

Memorandum

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To: Novo Group Limited

From: Jo Appleyard / Meg Davidson
Direct: +64 3 353 0022 / +64 3 353 0932
Mobile: +64 27 444 7641 /
Email: jo.appleyard@chapmantripp.com /
meg.davidson@chapmantripp.com
Ref: 100656122/3467-5663-5448.2

ADVICE ON THE APPLICATION OF THE NATIONAL POLICY STATEMENT FOR HIGHLY PRODUCTIVE LAND 2022 TO LAND ZONED RURAL URBAN FRINGE

- 1 Novo Group Limited is currently preparing an application for approval under the Fast-track Approvals Act 2024 (*Application*) on behalf of Carter Group Limited (*Carter Group*). The Application relates to the Ryans Road Industrial Development which is a listed project in Schedule 2 of the Fast-track Approvals Act 2024.
- 2 We understand that the land to which the Application relates is zoned Rural Urban Fringe in the Christchurch District Plan and is made up of LUC class 2 soils (*Land*).
- 3 You have asked for our advice as to whether the National Policy Statement for Highly Productive Land 2022 (*NPS-HPL*) has any relevance to the Application and in particular, whether the Land is zoned "General Rural or Rural Production" land for the purpose of the NPS-HPL.
- 4 Our advice is set out below.

National Policy Statement on Highly Productive Land

- 5 The NPS-HPL requires regional councils to map highly productive land in their regional policy statements within three years of the NPS-HPL coming into force (in other words, by 17 October 2025).¹ In the interim period before mapping occurs, land must be treated as highly productive land for the purposes of the NPS-HPL if it, at the commencement date of 17 October 2022:

5.1 is zoned general rural or rural production; and

5.2 is LUC 1, 2, or 3; but

5.3 but is not:

¹ National Policy Statement for Highly Productive Land 2022, cls 3.5(1).



- (a) identified for future urban development; or
 - (b) 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.
- 6 The Land is located on LUC 2 land and is not identified for future urban development or subject to a council initiated or adopted notified plan change. The question therefore remains, whether the Land which is zoned Rural Urban Fringe “is zoned General Rural or Rural Production”?

The Land is not zoned general rural or rural production

- 7 The NPS-HPL defines a reference to a zone within the NPS-HPL as being a reference to a zone described in the National Planning Standards. For local authorities who have not yet implemented the National Planning Standards (such as the Christchurch City Council), one must determine the nearest “equivalent zone” in the National Planning Standards.
- 8 Whether the NPS-HPL applies to the Land will be dependent on what the nearest equivalent zone in the National Planning Standards is to the Rural Urban Fringe Zone. In order to determine the nearest equivalent zone, it is necessary to look at the zone descriptions in the National Planning Standards and compare these with the zone description, objective, policies, activity table and subdivision provisions (in the round) of the Rural Urban Fringe zone.²
- 9 The four ‘rural type’ zones available for comparison in the National Planning Standards and their descriptions are as follows:
 - 9.1 **General rural zone:** Areas used predominantly for primary production activities, including intensive indoor primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.
 - 9.2 **Rural production zone:** Areas used predominantly for primary production activities that rely on the productive nature of the land and intensive indoor primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.
 - 9.3 **Rural lifestyle zone:** Areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General rural and Rural production zones, while still enabling primary production to occur.

² National Policy Statement for Highly Productive Land: Guide to Implementation, page 15.



- 9.4 **Settlement zone:** Areas used predominantly for a cluster of residential, commercial, light industrial and/or community activities that are located in rural areas or coastal environments.
- 10 Unfortunately, there is no clear description in the Christchurch District Plan of the intended purpose of the Rural Urban Fringe Zone. Nor are there any specific objectives or policies related to that zone that provide any insight. However, the activity and subdivision rules tell us that:
- 10.1 The minimum net site area is 4 hectares (this is the lowest minimum net site area allowed for any of the “rural” zones in the Christchurch District Plan, with other rural zones having a minimum net site area varying from 20 hectares to 100 hectares³).
- 10.2 A significant range of non-rural activities are permitted in the zone including retail and manufacturing, residential activities, recreation activities, emergency service facilities, vet facilities, poultry hatcheries, and visitor accommodation. Farming and rural produce retail are also permitted.
- 10.3 Intensive farming is also contemplated in the zone but as a restricted discretionary activity rather than a permitted activity, with specific regard needing to be given to the sensitivity of the surrounding environment, and the extent to which adverse effects on residents can be avoided.⁴
- 11 Having undertaken a desktop review of the actual permitted activities being undertaken in the Rural Urban Fringe Zone around Christchurch, the area appears to comprise a mixture of uses, predominantly made up of rural lifestyle properties, smaller farming units, as well as some small commercial offerings (particularly towards Marshlands). We understand that demand for rural lifestyle properties in the Rural Urban Fringe zone close to the city has elevated the land value to a level where rural lifestyle represents the highest and best use in many cases meaning we can expect to see a continued proliferation of 4-hectare properties within the Rural Urban Fringe zone as permitted activities.
- 12 While this might appear helpful at face value, the Court has held that ascertaining what the “nearest equivalent zone” is, does not involve an evaluation of the extent of land use activities taking place within the relevant zone.⁵ We are however of the view that this would still be a relevant consideration in the round as it is evidence of the purpose of the zone as reflected in the permitted activities taking place. We accept that it is not the sole determinant.
- 13 On the basis of the above review, we conclude that the nearest equivalent zone to the Rural Urban Fringe zone in the National Planning Standards is the Rural lifestyle

³ Rural Waimakariri Zone and Rural Quarry (McLeans Island) Zone: 20 hectares. Rural Port Hills Zone: 100 hectares. Rural Banks Peninsula Zone: 40 or 100 hectares depending on location.

⁴ Refer to *Wakatipu Equities Limited v Queenstown Lakes District Council* [2023] NZEnvC 188 at [57] and [65].

⁵ *G M & J Drinnan v Selwyn District Council* [2023] NZEnvC 180 at [82].



zone. This is mainly on the basis that a significant proportion of the zone is able to be, and is in fact used for residential purposes, and the rules allows for the creation of 4-hectare allotments (which is generally accepted as a lot size that does not support primary productive use). We note a relevant excerpt from a 2018 MacFarlane Rural Business assessment referenced by a Waimakariri District Council officer in a memo to the hearings panel for the Proposed Waimakariri District Plan which says:⁶

there are very few agricultural or horticultural farming practises that would justify a farming business of 4ha (with the exception of very intensive vegetable production or glasshouse operations), even if they are operated to the highest level. The reality is that most properties under 10ha have been purchased for lifestyle purposes and the majority of the household income is derived off farm. Furthermore, once the house and amenities are deducted from the total area, the effective farming area on a 4ha property could be as low as 2ha. Whilst in theory a group of 4ha properties could be operated in conjunction to achieve scale, this is unlikely to be successful given owners will often have differing priorities and the fact that the small paddock sizes will limit operational efficiency.

The NPS-HPL does not apply

- 14 For the reasons explained above, we consider that for the purpose of the Application, the Land is not zoned General Rural or Rural Production and therefore the NPS-HPL is not relevant to the Application under the current definition of highly productive land.
- 15 Having said that, for the purposes of Carter Group's fast-track application in relation to Ryans Road, we suggest that rather than relying solely on our advice, as a belts and braces exercise to keep the application moving at pace through the fast-track process that in the alternative, and without prejudice to the interpretation set out above, an assessment against the NPS-HPL should nevertheless be undertaken as a fallback exercise in case the fast-track panel do not accept our interpretation.

Jo Appleyard / Meg Davidson

Partner / Solicitor

⁶ Memorandum from Mark Buckley, S42A Reporting Officer for Rural Zones, 30 June 2023.