support primary production activities.

(b) In light of these constraints, the overall benefits of retaining this land for primary production are, in my opinion, negligible. That is especially so, given that:

(i) There are likely to be very few other rural sites within the Waimakariri District that have lower productive capability or less constraints than the Applicant's site.

(ii) The proportional reductions in HPL in the district and the region as a result of the rezoning of the site are insignificant.

(c) The site is proposed for rural lifestyle zoning which will permit subdivision of the land to 4-ha blocks. In Mr Ford's evidence for other submitters (which I discuss in paragraph 49-53 below) these smaller block are not highly productive and there is negligible difference between the 4-ha blocks and smaller residential lots with regards to the wider productivity of the site.

8 I address the points raised by Mr Ford below using the same subheadings as he does.

Groundwater

9 In paragraphs 42-44 Mr Ford questions my reference to the well data from Mr O'Neill's evidence. Mr O'Neill concluded in his evidence that "*in fact that well is only 20 m away from a spring and so may be in an area of the Site that has particularly high groundwater levels*."

10 I note this is not a direct quote from Mr O'Neill's evidence, although he does make this point briefly. While this point made by remains valid, I would not expect the piezometric contours to drop sharply with distance from bore. In my evidence I discussed the geotechnical assessment carried out by Tetra Tech Coffee which confirm that mottling occurs from about 0.2 m below the ground level with most test pits showing mottling from 0.3 m. This implies that that waterlogging occurs to these depths across the site.

Area Soils

11 In his paragraph 45 Mr Ford attributes statements that are not in my evidence in chief to me when he says "*He then comments on the permeability of the soils which is listed in his Table 2 and then makes the comment that most were trending towards the slower scale. There is nothing in his table which would indicate that any of the soils, which are all labelled as Moderate to Slow apart from 6.2*

ha which is 10% of the area, are "trending towards" the Slower scale and he doesn't explain exactly what that scale is".

12 I am not sure where Mr Ford got this from. The following is what I say in paragraphs 38 and 39 of my evidence in chief:

> *"Table 1 and 2 show that 98% of the soils have poor to very poor drainage. Permeability is moderate to slow.*
>
> *Poor drainage can have significant impact on the soil's productive potential and crop/plant yields, unless the crop types grown are suited to wet feet"*.

13 Mr Ford does not mention the fact that 98% of the site has poor drainage and the well-known adverse effects this has on productivity.

Available and Proportions of Productive Land

14 In 47-48 Mr Ford takes issue with my 10-25% estimation of non-productive land for the site and concludes that in his experience this should be up to 10%. While his 10% might apply to some of the farms he has worked on, for this site with its several tracks, windbreaks, waterways, the homesteads, all fenced waterways and riparian areas are not grazed or farmed the up to 25% estimate is reasonable. I have estimated that this area would be of the order of 10-25% based on a review of Canterbury Maps and also assumed riparian margins on 5 m on either side of each waterway.

15 In any case, I note that Mr Ford's 10% figure is within the band that I quoted/adopted in my evidence.

Effect of the Community Drinking Water Exclusion Zone (CDWEZ)

16 In Paragraph 50 Mr Ford states that he could not locate any CDWEZ related rules that influence the site's productivity.

17 In response I note the following provisions in the Canterbury Land and Water Regional Plan and the associated sub-regional plan (section 8 – Waimakariri) that may directly or indirectly affect the possible use of the land within a drinking water protection zone:

17.1 Policy 4.14 relates to *"Any discharge of a contaminant into or onto land where it may enter groundwater"* and that these will *"ensure there is sufficient distance between the point of discharge, any other discharge and drinking-water supplies to allow for the natural decay or attenuation of pathogenic micro-organisms in the contaminant plume*".

17.2 Policies 4.23 and 4.23A seek protection of the drinking water supply sources by implementing a protection zone.

17.3 Policy 4.31 which relates to Livestock Exclusion from Water Bodies.

17.4 Rule 5.22 which relates to "*The discharge of an agrichemical, or agrichemical equipment or container…into or onto land"*.

17.5 Rule 5.31 which relates to Stock Holding Areas and Animal Effluent.

17.6 Rule 5.33 which relates to "*The use of land for the collection, storage and treatment of animal effluent*.

17.7 Rule 5.36 which relates to "*The discharge of animal effluent or water containing animal effluent*".

17.8 Rule 5.71 which relates to "*The use and disturbance of the bed (including the banks) of a lake or river by any farmed cattle, farmed deer or farmed pigs and any associated discharge to water".*

Effects of High Groundwater

18 In his Paragraph 51 Mr Ford states that "*Mr Mthamo's discussion on the effects of high groundwater only reference his earlier report of the highest groundwater readings in two wells. Nowhere does he discuss the likely impact of the average groundwater levels. Therefore I am of the opinion that the discussion is theoretical and he doesn't apply it to the site in question*".

19 The purpose of discussing the high groundwater levels and the water table is to provide an understanding of the impact of high groundwater or water table on plant rooting depths. I discuss the relevance of the high groundwater to the site and Mr Sherriff's (the dairy farmer on the site) specific challenges with drainage issues.

20 Mr Ford's suggestion to use average groundwater readings can result in misleading conclusions regarding the impact of groundwater as average readings may be significantly lower (depending on the spread of the readings) than the highest groundwater levels. In my evidence in chief I discussed the results of the Tetra Tech Coffee geotechnical assessment and how mottling was observed within 200-300 mm of the surface. If I took Mr Ford's suggestion to use average groundwater depths I would be making completely incorrect interpretations regarding the potential plant rooting depths across the site.

21 What Mr Ford fails to realise is that average groundwater levels are meaningless in this regard. Average levels during a season could be >1 m for example but highest groundwater levels could be close to ground levels and within the root zone for a period or periods that cannot be sustained by the crop/grass. During these periods the effect on productivity will be significant.

22 When I spoke Mr Sherriff he said there are many times during the year that parts of the land cannot be used because of the high groundwater and grass yields are also impacted.

23 In his Paragraph 39 Mr Ford makes the point that "*I would suggest that the main reason for the use of the feed pad would be to avoid pugging of the soil during wet periods.*" The wet periods he points out manifest through high groundwater and saturated soils from runon and/or runoff rainfall water. Therefore, in one statement Mr Ford acknowledges the effect of groundwater to make a point and later discounts the effect in order to make a separate point.

Effects of Poor Drainage

24 In Paragraph 52 Mr Ford states that "*The discussion on poor drainage is highly theoretical and doesn't relate to the site directly. He states that "Poor management and excessive wetness or poorly drained soils affect production as some crops/plants do not do well in these soils." He does not clarify exactly how this general statement relates to the land itself*".

25 In saying this Mr Ford ignores the site-specific soil information on drainage I presented in Table 2 of my evidence. Table 2 shows that 98% of the site has poor to very poor drainage. From that point I discuss specific issues caused by poor drainage in my evidence in chief (paragraphs 52-66).

26 These issues on drainage that I discussed have been trivialised by Mr Ford. I note, however, that when it suits him, he acknowledges that drainage is an issue, as in his paragraph 28.1. With 98% of the site with drainage issues, Mr Sheriff has adopted the best possible management strategies but even with these, the site's productivity is limited.

27 While Mr Ford is critical of my assessment of the drainage issues for this site, I have reviewed his evidence provided on behalf of Survus (submitter 250) for hearing stream 12C (dated 5 March 2024)[1] where the following is the extent of his analysis for the poor drainage at that site:

> "*All of the soil types that have been identified as being on the site are classified as poorly drained. The three soils that make up 61% of the site are classified as moderately deep with a corresponding depth of a pan which limits the potential for root penetration. This means that horticulture, that is permanent crops, and many of the vegetable cropping options are either not available or are limited to the summer months when the limitations which are caused by the wet nature of the soils are not as prevalent as they are in the winter months. Autumn sown arable crops would not be practical*

[1] 2270.evidence_Stu_Ford_NPS-HPL_25-Ashley-Gorge-Road_final.pdf (waimakariri.govt.nz)

which would limit the potential range of arable crops to spring sown crops".

28 As set out above, Mr Ford considers the more detailed assessment I carried out in my evidence in chief is highly theoretical. Regardless of the lack of balance in his critique, I consider the drainage effects at the submitters' site to at least be the same but likely more significant as those outlined by Mr Ford in his evidence for Submission 250 I reference above.

29 Mr Ford in Paragraph 54 says "*I am firmly of the opinion that the LUC classification takes account of the constraints of a soil type before it settles on a classification and in this case it recognises the degree of constraints that are imposed by the poor drainage and so classifies the majority of the farm as LUC 3. In my opinion it is not appropriate to 'double count' the constraints*". Similarly, in Paragraph 71 Mr Ford states that "*It is my understanding that the LUC classification system is designed specifically to reflect the productive potential of the land*". With these statements:

29.1 Mr Ford assumes that when the LUC Classification is assigned the land has already been mitigated for the constraints. This is not the case.

29.2 To quote what Mr Ford calls the "the bible of the LUC Classification", the "Land Use Capability Survey Handbook - 3rd Edition" its Section 3.3.5.1 states that:

"a. When assessing an allocating LUC Classes and subclasses the following assumptions are made:

i. The permanent physical limitations of the land remain.

ii. The rectifiable limitations may be removed.

iii. An above-average level of land management is practised.

iv. Appropriate soil conservation measures will be applied and maintained.

b. Where it is feasible to either remove or significantly reduce the physical limitation (e.g. installing drainage or permanent irrigation, improving soil fertility, removing surface gravel, stones or boulders or minimising erosion) then the land is assessed as if the limitation has been removed or managed".

29.3 In misconstruing the LUC Classification methodology it makes me wonder as to the accuracy of Mr Ford's financial modelling as clearly the site has constraints that would need serious remediation if it is to achieve its full potential as assumed by the LUC Classes.

29.4 Furthermore, it is my opinion that providing effective mitigation would be impractical as providing effective drainage will be constrained by the availability of an effective outfall i.e. there is no deep enough outfall to convey the drainage from the site under gravity at the required depths.

29.5 Therefore, I question the profitability or viability assumed in his paragraphs 29-37 as he does not appear to have included some capital costs and any long-term operation and maintenance costs.

Moisture Availability and Irrigation

30 In paragraph 55 Mr Ford refers to my paragraph 71 which implied that moisture content had to be kept above field capacity. This is a typo in my evidence. The goal is always to keep the moisture content well above permanent wilting point but at or below field capacity. Therefore my paragraph 71 should have read:

30.1 *"When I spoke to Mr Sherriff he also advised that one of their management strategies on the clay soils was to keep the moisture content well above the permanent wilting point and at* ***or below*** ~~*more than*~~ *field capacity. Clay soils must be prevented from cracking and this has to be avoided because"*

31 Again I point out that this was a typo. I have spent the best part of the last 21 years in New Zealand designing and peer reviewing irrigation systems and more recently (May 2024) I ran a 4-day irrigation training course on behalf of Irrigation New Zealand and I am well aware that the goal is to irrigate to or close to field capacity and then apply an allowable moisture depletion which is typically 50% before the land is irrigated again.

32 For this site irrigation does become necessary for not just providing crops with water but also for ensuring the soils do not get to the cracking stage.

33 In Paragraphs 56-58 Mr Ford seems to contest the relevance of the flow restrictions on the site's consent CRC991827.

33.1 The fact that the flow is not currently monitored does not mean the consent condition becomes irrelevant. The condition forms part of the consent and compliance is necessary, it will also be a relevant factor in any reconsenting of the consent which will expire in 2041. The fact remains that the consent conditions have to be complied with and will limit the rate of abstractions based on the flow of the Ōhoka Stream.

33.2 I, therefore, do not agree with Mr Ford's assertion in his last paragraph in that section when he says *"Mr Mthamo is incorrect in his statement that "When these restrictions come into effect during the peak growing period for any crops the productivity is significantly impacted". In my opinion the impact would be*

determined by a range of factors if a restriction were to occur, it is not automatic". While I can come up with several of the "*range factors*" he does not identify any, nor why he thinks their impacts would be minimal. It's not clear to me why in Mr Ford's conclusion productivity would not be impacted significantly if any of the "range of factors" he refers to come into play and available irrigation water is reduced. For example, if the minimum flows were to come into effect and abstraction had to cease altogether during the hot and dry summer months, reliance would then be just on the consent CRC991022 which will not be able to cover the whole irrigable area. The fact remains that Mr Sherriff and any future productive user of the site will be faced with these threats to productivity, and they can occur at any time in a season or in any year.

33.3 I have also noted in paragraphs 77-79 of my evidence in chief the changes to minimum flows as part of Plan Change 7. These make the consent even less reliable as frequency of restrictions will increase due to the minimum flow increases. Climate change impacts will also play a role in the frequency of restrictions.

33.4 While Mr Ford concedes the importance of irrigation water reliability, it is my conclusion that Mr Ford is trying to minimise or trivialise the importance of the water restrictions on CRC991827 and the potential consequence on the site soils' productivity.

Modelled N Losses

34 In paragraphs 61 and 62 Mr Ford is at pains to explain the importance of soils in Overseer modelling outputs. I would have thought that it goes without saying that sandy soils leach more than clay soils. At no point in my evidence do I compare the clay soils with sandy soils at another site. The soils at the property are what they are and the baseline modelling reflects not only the clay soil types but the management as well. For example, in Overseer modelling the application of water whether by irrigation or natural rain and the timing of these applications have a significant impact on the leaching results.

35 In paragraph 62 he says that "*Many of these are relatively high input and high productivity farms with one who has consistently produced kilograms of milksolids per ha which are in the top 25% of Fonterra suppliers within the district with a baseline of 16 kg N/ha/yr from a high input system"*. Like Mr Ford I have carried out many Oversear modelling cases over the years and using the various versions of the programme. Mr Ford's statement is a broad generalisation and every output depends (soil types aside) on the management of the particular site – the inherent site properties, the quantum of the inputs and their timing. Thus, I consider that to draw the conclusions that this site is comparable to some high input

systems is a bit of a long bow to draw. I should also note that this site has added risks associated with:

35.1 Direct flows or runoff into waterways.

35.2 When the soils are cracked the movement of mineralised solutes is enhanced compared to non-cracking soils.

35.3 The high groundwater (within 200-300 mm of the surface) means the leachates gets into the groundwater without having to travel too far down the soil profile.

36 It therefore does not surprise me when Mr Ford concludes that "*I am not convinced that the Nitrogen leaching status of the farm is a valid constraint to its land use potential*" as he has attempted to minimise the importance of the site-specific factors.

Effect of Nutrient Reductions on Productivity

37 In paragraphs 65-67 Mr Ford trivialises the references I made to work done by him and his organisation and by Landcare Research by saying I did not demonstrate the relevance of the reports to the site. As I noted in my evidence, the reports demonstrate that any reductions in N inputs is accompanied by a reduction in outputs, revenue and profitability. Given Mr Ford's 25 years of using Overseer and modelling the economic productivity of such land one would expect him to at least acknowledge the impact. I find it difficult to see why Mr Ford takes issue in this respect where in several parts of his evidence he himself:

37.1 Has referenced his previous Overseer Modelling work and the results at locations that are different and managed differently to the site (paragraph 62).

37.2 Uses the DairyNZ systems as a basis for his financial modelling. These systems are based on data based a wide variety of assumptions (paragraph 30).

38 In Paragraphs 68-69 Mr Ford questions my conclusion that "*The site has no potential for increased intensification and the current low productivity (as demonstrated by the current low stocking rates*." He goes onto add that "*It is my understanding that the current dairy farming system is one which is focused on producing animals of superior genetic material which can be used in the dairy industry to improve productivity. One of the aspects of this sort of system is to stock animals at a relatively low stocking rate but to milk them for a longer lactation at a higher rate of production than what is achieved on normal farms. I would expect that the productivity of the farm under the current management would be at or above what can be achieved on a normal farm*". My comments regarding this are:

38.1 Mr Sheriff has had to adapt and adopt this breeding cows because the land could not be used for profitability with the

conventional farming systems. This does not mean that the land is very productive as assumed by the LUC Classification or as assumed by Mr Ford's use of the DairyNZ systems.

38.2 As I noted in my evidence Mr Sheriff's operation is a low input and a low productive system. The fact that he has managed to adapt to a new productive system does not change this.

39 In paragraph 70 and 71 Mr Ford then goes onto define the LUC Classification and states that "*Capability is used in the sense of suitability for productive use or uses after taking into account the physical limitations of the land*." Mr Ford then concludes that "*I cannot reconcile this description of the classification system with Mr Mthamo's opinion that the classification of the site does not reflect the sites productive potential, it is my understanding that the LUC classification system is designed specifically to reflect the productive potential of the land*". In extracting this definition Mr Ford omits the associated explanation which states that:

"*Productive capacity depends largely on the physical qualities of the land, soil and the environment. These physical qualities are frequently far from ideal. Differences between ideal and actual may be regarded as limitations imposed by the physical qualities of the soil, and the environment. These limitations affect productivity, the number and complexity of corrective practices needed, and the intensity and manner of land use. Limitations include susceptibility to erosion, steepness of slope, susceptibility to flooding, liability to wetness or drought, salinity, depth of soil, soil texture, structure and nutrient supply and climate"*[2].

40 I can understand why Mr Ford omits this part as it is his understanding that constraints would have already been mitigated. (paragraph 29 above).

41 My understanding of Mr Ford's logic in his paragraphs 70-71 is that because the land use being used for productivity purposes it is achieving its highest and best potential.

41.1 As I noted in my evidence Mr Sheriff's operation is a low input and a low productive system. The fact that he has managed to adapt to a new productive system does not mean that the land achieving its productivity potential based on the LUC classifications.

41.2 If I extend my understanding of Mr Ford's logic in paragraphs 70-71 he is basically suggesting that:

[2] *Land Use Capability Survey Handbook (3rd Edition Revised And Reprinted)*

(a) Because the land is being used to develop a specific animal type, then the site is suited for that use; or

(b) If some arable crop was to be grown on LUC 4 or 5 regardless of productivity then that LUC Class 4 or 5 was the best suited to that production system.

42 In paragraph 72 Mr Ford concludes that "*The majority of the constraints he has identified are theoretical and he hasn't proven the connection between his theoretical constructs and what is possible on the site"*.

43 The constraints I have highlighted are site specific. Management of the site (soils, drainage etc) is a real challenge. Production on the site is constrained with a mere 170 dairy animals managed over a >150 ha property.

44 In his assessment Mr Ford has by and large trivialised the factors and constraints as theoretical. To justify this position, in his paragraph 40, he references case law: *"It is my opinion that the productive capacity of land should be determined by reference to Federated Farmers of New Zealand (Inc) Mackenzie Branch v Mackenzie District Council where it is stated that "The viability of a farm should be assessed objectively rather than on a landowner's subjective view*". While I do not have the full context of the case law, in one swoop Mr Ford concludes that the owners' experience on the land and his management of the land under the clear and obvious constraints does not account to anything in understanding the land's productive capacity. In other words, he minimises the importance of Mr Sherriff's lived experience on the farm and the challenges associated with managing farming activities.

Alternative Options Analysis

45 Mr Ford critiques my assessment of alternative sites that could accommodate the development. In paragraph 75 he writes "*If we are to map the area within the Waimakariri District that is substantially flat land as to its LUC classification Figure 3 we find that there is approximately 29,830 ha, or 23% of the land area which is LUC 4. By its very definition LUC 4 has a lower productive capacity than the land in question. It is difficult to reconcile this fact with Mr Mthamo's conclusion"*.

46 Again, Mr Ford falls into the trap of accepting the currently mapped LUC at face value and assumes that the LUC 4 area in Figure 3 will be less productive than the submitters' site. I note that even the NPS-HPL has identified the possible shortcomings of the current mapping and provides room for more detailed mapping in future.

47 In coming to the conclusion that I did, I had looked at the site-specific constraints that I discussed in my evidence and which Mr Ford chose to minimise in his.

48 I am still of the opinion that there is other land with less constraints on which the current level of productivity can be matched or bettered.

PROPOSED ZONING AND FUTURE DEVELOPMENT

49 The proposed zoning for the is Rural Lifestyle Zone (*RLZ*) as I noted in paragraph 22 of my evidence and discussed in the evidence of Mr Walsh.

50 I understand it is agreed that the site is excluded from the NPS-HPL transitional definition of HPL because it is subject to a Council-initiated plan change, being the PDP, which proposes to zone the site to the RLZ.[3]

51 I understand that under the RLZ, the site is capable of being subdivided down to four hectare lots as a permitted activity. In this sense, it does not matter what Mr Ford considers may be the highest and best use of the site when in reality, the submitters will subdivided to 4ha lots if this rezoning does not go ahead (as per the supplementary evidence of Mr Carter).

52 I consider that subdivision down to 4ha lots will inevitably result in the loss productive potential for the site irrespective of whether the site is rezoned as sought by the submitters.

53 I consider this highly relevant and note that Mr Ford does not appear to have considered this context at all in his evidence. This is despite the fact that in Mr Ford's evidence on behalf of Mark and Melissa Prosser (submitter 224) for hearing stream 12C (dated 5 March 2024) [4] he clearly acknowledges this as being a relevant consideration. This submitter's land is proposed to be zoned RLZ, and they are seeking Large Lot Residential Zoning. Mr Ford in his evidence for this submitter supports zoning the site to enable lots ranging in size from 2,500 m^2, with an average of 5,000 m^2. Mr Ford in his evidence for this submitter concluded that:

> *"I am aware that the NPS-HPL doesn't apply to the site because the land has already been consented for subdivision to 4 ha lots and because the site is zoned as rural lifestyle in the proposed Waimakariri District Plan.*
>
> *The Gross Revenue from the site, if it were in its consented 4 ha form, is relatively modest at approximately $74k and the Earnings Before Interest and Tax (EBIT) is not significant at approximately $25k.*
>
> *What I can conclude from this analysis is that there would be a large proportionate drop in the financial performance of the*

[3] National Policy Statement for Highly Productive Land, clause 3.5(7).

[4] 09.-Evidence-of-Stuart-Ford-for-Prosser-dated-5-March-2024-Agricultural-Productivity.pdf (waimakariri.govt.nz)

> *site from its current best and highest use to the consented best and highest use but the loss of agricultural financial performance from the consented use to the proposed use is not significant.*
>
> *On this basis I consider that the loss of productive farmland, because of the rezoning of the site to large lot residential, will be minimal and should not impede future development of the site".*

54 I agree with this statement made by Mr Ford and consider the same statement and principle applies to the proposed rezoning.

55 I, therefore, conclude that as the site will be zoned RLZ, the submitter the land will not be HPL.

Dated: 13 June 2024

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Victor Mthamo