

Before a Hearings Panel for the Hastings District Council

In the matter of the Resource Management Act 1991 (**the Act**) and the Severe Weather
Emergency Legislation (Resource Management – Streamlined Planning
Process) Order 2023 (**SPP Order**)

And

In the matter of Plan Change 6 to the Hastings District Plan.

Reply on behalf of Hastings District Council

Dated 6 June 2024

May it please the Hearings Panel

1. This reply is given by Rowan Wallis and Asher Davidson, on behalf of the Council following the hearing of submissions on Plan Change 6 on 5 June 2024. It summarises matters discussed with the Panel at the conclusion of the hearing and records Council's position on each topic.

Community of Interest

2. The requirement that a new lifestyle site be within the "community of interest" of a displaced landowner is not a requirement of the empowering legislation, but was intended by the Council to reflect a desire by landowners for an opportunity to remain within their community.
3. The Council continues to support reference to "community of interest" in PC6, and considers the 15 km radius as a Controlled activity criterion, with the ability for a more distant site to be approved through a Restricted Discretionary Non-Notified pathway, is clear and enforceable. However, we acknowledge there is unlikely to be any "resource management harm" if this requirement is removed. As discussed there are 166 Category 3 owners who are eligible for the buy-out and therefore eligible to use this pathway. If these were dispersed outside the 15 km recommended radius from Category 3 areas, it is not expected there would be any particular adverse effect on the environment.

4. In the event the Panel decides to delete reference to the community of interest, amendments would be required to the following provisions of PC6:
 - (a) Amend Policy SLDP23 and the related Explanation;
 - (b) Delete Rule SLD16A as there would be no RDNN pathway;
 - (c) Delete criterion 30.1.7AA(4);
 - (d) Delete Assessment Criteria 27, noting that the existing assessment criteria would be sufficient to address Controlled activity subdivision under the new rule.

Role of the National Policy Statement on Highly Productive Land (NPS—HPL)

5. The opening submissions for Council raised the issue that the proposed new provisions were not proposed to apply to the Plains Production Zone (**PPZ**), in part due to the direction provided in the NPS-HPL which precludes Council providing for rural lifestyle subdivision on highly productive land. As discussed, the large majority of the PPZ is mapped as LUC 1, 2 or 3 and is therefore defined as highly productive land (**HPL**) for the purposes of the NPS.
6. Two issues were raised as a result of this as follows.

Could PC6 apply to the PPZ with a criterion that the land not be LUC 1, 2 or 3?

7. Council does not support PC6 applying to the PPZ for a number of reasons, of which the NPS-HPL is only one. As set out in the s 32 Report and other documents, the objectives and policies applicable to the PPZ seek to avoid fragmentation of the versatile land resource comprising the PPZ and preserve it for productive purposes. For instance, Policy PPP6 requires:

Restrict the ability to create lifestyle sites within the Plains Production Zone to those from an existing non-complying site where the balance of the site is amalgamated with one or more adjoining sites to form a complying site.

Explanation

One of the major issues affecting versatile land is the pressure that comes to bear as a result of people wanting to establish lifestyle developments close to the various urban centres. The Council is seeking to keep firm control over the creation of such sites to ensure that the versatile soils are not fragmented to such a degree that they cannot be used for production purposes... This policy is consistent with the Regional Policy Statement which states that versatile land of the Heretaunga Plains is highly desirable for urban and rural lifestyle development but most importantly it underpins the economy of the region. This conflict and pressure from urban development makes it a regionally significant issue.

8. The Environment Court has upheld these provisions in cases such as *Endsleigh Cottages Ltd v Hastings District Council* [2020] NZEnvC 064, finding that objectives and policies seeking to preserve the PPZ for productive purposes, including PPP6 “are fundamental and critical provisions” (at [173]). The Court also noted these give effect to Regional Policy Statement directives which are also relevant.
9. The Council remains strongly of the view that provision of new opportunities for lifestyle sites within the PPZ would fail to give effect to relevant objectives and policies of the District Plan and RPS, even if the particular site was not LUC 1, 2 or 3.

Should PC6 apply to Rural Zoned land that is LUC 1, 2 or 3?

10. Given there is some HPL, particularly LUC3, within the Rural Zone, the Panel queried whether providing for Controlled activity subdivision that might potentially affect such land gave effect to the NPSHPL.
11. The approach taken initially was that the relatively low proportion of HPL in the Rural Zone (which is significantly larger than the PPZ) and the low potential number of new sites meant that there was unlikely to be an inconsistency between PC6 and the NPS directive to avoid lifestyle subdivision of HPL. However, we acknowledge there is potential for a lifestyle lot to be established on HPL under PC6 as notified.
12. The Panel raised the possibility of adding an exclusion to criterion 30.1.7AA(3) that a new lot not be created on HPL. The Council would support that as a way of ensuring PC6 gives effect to national direction.
13. In terms of precise wording if this approach is taken, we recommend referring to the definition of HPL as per the NPS-HPL, because:
 - (a) While reference could be made to LUC 1, 2 or 3 land, there is the potential for that descriptor to become outdated if the NPS is amended (for instance to exclude LUC3) or the HBRC carries out the required mapping, which may include other land or exclude some LUC 1, 2 or 3. Reference to the NPS directly ensures the definition will stay current;
 - (b) There was a suggestion that the criterion might provide for a landowner to provide a site specific soil assessment to demonstrate the land was not LUC 1, 2 or 3. Council is not supportive of that approach and notes that the Environment Court decision in *Blue Grass Ltd v Dunedin City Council* [2024] NZEnvC 83 held that if land is mapped as LUC 1, 2 or 3 it

must be treated as HPL for the purposes of the NPS, even if site specific mapping suggests it is not.

Timeframe

14. There was discussion with Mr Taylor about the timeframe within which a subdivision under these rules could be carried out. Council would support the amendment raised by the Panel which would see criterion 30.1.7AA(2) amended to apply 2 years from the date at which PC6 becomes operative or 2 years from settlement, whichever is the later. This would ensure persons who have settled already are not disadvantaged.

Three-year Rural Lifestyle lot rule

15. Mr Taylor also raised the issue of the interrelationship between the 3-year rural lifestyle lot rule and the Category 3 lifestyle subdivision rule. The suggestion is that the Category 3 entitlement would be separate from the 3-year rule. The notified drafting would meet this intention where the Category 3 subdivision occurred after a 3 year subdivision, but may cause issues where the Category 3 subdivision occurs first. This is because the 3 year period is counted from when the subject title is issued.
16. We have suggested an addition to 30.1.6B which is the Lifestyle Lot rules to clarify that a Category 3 subdivision should be disregarded when calculating the 3 year lapse period.

Conclusion

17. Provided with this Reply are:
 - (a) Word versions of the Section 32AA evaluation and Section 42A report;
 - (b) A corrected track change version of PC6 (Council recommendation version);
 - (c) A track change version of PC6 which reflects the changes discussed at the hearing and above, for the consideration of the Panel.
18. If there is anything further the Council can usefully provide, please let us know.

Rowan Wallis / Asher Davidson
On behalf of Hastings District Council
6 June 2024