

Before the Independent Panel appointed by
Central Hawkes Bay District Council

Under of the Resource Management Act 1991
(the Act)

In the matter of The hearing of an application by
PAOANUI POINT LIMITED to
subdivide part of a 380 hectare rurally
zoned property to create 48 residential
allotments

Statement of Planning Evidence of Roger Douglas Wiffin

05 July 2023

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INTRODUCTION

Qualifications and experience

- 1 My name is Roger Douglas Wiffin. I graduated from Massey University with a bachelor's degree of Resource and Environmental Planning in 2000 and have 22 years of professional planning experience.
- 2 I am currently a Principal Planner and Director of Strategy Planning Limited. Prior to this I have worked for a number of private consultants as an Environmental Planner, and at the Horowhenua District Council and Hastings District Council as a Consents Planner.
- 3 I am a Full Member of the New Zealand Planning Institute.
- 4 I have achieved panel certification, having completed the Ministry for the Environments *Making Good Decision's* Foundations Course.
- 5 I confirm I have read the application material, Section 42A Report, and have visited the local area in which the application site is located.

Expert witness Code of Conduct

- 6 I have been provided with a copy of the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note 2023. I have read and agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

PURPOSE AND SCOPE OF EVIDENCE

My evidence is provided in support of particular matters included in the submission made by the Trustees of the Havelock Bluff Trust (Submission 5).

- 7 Submission 5 signalled full opposition to the application and referenced a range of matters, many of which were also raised by opposing Submissions 2 through to 4.
- 8 The primary focus of this evidence is on those Submission 5 matters pertaining to the effects of the proposal on the productive capacity of the soils resource.
- 9 Focussing my evidence on this matter does not diminish the relevance of any other matter raised by Submission 5, which will remain to be considered by the Panel, and which I acknowledge are also covered in the Section 42A report and evidence of Ms Foster.
- 10 My evidence will consider the matters of focus in terms of:
- a) The Decision making framework and relative significance of provisions under s104(b)
 - b) The National Policy Statement: Highly Productive Land (**NPS: HPL**),
 - c) Technical reports relating to the above matters of focus, the Application, and the Section 42A Report.
 - d) The Proposed District Plan and the Operative District Plan.
- 11 I also provide comment on these matters in response to the Applicants Evidence as circulated on 29 June 2023.

EVALUATION FRAMEWORK

- 12 I agree with the application and the s42A report in that the proposed subdivision falls to be assessed as a discretionary activity.
- 13 At 4.1 and 4.2 the s42A Report establishes the statutory framework, referencing s104 and 104B, which I agree with. Here I add that unlike controlled or restricted discretionary activities, when considering a

discretionary activity the matters of discretion are unrestricted and regard can be had to “any other relevant matter” (RMA s104(1)(c)).

14 At 4.4 a. the s42A Report states that the matters under s104(b), which a decision maker is to ‘have regard’, to are non-hierarchical and are on equal footing. Whilst this is a generally accepted principle, when ‘having regard’, I consider it appropriate to consider these matters in the context of the hierarchical structure of the RMA as to the planning instruments and the import of any specific direction in the provisions of those instruments. This relative import between provisions is signalled in the following:

- Under RMA s75(3) a district plan must give effect to any national policy statement, and any New Zealand coastal policy statement, a national planning standard and any regional policy statement.
- Under RMA s74(1)(ea) a territorial authority must prepare and change its district plan in accordance with a national policy statement. In
- Under 4.1 of the National Policy Statement: Highly Productive Land (**NPS-HPL**), every local authority must give effect to the NPS-HPL from its date of commencement, and must notify changes to objectives, policies and rules in its district plan to give effect to the NPS-HPL as soon as is practicable.

Under these provisions a district plan is subservient signalling that when ‘having regard to’ under s104(b) an at least implicit ordering or sequencing should be applied. This approach is consistent with the s42A Report where reference is made under 4.5(j) and also at 4.111 to consideration of ‘Higher order documents (including National Policy and Regional Policy Statements)’.

15 This ordering or hierarchical approach to s104(b) is further supported in that an NPS has capacity to specifically direct, re-direct, or supersede district plan provisions. Where an NPS has immediate effect, a district plan is potentially

also immediately outdated. It is my view that the recently enacted NPS-HPL falls into this category.

- 16 I agree with the s42A report that the gateway test under s104D does not apply. However effects and consistency of a proposal with the planning framework remain key considerations at the heart of decision making. I consider both below in relation to the matters of focus and having regard to s104(b).
- 17 Appendix 2 of the s42A report references the relevant objectives and policies of the Central Hawkes Bay Operative District Plan, the Central; Hawkes Bay Proposed District Plan and the Regional Resource Management Plan – Hawkes Bay Regional Policy Statement. I would agree that those listed are relevant to the proposal on the whole, including those relevant to the soils resource management, being the main focus of this evidence.
- 18 In my opinion, whilst the Proposed District Plan provisions represent a move towards alignment with the direction of the NPS-HPL they cannot be said to give it full effect because the Proposed District Plan was drafted and notified prior to the release of the NPS legislation in September 2022. In this regard there is potential that changes to the Proposed District Plan may be required to give proper effect to the NPS. This also influences the hierarchy to be applied between the NPS-HPL and the District Plan, including in the event of any current or apparent conflict in the provisions of each instrument.
- 19 Having regard to the structure of the Act it is therefore appropriate when considering management of the soils resource to first consider the proposal in terms of the NPS-HPL. This is the most recently enacted legislation and can be considered to provide the primary direction that lower order instruments are required to follow and give effect to. As such the NPS-HPL carries significant weight under s104 of the RMA.

**NATIONAL POLICY STATEMENT FOR HIGHLY PRODUCTIVE
LAND (NPS-HPL)**

- 20 The NPS-HPL was introduced in September 2022 coming into force on 17 October 2022. Having immediate effect and applying to decisions on resource consents lodged prior to 17 October signals the intended significance of the NPS-HPL to decision makers under s104.
- 21 The NPS-HPL was developed through legislative process, it was approved by the Governor General under section 52(2) of the RMA and is published by the Minister for the Environment. In this regard I consider that the NPS-HPL gives direct expression to Part 2 of the Act on the matters it covers and having had regard to the NPS-HPL, no specific or separate consideration of Part 2 is warranted in relation to NPS-HPL matters.
- 22 In March 2023 the Ministry for the Environment issued an updated NPS-HPL Guide to Implementation (the Guide). The Guide includes a disclaimer stating it has no official status and does not alter any law or constitute legal advice. The Guide does however signal the Ministry's intent for how the NPS should be applied, as communicated through examples. It is my view that as the NPS is highly directive the Guide examples and commentary provide context for interpreting and applying the legislation. I have read the Guide and understand and take aboard its subtle role in establishing context and guiding the implementation of the NPS-HPL, but whereby it is the express wording of the NPS which should be the principal focus of evaluation.
- 23 The NPS-HPL provides direction for the way highly productive land is to be managed under the Act, comprising 4 Parts.
- a) Part 1 - Preliminary Provisions (including definitions),
 - b) Part 2 - Objectives and Policies,
 - c) Part 3 Implementation (establishing the specific actions required by Regional Council and Territorial Authorities), and
 - d) Part 4 – Timing for actions.
- 24 I agree with section 4.20 of the s42A Report that the land proposed to be subdivided is Highly Productive Land for the purpose of the NPS. I note

here that there is no mechanism in the NPS-HPL to challenge the LUC 3 status via a resource consent application or other means. Classification changes fall to be determined by a regional council mapping exercise (as per clause 3.4) and only have effect once included in an operative regional policy statement (Clause 3.5) via a Schedule 1 process. No such action has been initiated by the Hawkes Bay Regional Council.

- 25 The NPS-HPL Objective and Policies are correctly referenced at 4.115 of the s42A Report and I agree (with 4.116) that the relevant Part 3 Implementation Clauses are 3.8, 3.9 and 3.10. Where a pathway through clauses 3.8, 3.9 or 3.10 cannot be established the Objective and Policies of NPS-HPL are not met by the granting of consent in this case.
- 26 These clauses are considered below in relation to the application.

Clause 3.8 NPS-HPL

- 27 Clause 3.8 applies to subdivision of HPL and is suitably outlined with the full clause text included in 4.117 of the s42A Report. The starting position is that subdivision of HPL must be avoided unless one of the stated exceptions in subclause 1 and the measures in subclause 2 are applied.
- 28 Subclauses (b) and (c) do not apply. Subclause (a) requires the applicant to demonstrate that the proposed lots will retain the overall productive capacity of the subject land over the long term. Productive capacity is defined in Part 1 NPS-HPL as:

means the ability of the land to support land-based primary production over the long term, based on an assessment of:

(a) physical characteristics (such as soil type, properties, and versatility); and

(b) legal constraints (such as consent notices, local authority covenants, and easements); and

(c) the size and shape of existing and proposed land parcels

- 29 The Goodman Report has been presented to demonstrate the effect of the proposal on productive capacity. Council has commissioned a review of the Goodman Report (the Grant Report), and a further assessment (from Mr Tither) has been provided in evidence on behalf of Submitter 5.
- 30 I have reviewed all three productive capacity assessments. In doing so I note that the Guide (Page 19) suggests that where only part of a site is HPL, that the NPS-HPL, and therefore productive capacity analysis, should only apply to that part of the site that is HPL. The Goodman Report provides an assessment of the entire property, applying a 'Farmax' economic model to quantify the effect of the subdivision in economic terms, and as a measure of productive capacity.
- 31 An entire property approach allows the supporting 'farming model' relationship between HPL and non HPL land to be recognised. A risk of this approach however is to dilute the level of change that might be apparent compared to applying an HPL only approach.
- 32 The entire property approach of Goodman is also adopted by Grant and Tither and as such the assessments are comparative. In my view either approach is appropriate as both provide a mechanism to assess change in productive capacity.
- 33 The Goodman model shows an economic reduction of 4.5% of economic farm surplus (EFS). Notably the (circa)18ha of HPL impacted by the subdivision represents approx 4.5% of overall property, so the reduction in EFS is effectively 'pro rata'. An HPL only analysis would likely result in a different outcome as the productivity loss would not be 'diluted' by the significant area of non-HPL land being included in the equation.
- 34 The Goodman report is also essentially a single snapshot in time and is based on economic analysis of the current farming system. I consider that the Goodman Report falls short of the level of analysis required to assess effects on the productive capacity of the overall farm. It utilises a single approach and does not take into account alternative farming models, how farming

models could change over the longer term, and the effects of the HPL on those long-term models.

- 35 The Report also does not have regard to the benefits to wider farm overall productive capacity attributable to the HPL component of the existing property. In a Hill Country farming situation a farm that has a component of HPL has greater resilience than one that does not. Hence the HPL component supports the productive capacity and operations of the entire farming unit and cannot be subdivided off without affecting productive capacity of the overall farm unit.
- 36 For example, the HPL land component can provide hay that can be used to boost winter productivity for stock. It can be planted to provide winter feed crops to support stock when the steep land productivity is low. Higher quality pasture on HPL can be used to ‘flush’ ewes for tugging to maximise lambing rates. In this way the productive value for HPL components of a hill country farming operation is more than just what that specific area of HPL land can produce. A hill country farm with a substantial HPL is not only more productive, but the HPL creates opportunities to apply different or alternative farm management and production models to enhance overall production. The loss of 17 ha of HPL not only reduces HPL productivity directly, it also reduces the farm's overall productive capacity and potential capacity (opportunity), and reduces the resilience of the farming system overall.
- 37 The Goodman report falls short of providing the information required for an assessment of this dimension of overall productive capacity under 3.8. I consider that the Goodman approach has insufficiently assessed the role of the HPL in supporting the productive capacity of the overall farm. It does not have regard to other farming systems, different types of land-based primary production, or management practices that could occur, in the present or into the future. As noted above, Mr Goodman's report and evidence is presented as a snapshot in time. It does not assess whether the actual or productive capacity (under alternative scenarios) will be retained *over the long term*.

- 38 In his evidence, Mr Goodman makes reference to improvements proposed to be applied to the unsubdivided HPL to offset the reduction in farm productivity (or farm surplus) caused by the subdivision of part of the HPL land. Such improvements may increase production elsewhere on the property, but they do not retain overall productive capacity at whole of farm scale. They are really only a means of realising or releasing productive potential of the specific part of the farm being treated (eg. the 40ha referred to in Mr Goodman's evidence). Mr Goodman makes no reference to whether the productivity (or productive capacity) of the HPL being subdivided can be either maintained, or improved and realised over the long term, in addition to the other area being treated, which would be a better measure of overall productive capacity.
- 39 Mr Grants Report relies on assessment via analysing stock units. It arrives at a reduced stock carrying capacity of approx 5.9% - a somewhat larger proportion of capacity reduction than modelled by Mr Goodman.
- 40 The Grant Report supports my view that the Goodman Report is insufficiently comprehensive, but for differing reasons.
- 41 The Grant Report refers to three criteria that would need to be assessed, and presumably if met, would (in Mr Grant's opinion) demonstrate retention of productive capacity. These matters are listed at 4.119 of the s42A report as:
- a) absorbing the loss of productive capacity into the remaining land,
 - b) demonstrating what management changes would be required to do so, and
 - c) how any reductions to carrying capacity or farm surplus are not significant.
- 42 I disagree with the additional assessment approach and the criteria suggested by Mr Grant. The suggested approach is reliant on HPL within a property being underutilised and would then rely on ramping up the production on the balance HPL as a means to offset the productive capacity lost from the

subdivision. This is an approach that could be artificially constructed by deliberately underutilising HPL land to facilitate this outcome. Just because HPL is currently underutilised does not support its subdivision via an offsetting approach. Such an approach does not recognise the overall productive potential of the land in question, and it would also run contrary to the objective of the NPS-HPL to protect that productive capacity for future generations.

- 43 Here I note that the intergenerational approach in the Objective of the NPS-HPL contemplates potential for productive capacity. The criteria and approach suggested by Mr Grant does not acknowledge that the HPL being subdivided has the same potential for increased production as does the balance unsubdivided HPL, nor assess that in the context of the property as a whole. To enable subdivision on the 'offsetting' basis as suggested by Mr Grant would mean that not only would the current level of production of the subdivided HPL be lost, but that additional (as yet unrealised) potential capacity of the subdivided area, would also be lost. On this basis I disregard Mr Grants suggestion that satisfying his offsetting criteria would demonstrate a retaining of the overall productive capacity of the HPL, in a way that serves the objective of the NPS-HPL.
- 44 The evidence of Mr Tither also identifies deficiencies in the Goodman Farmax assessment, in that the differing levels of productivity associated with different parts of the property have not been recognised in the model, and that by adopting an 'average' per ha production rate across the entire property, Mr Goodman has in effect under-quantified the contribution of HPL on the property to overall productive capacity. Flowing on from this the loss in productive capacity is also under-quantified. Mr Tithers modelling is more comprehensive in that his model takes into account the varied productive capacity across different areas of the property to arrive at an overall productive capacity - noting that the HPL is the highest producing land component of the property. Applying his more detailed analysis Mr Tither has arrived at a reduction in economic farm surplus of 65%. Based on

current farm systems (meat and wool production), the subdivision represents a reduction of 7.6% in total production from the farm.

- 45 Mr Tither considers that the subdivision will result in lot sizes (lifestyle sites) that are too small for any effective grazing or cropping. Effectively, the productive capacity, including unrealised potential capacity of the subdivided area will be lost.
- 46 It is my view that subdividing to remove 18ha of the most productive part of the farm will have the impact of reducing the overall versatility and resilience of the property, therefore impacting the actual and potential productive overall capacity and the range of opportunities for land-based production in the short and long term.
- 47 In this regard the application has not demonstrated that the proposed subdivision will retain the overall productive capacity of the subject land over the long term and the exemption in clause (1)(a) is not met.
- 48 Based on my findings for Clause (1)(a) clause (2) is not applicable. For completeness however I offer the follow commentary.
- 49 In terms of cumulative effects, whilst I acknowledge Mr Grant's view that 17ha is a small proportion of the District HPL, to grant consent would still result in a loss of HPL. It is my view that it is this ongoing and accumulative loss of small or 'negligible' portions of the overall resource, as described by Mr Grant, that clause (2)(d) is directing territorial authorities to avoid, where possible. A decision to decline consent is a possible measure that the territorial authority can take to avoid that cumulative loss.
- 50 In terms of mitigation, the analysis above indicates that a ramping up of production on the remaining HPL is not a mitigating factor, as it removes this option from future farm management.
- 51 Touching on reverse sensitivity under clause (2)(e), it is my long-held opinion that reverse sensitivity land covenants have their place. They communicate to purchasers and occupiers of the risk that they may be exposed to the

effects of land based primary production. However, whilst they remove the right to complain, the covenant does not stop the effect that would otherwise cause complaint, which is the source of contention. Whilst a reverse sensitivity covenant may allow conflicting activities to co-exist alongside each other in a legal sense, they do not remove that conflict. I consider that the urbanised expectations associated with a subdivision of the scale and character (beach lifestyle) proposed, pose a threat to adjacent land-based production activities to operate unhindered and in the manner expected in this type of rural context. Whilst imposing a no complaints covenant is a mechanism to manage reverse sensitivity effects on legitimate land based primary production activities, it can result in lifestyle sites that are potentially exposed to adverse effects that those occupiers have no right to seek resolution of. This situation can be avoided by not allowing such subdivision in the first instance.

- 52 It is my view that as the exceptions under Clause 3.8 (1) do not apply the NPS-HPL directs the territorial to avoid the subdivision of the HPL in the manner proposed. This can only be achieved by the decline of consent.

Clause 3.9 NPS-HPL

- 53 Clause 3.9 NPS-HPL seeks to protect HPL from inappropriate use and development that is not land-based primary production (Clause 3.9(1)), unless that use falls within the specified exemptions in clause 3.9(2) (a) – (g). Where an exemption does apply the territorial authority must take the measures specified in subclause (3)(a) and (b).
- 54 I agree with the s42A report in that none of the exemptions appear to apply directly to the proposed subdivision or to the associated activities also requiring resource consent. I also share that s42A report view that those elements of the proposal requiring separate landuse consent are not land-based primary production.
- 55 The direction under 3.9(1) is for the territorial to avoid those uses / development. This can only be achieved by the decline of consent.

Clause 3.10 NPS-HPL

56 Clause 3.10 provides an exemption pathway for consideration of subdivision, development or use activities not enabled by Clauses 3.8 or 3.9, on the basis of proving that the HPL is subject to permanent or long-term constraints. The criteria under subclause (1) (a) to (c) are conjunctive and consecutive, which means each has to be satisfied before moving on to apply the next.

57 Exemption criteria (a) applies if:

‘there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years’

As noted in the s42A report no evidence has been provided to suggest that the HPL land proposed to be subdivided is exempt under criteria (a).

As such, the proposal cannot move on for consideration against criteria (b), or subsequent criteria (c).

NPS-HPL Summary

58 The NPS-HPL provides limited pathways for territorial authorities to consider the subdivision and/or development of rural general or production land that is HPL.

59 The initial pathways are via HPL Clauses 3.8 and 3.9. These pathways are clearly prescribed and require the application and analysis of specific criteria. Where these criteria cannot be met the only remaining enabling pathway is the exemption pathway under clause 3.10 where a number of sequential tests must all be met. The first test is to prove that the subject land would be economically unviable for land-based production for at least 30 years. If that initial test cannot be met (which it has not been in this case) assessment cannot progress through the to the remaining subsequent tests. There is no other enabling pathway.

- 60 My evidence has confirmed that the proposal does not satisfy pathway criteria under either NPS-HPL 3.8 or 3.9 or the exemption pathway of 3.10.
- 61 Passing through the pathways might generally draw the conclusion that a proposal is consistent with the NPS-HPL Objective and Policies. Conversely, a proposal failing the pathways requires a decision maker to conclude that application to be contrary to the NPS-HPL Objective and Policies.
- 62 It is my opinion the application (220003) falls within the latter category.
- 63 As I have stated earlier in my evidence it is my view that in applying s104 an application which is contrary to the NPS-HPL would be unlikely to be consentable through reliance on a plan lower in the hierarchy. Here I return to my earlier assessment noting the RMA requirements that a district plan must give effect to any national policy statement (s75(3)), that district plans must be prepared or changed to give effect to any national policy statement (s74(1)(ea)), along with the requirement that the NPS-HPL is to be given immediate effect, and that local authorities must notify changes to objectives, policies and rules in its district plan (via RMA Schedule 1) to give effect to the NPS-HPL as soon as is practicable (NPS-HPL Clause 4.1).
- 64 Based on the emphasis and the urgency placed by the legislation to give effect to the NPS-HPL, when applying s104, it is difficult to determine how an application not passing the tests and therefore being contrary to the NPS-HPL could then be approved in reliance on a district plan. This is particularly so for a district plan that has not been prepared or is yet to be reviewed, as is required by the legislation.

PROPOSED AND OPERATIVE DISTRICT PLANS and NPS-HPL

- 65 For completeness I provide commentary regarding the Operative and Proposed District Plans in order to place these in the appropriate context. In doing so I also comment on the evidence of Ms Foster, Mr Goodman and Mr Nguyen.

- 66 Summarily, the evidence of Mr Goodman states the productive capacity of the land is affected by poor drainage.
- 67 Mr Goodman explains that the installation of drainage to the remaining HPL will increase production in the drained area sufficient to offset the production lost from the subdivided area. In other words it is asserted that the drainage would release the potential productive capacity of that land.
- 68 Mr Goodman however does not comment on whether the area proposed to be subdivided also has potential productive capacity that could be realised through improvement (whether by drainage or other means).
- 69 The evidence of Mr Nguyen confirms that the subdivision area is not subject to flooding in 250-year flows, and that flows are contained in existing watercourse channels around the subdivided area. This is evidenced by cross sections showing the relative elevation between the subdivision area and the channels. The cross sections suggest that there is sufficient gradient that drainage of the subdivision area to the channels would be viable. As Mr Goodman has signalled drainage would allow potential productivity to be realised.
- 70 If production can also be increased in the area proposed to be subdivided, which based on the above I suggest is the case, then that increase would also need to be covered by any claimed offsetting on the unsubdivided area. It would also need to be demonstrated that the offsetting could be maintained over the long-term. The analysis provided is not to suggest that an offsetting approach is correct, however the quantum of offsetting required or the ability to achieve it has not been demonstrated. As such I cannot accept Mr Goodman's conclusion that 'there will be no loss in overall productive capacity'.
- 71 In terms of the Operative and Proposed District Plans Mr O'Leary has commented that the Operative District Plan is now a relatively 'old' plan. This view is recognised in the evidence of Ms Foster (74), who then goes on to agree that the Decisions Version represents a substantive 'shift' in the outcomes sought for the rural land resource.

72 I acknowledge and agree with the views of both Mr O’Leary and Ms Foster in this regard noting also that the Decision Version is representative of the views of the community having been through the rigour of the 1st Schedule process to the point of decisions being released after hearings before the Independent Hearings Panel retained by the Council.

73 Ms Foster then goes on to outline how, when drafted, the proposed plan created three rural land classifications, including the General Rural Zone and the Rural Production zone. These were based on the LandVision report.

‘encompassing the major concentration of the District’s highly productive/versatile land (largely LUC 1-3 soils) centred in and around the Ruataniwha Plains and flat to rolling land surrounding the main urban areas of Waipukurau, Waipawa and Ōtāne township.

74 Ms Foster goes on to acknowledge that the PDP rural environment hearing pre-dated the NPS-HPL (17 October 2022).

75 I consider that the content of the NPS-HPL could not have been contemplated at the time of drafting of the PDP or during the PDP’s Panels decision making. After decisions were made on the PDP, legal advice was taken (9 November 2022) where the Panel observed that the use of LUC 1 – 3 class soils by the NPS-HPL generally aligned with the PDP. It was consequentially determined that specific mapping of LUC would not be included in the district plan to avoid the risk of having to vary the Plan once the regional council completed its mapping as required under the NPS-HPL. Although not a matter for this Panel, I note that the updating of the District Plan to add the regional council maps does not attract a Schedule 1 process.

76 The above events and outcome are a consequence of timing and are reflective of an attempt to rationalise the differences between the new, deliberate and highly directive approach of, the NPS-HPL, against the similarly oriented but different and less restrictive approach that was developed by the PDP prior to the existence of the NPS-HPL.

77 Ms Foster is inviting the Panel to set aside the specified approach and direction of the NPS-HPL in favour of the provisions of the Proposed

District Plan, for example by suggesting that ‘highly productive land’ is confined to the area zoned as Rural Production Zone under the PDP (see her paragraphs 87 to 89 in particular). On this basis Ms Foster gives the opinion that the subdivision would not be contrary to (for example) Objective RLR-O3 as no highly productive land (as she suggests it is zoned under the PDP) is being fragmented. In my view this is not only incorrect in terms of approach and interpretation, but to accept that the land is not HPL essentially pre-empts the decisions on mapping of HPL which is clearly a decision that fall to the jurisdiction of the Regional Council and to which the Schedule 1 process must be applied.

- 78 It is my opinion that notwithstanding the process and considerations of the PDP Panel the content of the Decisions Version of the PDP, the PDP remains subservient to the NPS-HPL and must be treated as so by the Hearings Panel.
- 79 Ms Foster has advised that the zoning of the subject land under the PDP is under appeal and therefore a reduced weight should apply to the PDP. I accept this principle might apply at a site-specific level, however the ODP provided little guidance for management of the soils resource and, as has been accepted by Ms Foster, it is out of date. In this regard it is appropriate to seek guidance from the NPS-HPL as it is the highest level and most up to date instrument pertaining to the management of the soil resource.
- 80 I agree with the s42A Report (4.18) that the provisions of the PDP have a degree of alignment with the NPS-HPL. This is reflected by provisions that anticipate rural lifestyle subdivision at a controlled rate, that seek to minimise the fragmentation of rural land, as summarised in the s42A Report at 4.26 and 4.27. I agree with the s42A Report in that the proposal is at odds with and contrary to, RLR-O3, RLR-O4, and RLR—P3.
- 81 I do not consider however that the PDP fully gives effect to the NPS-HPL. Until such time as a review of the district plan has been completed and the objectives, policies and rules are re-considered through the NPS-HPL lens, and Schedule 1, it cannot be claimed that the PDP gives effect to the NPS-

HPL. Indeed, there remains the risk that the PDP is out of date and is not yet properly aligned with the NPS-HPL.

CONCLUSION

82 I consider that in applying s104 primary weight must be given to the highly directive NPS-HPL such that the application (220003) must be refused under RMA s104B, and this is the decision that the Panel is effectively obliged to reach.

Roger Douglas Wiffin

05 July 2023