

**Before the Hearings Panel
At Waimakariri District Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Waimakariri District Plan

Between **Various**

Submitters

And **Waimakariri District Council**

Respondent

**Council Officer's preliminary response to written questions on Rural Zones
Rezoning Requests s42A Report on behalf of Waimakariri District Council**

Hearing Date: 11 June 2024

INTRODUCTION:

- 1 My name is Shelley Milosavljevic. I am a Senior Policy Planner at the Waimakariri District Council.
- 2 The purpose of this document is to provide a preliminary response to the written questions from the Hearings Panel in response to my s42A report¹ relating to Rural Zones Rezoning Requests.
- 3 In preparing these responses, I note that I have not had the benefit of hearing evidence presented to the panel at the hearing. For this reason, my response to the questions may alter through the course of the hearing and after consideration of any additional matters raised.
- 4 Following the conclusion of this hearing, I will prepare a reply report outlining any changes to my recommendations as a result of matters highlighted during the hearing, and a complete set of any amendments relevant to the matters covered in my s42A report.
- 5 The format of these responses in the table below follows the format of questions asked by the Panel².
- 6 I am authorised to provide this evidence on behalf of the District Council.

¹ https://www.waimakariri.govt.nz/_data/assets/pdf_file/0027/162684/STREAM-12B-RURAL-REZONE-REQUESTS-S42A-REPORT.PDF

² https://www.waimakariri.govt.nz/_data/assets/pdf_file/0025/163195/Hearings-Panel-Questions-for-Hearing-Streams-12B.pdf

Date: 10 June 2024

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Question number	s42A report paragraph reference	Hearings Panel question
s42A Officer's preliminary response pre-hearing		
1	Para 52	<p><i>You have referred to the Rural Character Assessment, which itself notes the difference in rural character of lots between 4 and 10ha and those above 10ha. Is this not therefore only relevant to the General Rural Zone, rather than the Rural Lifestyle Zone?</i></p>
<p>No, I consider this part of the Rural Character Assessment is relevant to both the RLZ and GRUZ as the description of 'small rural lots 4ha to 10ha' includes lots of 4ha (and up to 10ha) thus can be applied to RLZ given its minimum lot size of 4ha; and its description of 'productive rural 10ha+' can be applied to GRUZ given its minimum lot size is 20ha (therefore 10ha+). The purpose of including these descriptions was to convey the difference in rural character that differing lot sizes contribute to.</p>		
2	Para 77	<p><i>You state:</i></p> <p><i>“Chapter 15 (Soils) addresses versatile soils, which the CRPS defines as LUC 1 and 2 only. Objective 15.2.1 seeks the maintenance of soil quality, including productive capacity. Section 3.2.4 above outlines how the NPS-HPL applies to LUC 1, 2 and 3 soils within the GRUZ and as such the provisions of Chapter 15, as they relate to versatile soils, are superseded by the NPS-HPL. Therefore, within the District, Chapter 15 only applies to LUC 1 and 2 soils located outside the GRUZ. Thus Chapter 15 is not of relevance to the GRUZ rezone submissions addressed in this report.”</i></p> <p><i>Please explain how the NPS-HPL “supersedes” the RPS, and how you have defined supersede in this instance? Please further explain your conclusion that Chapter 15 of the RPS only applies to LUC 1 and 2 soils located outside the GRUZ.</i></p>

		<i>If your assessment of the RPS being superseded is wrong, what are the implications for your assessment? In answering this, you may want to refer back to evidence the Panel received during Hearing Stream 6.</i>
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Upon giving this matter further consideration, I see that none of the Chapter 15 objectives or policies mention ‘versatile soils’³ thus their reference to soils is in a broader context. Ms Orr from ECan noted in her supplementary evidence⁴ for Hearing Stream 6 that *“the policies and objectives of the CRPS are not inconsistent with those of the NPS-HPL. The NPS-HPL is very directive where it applies, however, it does not apply to soils that are not contained in highly productive land. Alternatively, the provisions of Chapter 15 provide consideration of soil quality and erosion much more broadly than protecting highly productive land for use in land-based primary production. The proposed Waimakariri District Plan (pWDP) must give effect to both the CRPS policies and objectives and to the NPS-HPL. There is nothing in the NPS-HPL that precludes the CRPS from protecting soils beyond those considered to be highly productive under the NPS-HPL”*.

I prepared the diagram in **Figure 1** below that shows my interpretation of applicability and objectives of NPS-HPL and CRPS Chapter 15 and areas of overlap. I consider ‘superseded’ in this context would more appropriately apply to the areas of overlap between the CRPS and the NPS-HPL in the context of the directive provisions of the NPS-HPL.

³ The CRPS (page 245) defines ‘Versatile soil’ as ‘Land classified as Land Use Capability 1 or 2 in the New Zealand Land Resource Inventory’

⁴ https://www.waimakariri.govt.nz/_data/assets/pdf_file/0029/144686/STREAM-6-SUPPLEMENTARY-EVIDENCE-4-SUBMITTER-316-CANTERBURY-REGIONAL-COUNCIL-ECAN-.pdf

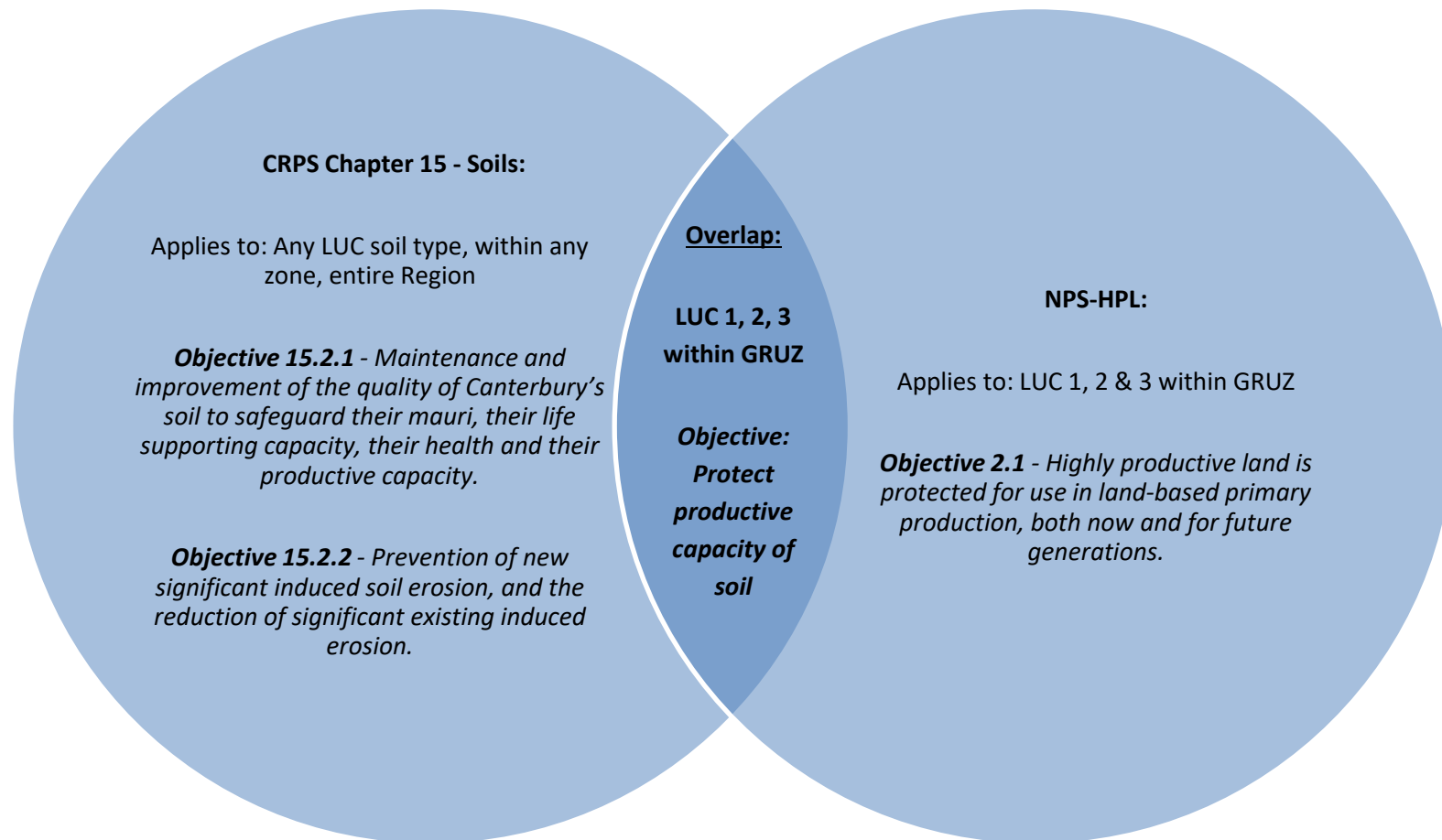


Figure 1: Applicability and objectives of NPS-HPL⁵ and CRPS Chapter 15 and areas of overlap

⁵ I note that the NPS-HPL also includes the Rural Production Zone as an applicable zone under Clause 3.5(7) however there is no such zone in the PDP.

Taking into account the above matters, I consider paragraph 77 of my report is incorrect in its conclusion that Chapter 15 is not relevant, as it may be relevant in some circumstances. The implications of this are that paragraph 77 should be amended, and my CRPS assessments in sections 3.5, 3.6, and potentially sections 3.7, 3.8, 3.9, 3.10 must be amended to add an assessment against relevant objectives and policies of Chapter 15. However, I note that in most cases I have included an assessment of a rezone request against CRPS Objective 5.2.1 (applies to the entire region) and CRPS Policy 5.3.12 (Rural production - applies to the area outside Greater Christchurch), and these link to Objective 15.2.1. Therefore, some consideration of Chapter 15 matters have inherently been included in my report due to this however not comprehensively.

I have provided my amended paragraph 77 below and will provide the CRPS Chapter 15 assessments to the sections I list above in my reply report.

“Chapter 15 addresses soils to address issues related to soil degradation and induced soil erosion. The chapter applies to the entire region thus is not limited to outside or inside Greater Christchurch.

I consider Objective 15.2.1 is of relevance to this report, which seeks the maintenance and improvement of the quality of soil to safeguard their mauri, life supporting capacity, health and **productive capacity** (my emphasis). Policy 15.3.1 seeks to “*ensure that land-uses and land management practices avoid significant long-term adverse effects on soil quality, and to remedy or mitigate significant soil degradation where it has occurred, or is occurring*” and to “*promote land-use practices that maintain and improve soil quality*”. While this policy relates more to soil quality such as avoiding compaction or contamination, these are factors that could reduce the productive capacity of soils (as set out in the policy’s principal reasons and explanation) thus in my opinion this policy is of relevance to this topic. Objective 15.2.1 (maintenance of soil quality) also links to Objective 5.2.1(2)(e) which seeks that development enables rural activities that support the rural environment including primary production, and also Policy 5.3.12(1)(a) which seeks to avoid development and/or fragmentation which forecloses primary production outside Greater Christchurch / within ‘wider region’. Thus, in my view these all seek (in part) to safeguard to productive capacity of soil/land.

As set out in Section 3.2.4 above, the NPS-HPL currently applies to LUC 1, 2 and 3 soils within the GRUZ only. CRPS Chapter 15 is broader as it applies to the entire region, regardless of zoning and is not limited to certain LUC soils. CRPS Policy 5.3.12 (Rural production) applies outside Greater Christchurch only, however it is also not limited by soil type or zone. Overall, I consider the objectives and policies of Chapter 15 protect soils beyond the protection of HPL directed by the NPS-HPL (in

terms of spatial extent, purpose of protection, soil type) and therefore the above Chapter 15 provisions are of relevance to this topic.”

3	Para 90	<p><i>At para 61 you acknowledge that because the NPS-HPL came into effect approximately 1 year after the notification of the PDP, submissions have not addressed the provisions of the NPS. You have not assessed these submissions because of this lack of assessment. Given most of these submitters are lay people who have not used professionals to prepare their submissions, has Council approached these submitters and advised them of the change in legislation and what is now expected?</i></p> <p><i>Furthermore, is it not possible to carry out a desk top study of these areas against at least some of the criteria in clause 3.10 to ascertain whether it would be appropriate to carry a more detailed assessment? The Odgers submission, for example, would appear to raise some valid reasons for a more detailed assessment of these submissions.</i></p> <p><i>The Odgers submission also raised the interesting point of land that has consent to be subdivided down to the RLZ minimum, but has not yet been given effect to, and has not been zoned RLZ even though it adjoins RLZ. Is there scope to address this anomaly in the higher order documents?</i></p>
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No, Council did not directly approach these submitters to advise them of the change in legislation and what is now expected. Council’s rezoning memo⁶ (December 2023) for rezoning submitters did list the NPS-HPL as being potentially relevant to rezoning requests. The NPS-HPL memo⁷ (June 2023) set out to the Panel Council’s approach to addressing submissions relating to the NPS-HPL and ensuring it is given effect to. However, neither of these memos set out the clause 3.10 exemption requirements for GRUZ to RLZ rezonings. I am aware that the Council have generally discussed the existence of the NPS-HPL with submitters where asked, Council has regularly received duty planner enquiries regarding the NPS-HPL, and it has been subject to minutes from the Panel to Reporting Officers.

⁶ https://www.waimakariri.govt.nz/_data/assets/pdf_file/0021/151635/MEMO-REZONE-REQUEST-REZONING-OVERARCHING-INFORMATION-REQUIREMENTS-PDP-STREAM-12-17-OCTOBER-2023.pdf

⁷ https://www.waimakariri.govt.nz/_data/assets/pdf_file/0022/137137/MEMO-TO-HEARING-PANEL-ON-NPS-HPL-BY-WDC.pdf

Policy 6 of the NPS-HPL seeks avoidance of rezoning of HPL to RLZ, except as provided for in clause 3.10. I consider this policy is very directive, and the exemption criteria in clause 3.10 very detailed and prescriptive; hence the 'blunt' approach I took when assessing rezone requests within HPL. I note that while such an assessment pathway does exist, no evidence on the relevant clause 3.10 matters is before the Panel.

In considering this question and the application of Policy 6 I looked at how the NPS-HPL deals with zoning under a Proposed District Plan given it is not yet operative thus whether the PDP's proposed zoning would constitute 'zoning' under the NPS-HPL. I also looked into whether submissions seeking a change in zoning in the PDP would be considered 'rezoning' under the NPS-HPL given the proposed zoning is not yet operative. Clause 3.5(7)(b)(ii) of the NPS-HPL excludes areas "*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*" which to me indicates that it includes Council initiated 'notified zonings' as 'zonings', which would therefore apply to the PDP's proposed zoning.

As I noted in paragraph 89 and 90 of my report, the exemption criteria in clause 3.10 requires a substantial site-specific, farming practice-focused, and conjunctive evaluation of the listed matters. This includes demonstration that permanent or long-term constraints cannot be addressed through any reasonably practicable options such as alternative forms of primary production, improved land-management strategies, alternative production strategies, water efficiency or storage methods, reallocation or transfer of water and nutrient allocations, boundary adjustments, or lease arrangements.

I accept that I could have undertaken individual desktop assessments against a small number of some of the criteria in clause 3.10 (such as consideration of some potential constraints (clause 3.10(1)), and whether significant loss of productive capacity is avoided (clause 3.10(1)(b)(i))), to ascertain whether it would be appropriate for the submitter to carry out a more detailed assessment. However, I consider this could also have had the potential to incur significant costs for submitters and may have raised expectations. Furthermore, as per the assessment framework set out in Figure 3 of my s42A report, rezone requests that did give effect to the NPS-HPL would then need to also give effect to the CRPS, and following that would then need to be assessed against matters such as rural character, servicing, hazards, and consistency with PDP objectives and policies.

In terms of the Odgers submission [421] that seeks the rezoning of GRUZ to RLZ for 1624, 1590, 1592, 1586 and 1552 Tram Road (which are all on the north side of Tram Road); the site with the fifteen lot (each lot approximately 4ha) approved subdivision at 1573 Tram Road (southern side) will not directly adjoin RLZ as

there is a 157ha balance lot⁸ between it and RLZ, and also to the south (refer to **Figure 2** below). The subdivision at 1552 Tram Road, which adjoins RLZ was not approved prior to the notification of the PDP thus is subject to the PDP provisions also and has not been processed at this stage. Therefore, as shown in **Figure 2** below, while there are 4ha lots consented and not yet given effects to within this area, there are not any *directly* adjoining RLZ.

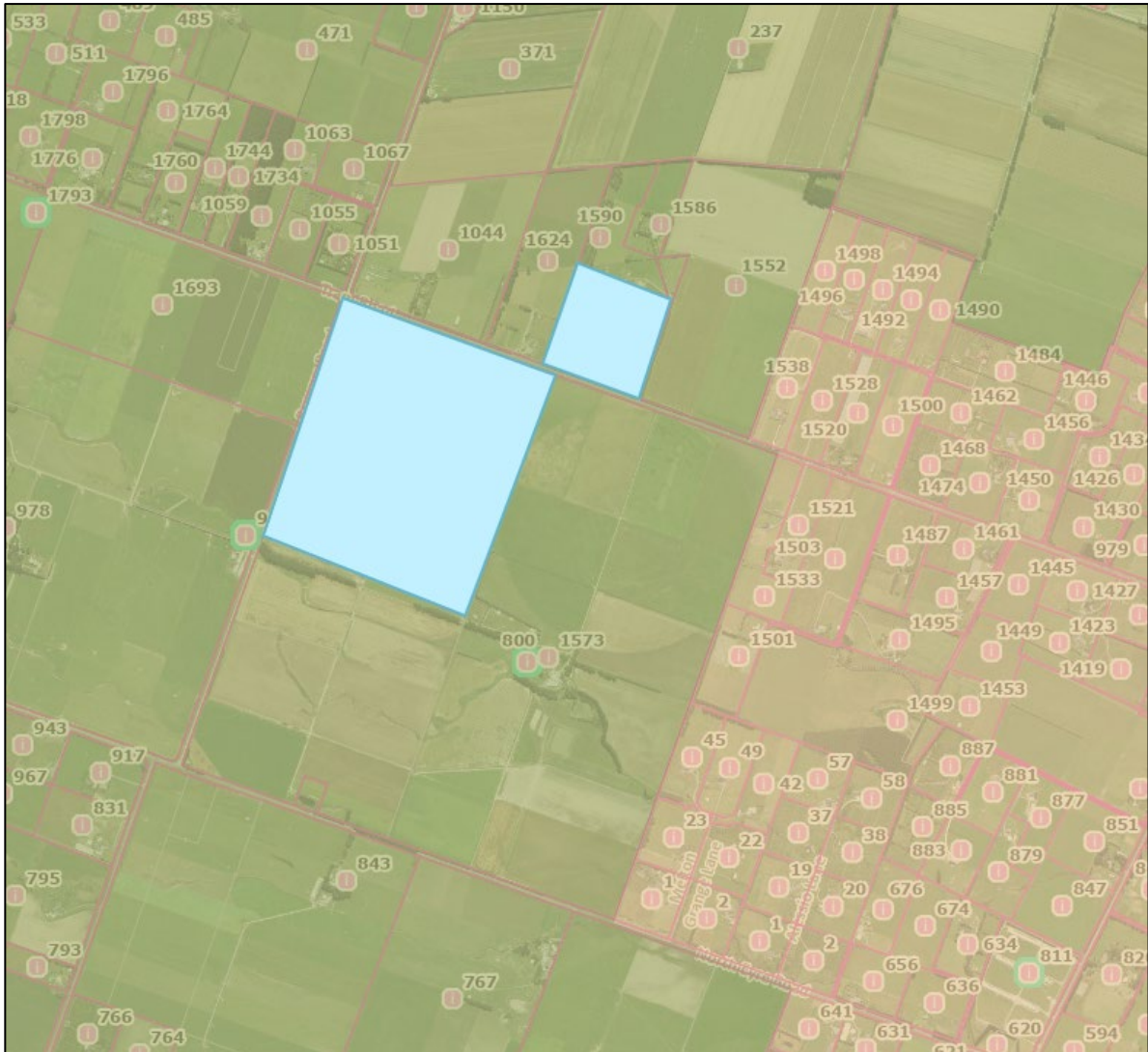


Figure 2: Blue squares show approximate areas where there are approved subdivisions at 1573 & 1592 Tram Road in relation to the RLZ and GRUZ boundary and also surrounding lot sizes

However, in terms of the general question of whether there is scope to address zoning anomalies (i.e., smaller rural lots within GRUZ that are more akin to RLZ in terms of lot size and overall rural character than GRUZ and located near the RLZ boundary) within the higher order documents, I consider the NPS-HPL is

⁸ RC205184 Decision letter (TRIM: 200917123516) - can be provided to Panel on request.

very directive in that if the land is HPL then unless clause 3.10 exemptions can be met, the rezoning should be avoided. However, I accept that the Panel may come to a different view on this.

Overall, aside from noting their proximity to 4ha lifestyle blocks none of the submissions provided evidence relating to primary production or rural character, which I consider makes such rezoning requests difficult to accept under the current higher order documents and PDP framework. In my view, expanding the RLZ boundary line could contribute to further fragmentation of productive rural land and change rural character by enabling more 4ha lifestyle blocks to establish and surround GRUZ land.

4	Para 120	<p><i>You infer here that 4ha allotments would not support primary production. Is this consistent with the approach taken in the s42A report for the Rural zone? For example, para 84 of that report recommends the following amendment to the ‘Introduction of the rural zones Chapter’ as follows:</i></p> <p><i>“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. <u>While the sites are smaller than the GRUZ, they are still productive and the majority of the District’s horticultural operations are within the RLZ. [295.121]”</u></i></p>
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I consider my conclusion in paragraph 120 that “rezoning these areas RLZ would not support primary production as it would enable 4ha lifestyle blocks” is consistent with the above recommended amendment⁹ to the Introduction section of the ‘General Objectives and Policies for all Rural Zones’ chapter as I do counter my position with the evidence that intensive vegetable production or glass house operations, which are horticultural activities, could be supported on 4ha lots, which aligns with the position of the Rural s42A Reporting Officer in accepting the submission point to amend the RURZ Introduction.

⁹ Hearing Stream 6 – Rural Zones s42A Report
https://www.waimakariri.govt.nz/data/assets/pdf_file/0013/142240/STREAM-6-RURAL-ZONE-SECTION-42A-REPORT.pdf

Overall, I consider that while primary production is possible on 4ha lots, it will be much less likely to occur as there are more operational limitations and therefore such lots are more likely to be used for lifestyle purposes, as is evident with many of the 4ha lifestyle lots created within the District over the years.

The thrust of my assessment is that rezoning these areas to RLZ is not the most appropriate method to give effect to CRPS Objective 5.2.1 as it would be less likely to *‘support the rural environment including primary production’*.

5	Paras 144 – 149	<p><i>Please provide comment on whether there are any elements of the requested rezonings that have merit, such as their location surrounded by small-sized lots. Particularly, if there is limited ability to undertake primary production activities without generating adverse effects on, or reverse sensitivity effects from, sensitive activities, and taking into account Zone setback requirements.</i></p>
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As I noted in paragraph 144 and 147, these rezone request areas are partly surrounded by 4ha lots and therefore the proximity to these smaller lots could mean the rural character adjoining them is more of a RLZ nature than GRUZ, and that there may be a more limited ability to undertake primary production activities without generating adverse effects on, or reverse sensitivity effects from, these more sensitive activities. However, I also note in these paragraphs that these rezone areas also adjoin larger lots used for primary production thus enabling more 4ha lots adjacent to them could contribute to reverse sensitivity issues for these existing primary production activities.

Also, given the HPL mapping is still transitional, there is still the potential that these LUC 4 areas could end up being mapped HPL by ECan. The submissions did not provide rural character evidence or primary production evidence thus I relied on the expert reports prepared by Boffa Miskell and Macfarlane Rural Business on these matters.

I do not consider spot zoning is appropriate as it would increase the interface between GRUZ and RLZ, which could potentially lead to reverse sensitivity issues for adjoining primary production within GRUZ, which could spread the reduction in primary production activities, and change rural character. Thus, in order to give effect to the relevant higher order documents and achieve the PDP’s rural objective framework, I consider it is important to hold the line.

Section 2.3 of the Rural s32 Report¹⁰ outlines the impact of ongoing 4ha lot subdivision on the rural zone that the GRUZ zoning is intended to help address:

“Ongoing availability of land for production for the future is compromised by trends for land fragmentation, investment and use for mainly residential purposes. Once land is developed for ‘lifestyle’ purposes, it is unlikely that it will be returned to productive use in the foreseeable future.

“In terms of maintaining land for rural productive purposes and retaining productive potential within the Waimakariri District the minimum effective areas for primary production activities range from between 10-15 ha up to 100ha. The effective areas are those used for primary production systems. The provision of residential units, sheds, access and associated land use for domestic purposes is in addition to the effective production area. It is acknowledged that smaller areas may be sustainable for fresh produce, glasshouses and tunnel houses. However, to sustain the potential for a range of productive uses a larger area is required.

Higher land values for small lots to develop for rural lifestyle purposes can be an incentive to subdivide larger land parcels, thereby increasing the price of rural land to reflect the possibility of subdivision, and for larger parcels that become increasingly scarce. This can be a disincentive to purchase for primary production purposes.

Cumulative effects from small scale subdivision include:

- *increasing potential for conflict between rural and residential land uses and expectations,*
- *development of ‘nodes’ where demand for new or upgraded infrastructure and services may occur,*
- *loss of rural character, and*
- *higher dominance of residential focused activities, rather than rural productive activities*
- *undermining the Canterbury Regional Policy Statement directions that rural production is the focus for rural areas.”*

¹⁰ https://www.waimakariri.govt.nz/data/assets/pdf_file/0020/136109/24.-RURAL-S32-REPORT-DPR-2021..pdf

Figure 3 below (from the Rural s32 Report) demonstrates the high level of 4ha lots created by subdivision following the introduction of the Operative District Plan’s 4ha rural lot minimum until the year before the PDP was notified.

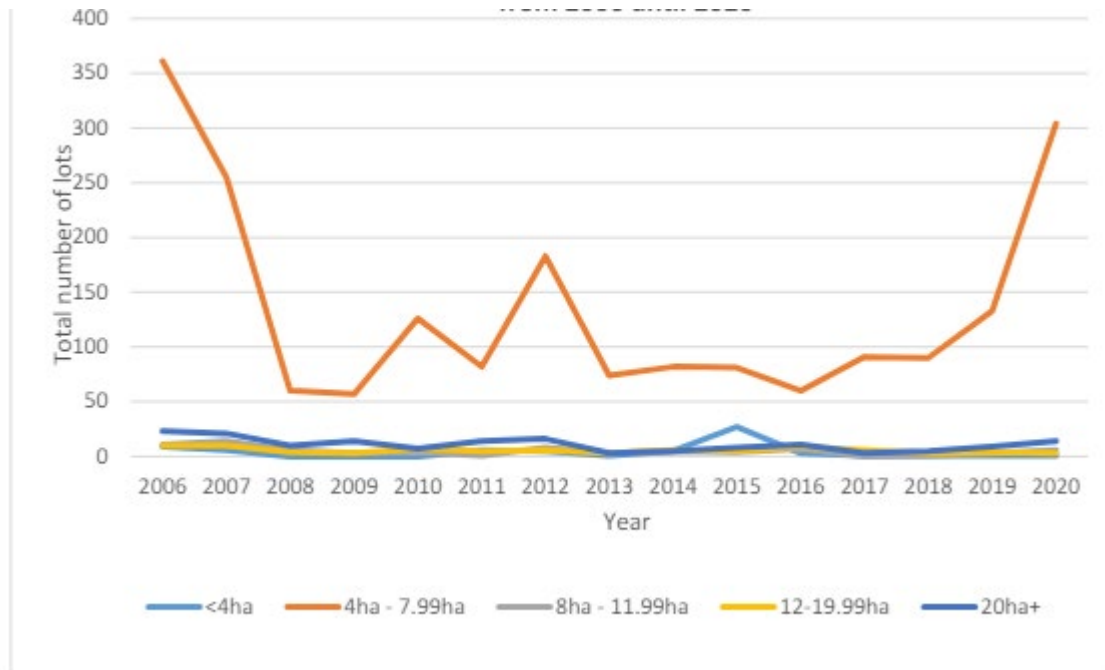


Figure 3 – Number of lots (by size) created by subdivision in Rural Zone from 2006 until 2020 (Source: page 8, Rural s32 Report)

“The creation of 4ha - 7.99ha lots has increased from 2016 onwards, with a strong peak from 2018 to present. This coincides with the signals given by Council¹¹ that the fragmentation of rural land is a major resource management issue that needs to be addressed. It also coincides with when district wide geotechnical requirements being relaxed.”

Section 4 of the Rural s32 Report also provides further details on the resource management issues for the rural zones.

I consider these parts of the Rural Section 32 Report, along with the fact that the primary reason submitters oppose GRUZ zoning is that it reduces their potential subdivision yield¹², support my view that rezoning

¹¹ via the District Development Strategy (2017 – 2018), District Plan Review ‘Issues & Options’ (2017) consultation and ‘What’s the Plan?’ consultation (2019)

¹² Given this is the key difference between the GRUZ and RLZ rules

from GRUZ to RLZ would likely result in a large number of 4ha blocks which overall could contribute to reducing GRUZ's primary production potential and rural character.

6	Para 206	<i>In your assessment of the RPS you have referred to Chapters 5 and 12. Please explain why you have not considered Chapter 10, Beds of Rivers and Lakes and their Riparian Zones. If you do think it is relevant, please provide an assessment against it.</i>
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I agree that Chapter 10 of the CRPS, which addresses the beds of rivers and their riparian zones, would be relevant to my assessment in section 3.10.2.2 of my report and apologise for omitting this. My assessment is as follows:

“Chapter 10 of the CRPS relates to the beds of rivers and lakes and their riparian zones thus is relevant to this rezone request. Objective 10.2.1 seeks to enable subdivision, use and development of river and lake beds and their riparian zones while protecting all significant values of those areas. Policy 10.3.1(2) seeks to provide for activities in river and lake beds and their riparian zones while ensuring that significant bed and riparian zone values are maintained or enhanced. Policy 10.3.2(2) seeks the preservation of natural character of river and lake beds and their margins and protect them from inappropriate subdivision, use and development. Objective 10.2.4 seeks the maintenance and enhancement of public and Ngāi Tahu access to and along rivers and lakes. Overall, I consider that NOSZ zoning would be more consistent with these relevant Chapter 15 provisions than GRUZ zoning given the NOSZ purpose is to provide for areas where the natural environment is retained. I therefore consider this request is consistent with the relevant provisions of Chapter 10.”