



CENTRAL HAWKE'S BAY DISTRICT COUNCIL

COMMISSIONER HEARING

The following Hearing is to be held in the Council Chamber,
Ruataniwha Street, Waipawa:

**Hearing Stream 3 Rural Environment:
Rural Land Resource, General Rural Zone, Rural
Production Zone, Rural Lifestyle Zone and
Subdivision - Rural**

9.00am Thursday 16 June 2022

COUNCIL MISSION STATEMENT:

Our Vision for Central Hawke's Bay is a proud and prosperous district made up of strong communities and connected people who respect and protect our environment and celebrate our beautiful part of the New Zealand

Timetable

9.00am	Heretaunga Tamatea Settlement Trust (S120, FS13)	In Person	15mins
9.25am	Silver Fern Farms Limited (S116, FS8)	Zoom	10mins
9.45am	James Bridge (S105, FS4)	Zoom	15mins
10.00am	Livingston Properties (S127, FS27)	In Person	15mins
10.30am	The Surveying Company (S50)	In Person	15mins
11.00am	20min Break		
11.30am	Josh and Suzie Calder (S58)	Zoom	30mins
12.10pm	60min Break		
1.15pm	Noise Experts	Zoom	20mins
1.40pm	Reporting Officers	In Person	20mins

Order of Business

1.0	INTRODUCTIONS	iv
2.0	HERETAUNGA TAMATEA SETTLEMENT TRUST (S120, FS13)	iv
3.0	SILVERFERN FARMS (S116, FS8)	iv
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6.0	THE SURVEYING COMPANY (S50)	v
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10.0	CLOSURE	v

CENTRAL HAWKE'S BAY DISTRICT COUNCIL

A meeting of the District Plan Hearings Panel will be held in the Council Chamber, 32 Ruataniwha Street, Waipawa on **Thursday 16 June 2022** commencing at **9.00am**.

PRESENT:	Commissioners Robert Schofield (Chair), Loretta Lovell, Roger Maaka, and Tim Aitken	
IN ATTENDANCE:	Jessie Williams	[CHBDC - District Plan Hearings Administrator]
	Rowena Macdonald	[Sage Planning – Reporting Officer]
	Janeen Kydd-Smith	[Sage Planning – Reporting Officer]
	Tiffany Gray	[CHBDC – Reporting Officer/Decision Writer]

1.0 INTRODUCTIONS

2.0 HERETAUNGA TAMATEA SETTLEMENT TRUST (S120, FS13)

Stephen Daysh (Planner, Partner Mitchell Daysh Ltd) [In Person]

- a) Original Submission: <https://www.chbdc.govt.nz/assets/Document-Library/Received-Submissions-on-the-Proposed-District-Plan/S120-Heretaunga-Tamatea-Settlement-Trust.pdf>
 - b) Further Submission: <https://www.chbdc.govt.nz/assets/Document-Library/District-Plan-Proposed/FS13-Heretaunga-Tamatea-Settlement-Trust.pdf>
 - c) Statement of Evidence(attached, **pages 6 – 20**): <https://www.chbdc.govt.nz/assets/Document-Library/District-Plan-Proposed/Hearing-Stream-3/Submitter-Evidence-Heretaunga-Tamatea-Settlement-TrustS120-FS13-.pdf>
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3.0 SILVERFERN FARMS (S116, FS8)

Steve Tuck (Senior Consultant) [Online]

- a) Original Submission: <https://www.chbdc.govt.nz/assets/Document-Library/Received-Submissions-on-the-Proposed-District-Plan/S116-Silver-Fern-Farms-Limited.pdf>
 - b) Further Submission: <https://www.chbdc.govt.nz/assets/Document-Library/District-Plan-Proposed/FS8-Silver-Fern-Farms-Limited.pdf>
 - c) Statement of Evidence (attached **pages 21 – 44**): <https://www.chbdc.govt.nz/assets/Document-Library/District-Plan-Proposed/Hearing-Stream-3/Silver-Fern-Farms-Statement-of-Evidence-Steven-Tuck.pdf>
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4.0 JAMES BRIDGE (S105, FS4)

[Online]

- a) Original Submission: <https://www.chbdc.govt.nz/assets/Document-Library/Received-Submissions-on-the-Proposed-District-Plan-Contact-Info-Redacted/S105-James-Bridge.pdf>
 - b) Further Submission: <https://www.chbdc.govt.nz/assets/Document-Library/District-Plan-Proposed/FS4-James-Bridge.pdf>
 - c) Legal Evidence (attached, **pages 45 – 52**): <https://www.chbdc.govt.nz/assets/Document-Library/District-Plan-Proposed/Hearing-Stream-3/Legal-Submissions-on-behalf-of-James-Bridge-S105-FS04.pdf>
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5.0 LIVINGSTON PROPERTIES (S127, FS27)

Bill Livingston [In Person]

Chris Skerman [In Person]

Andrew Taylor (Director, Surveying the Bay Hawke's Bay, New Zealand) [In Person]

Philip McKay (Planning Associate, Mitchell Daysh Ltd) [In Person]

- a) Original Submission: <https://www.chbdc.govt.nz/assets/Document-Library/Received-Submissions-on-the-Proposed-District-Plan/S127-Livingston-Properties-Limited.pdf>
 - b) Further Submission: <https://www.chbdc.govt.nz/assets/Document-Library/District-Plan-Proposed/FS27-Livingston-Properties-Limited.pdf>
 - c) Statement of Evidence (attached **pages 53 – 63**): <https://www.chbdc.govt.nz/assets/Document-Library/District-Plan-Proposed/Hearing-Stream-3/Statement-Evidence-Livingston-Properties-S127-FS27.pdf>
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6.0 THE SURVEYING COMPANY (S50)

Nick Wakefield (Licensed Cadastral Surveyor) [In Person]

Brian Foote (Licensed Cadastral Surveyor) [In Person]

- a) Original Submission: <https://www.chbdc.govt.nz/assets/Document-Library/Received-Submissions-on-the-Proposed-District-Plan/S50-The-Surveying-Company-HB-Ltd.pdf>
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7.0 JOSH & SUZIE CALDER (S58)

Matthew Lawson (Legal Counsel/Representative) [Online]

- a) Original Submission: <https://www.chbdc.govt.nz/assets/Document-Library/Received-Submissions-on-the-Proposed-District-Plan/S58-Josh-and-Suzie-Calder.pdf>
 - b) Legal Submission (attached, **pages 64 – 72**): <https://www.chbdc.govt.nz/assets/Document-Library/District-Plan-Proposed/Hearing-Stream-3/S-J-Calder-Legal-SubmissionsS58.pdf>
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8.0 NOISE EXPERTS

Damian Ellerton (Environmental - Marshall Day Acoustics) ([Online]

Steve Peakall (Environmental - Marshall Day Acoustics)[Online]

9.0 REPORTING OFFICERS

10.0 CLOSURE

BEFORE THE HEARINGS PANEL

IN THE MATTER OF The Resource Management Act 1991

AND

IN THE MATTER OF Central Hawkes Bay Proposed District Plan Hearing
Stream 3 (Rural Environment)

**STATEMENT OF EVIDENCE BY STEPHEN GRAEME DAYSH
ON BEHALF OF HERETAUNGA TAMATEA SETTLEMENT TRUST,
TUKITUKI WATER SECURITY PROJECT AND WATER
HOLDINGS HAWKE'S BAY (FURTHER SUBMITTERS)**

31 MAY 2022

1. INTRODUCTION

QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Stephen Daysh. I am a partner with the firm Mitchell Daysh Limited, which practices as a planning and environmental consultancy throughout New Zealand, with offices in Auckland, Hamilton, Tauranga, Napier, Nelson and Dunedin.
- 1.2 I hold a Bachelor of Regional Planning (Honours) degree from Massey University and have over 35 years' experience as an environmental planner and project manager. I am a member of the New Zealand Planning Institute, the Resource Management Law Association, the New Zealand Geothermal Association, and the International Geothermal Association.
- 1.3 My specialist areas of practice include providing resource management advice to the private and public sectors, facilitating public consultation processes, undertaking planning analyses, managing resource consent acquisition projects, and developing resource consent conditions. I also have considerable experience as a process and meeting facilitator with a speciality in co-ordinating community-based option assessment processes for planning issues, often utilising multi-criteria evaluation methodologies.
- 1.4 I am an accredited Hearings Commissioner (with a Chair's endorsement) and have acted as a Hearings Commissioner on approximately 100 occasions, many in the role of Hearing Chair. I am currently the Chair of the New Plymouth District Proposed District Plan Hearings Panel.
- 1.5 My relevant experience includes:
 - a) Advising the Hawke's Bay Regional Council on the Heretaunga Water Storage Project which is supported with funding from the Provincial Growth Fund with the purpose of developing a number of water storage projects across the region, including the Central Hawke's Bay Managed Aquifer Recharge Project.

- b) A key strategic advisor for the Hawke's Bay Regional Council for the Ngaruroro Water Conservation Order which was an application considered by the Environmental Protection Authority Tribunal.
- c) Designing and facilitating community-based alternatives assessment process for a wide range of planning issues, often utilising multi-criteria evaluation methodologies.
- d) Drafting fair, effective and workable consent conditions (along with other mechanisms such as private agreements in some instances) for resource consents.
- e) I am currently advising a number of clients including both councils and private clients in respect of projects under the National Policy Statement for Freshwater 2020 (NPS-FM 2020) and the National Environmental Standards for Freshwater 2020 (NES-FM) including:
 - Advice to Hawke's Bay Regional Council;
 - Advising rural landowners in Hawke's Bay; and
 - Various water take and discharge applications.

1.6 While this is not an Environment Court hearing, I confirm my obligations in terms of the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

1.7 Mitchell Daysh Limited has been engaged by the Heretaunga Tamatea Settlement Trust ("**HTST**") to provide resource management advice about the Central Hawkes Bay Proposed District Plan (the "**PDP**"). I assisted in the preparation of HTST's submission and further submission on the PDP. I am also engaged as a strategic advisor to Tukituki Water Security Project (Tukituki Water) and Water Holdings Hawke's Bay (Water Holdings) who are further submitter's to HTST submission.

- 1.8 Liz Munroe on behalf of HTST has presented evidence in support of the HTST submissions during the Hearings Stream 1 and this evidence builds on that previous evidence.
- 1.9 In this statement of evidence, I will:
- 1.9.1 Summarise the background to HTST’s submissions;
 - 1.9.2 Outline the main aspects of the relief sought by HTST and address the recommendations of the Section 42A report;
 - 1.9.3 Where my recommendation differs to that of the Section 42A report, my suggested amendments to the provisions and reasons for those changes; and
 - 1.9.4 Provide a brief conclusion.
 - 1.9.5 Provide an evaluation under section 32AA
- 1.10 HTST submission included numerous points not addressed in this statement of evidence. With respect to those submission points, they are to be addressed in different hearing streams.
- 1.11 In preparing this statement I have reviewed the following material:
- 1.11.1 HTST’s submission and further submission on the PDP;
 - 1.11.2 The further submissions of Tukituki Water and Water Holdings;
 - 1.11.3 Other relevant submissions and further submissions; and
 - 1.11.4 The Council’s report and recommended provisions relating to the rural environment, prepared under RMA Section 42A (the “**s42A report**”).

2. BACKGROUND TO HERETAUNGA SETTLEMENT TRUST SUBMISSION

- 2.1 HTST was established in 2016 as the post settlement governance entity for Heretaunga Tamatea. HTST administers the Heretaunga Tamatea Treaty settlement signed between Heretaunga Tamatea and the Crown on 26

September 2015 and enacted by Parliament in 2018. A copy of the Statutory Acknowledgement sites was appended to the HTST submissions.

2.2 Te Rohe of Heretaunga Tamatea comprises around 1.5 million acres of land extending from the Tūtaekurī River in the north, following the ridge of the Ruahine Range south to Takapau, then turning seawards to Pōrangahau. The rohe contains five primary river systems, which comprise an alluvial plains system fuelled by the Heretaunga and Ruataniwha aquifers. All of the Central Hawke's Bay District is within this area.

2.3 HTST has specific interest in the following sites located in the Rural zones of the PDP:

- Section 7 Block II Motuotaraia Survey District and Lot 1 DP 7057 – Lake Whatumā;
- Lot 4 DP 25272 – Pukeora;
- Part Lot 1 DP 25272 – Pukeora; and
- Part Lot 29 DP 4416 – Te Aute College.

2.4 Each of these areas provide an opportunity for tangata whenua to live and prosper on their land or develop the land for environmental, training or education purposes. This land has been returned to hapū through redress and are areas where hapū originally lived and worked and undertook cultural and traditional activities within the Central Hawke's Bay District. It is the vision of HTST that the areas located close to Waipukurau at Lake Whatumā and Pukeora be developed to enable subdivision, development and use in line with the indicative concept plans on the edge of Waipukurau. The redress also includes Te Aute College, which has a rich tradition, culture and history providing Māori education. HTST has a vision for Te Aute College creating an opportunity to develop and grow the College to ensure that it develops and continues its culture, heritage values and traditions of Māori education for future generations in the District. It is essential that there is an opportunity for Te Aute College to grow and ensure that it provides an excellent education facility for tamariki to learn and excel and become the future leaders of their hapū.

Preserving Treaty settlement outcomes and commitments

- 2.5 In the Crown Apology to Heretaunga Tamatea, recorded at section 10(g) of the Heretaunga Claims Settlement Act 2018, the Crown said: “*The Crown looks forward to restoring a relationship with the hapū of Heretaunga Tamatea that is built on trust, co-operation, and respect for each other and the Treaty of Waitangi and its principles.*”
- 2.6 It is important to ensure that the PDP includes appropriate objectives, policies and rules in the Rural Environment to ensure that mana whenua across the district can live and prosper and provide for future generations.

3. HERETAUNGA TAMATEA SETTLEMENT TRUST SUBMISSION S120.0010 AND THE FURTHER SUBMISSIONS IN SUPPORT BY TUKITUKI WATER AND WATER HOLDINGS AND THE S42A RECOMMENDATIONS

- 3.1 Within the Rural Environment Strategic Direction & General Matters HTST submission point requested a new policy as follows:

RLR-PX - Tangata whenua recognise the need for an economically sustainable rural environment which has access to reliable stored water resources to ensure the productive capacity of the land is maintained.

- 3.2 HTST outlined that the opportunities that the Crown Settlement provides including the ability for people who have been dispossessed of their land in Central Hawke’s Bay to return to it and as such HTST understands the importance of ensuring the sustainable management and the economic value of the highly productive rural areas of the district. HTST identified that one way of ensuring the productive capacity of the land is through access to stored water. The s42A report recommends rejecting this relief¹ of HTST and further submitters stating that:

“it is unclear from the submission what resource management issue this is addressing, and the linkages between the issue, objectives, policies and methods in the PDP are unclear to me.

¹ Paragraphs 5.3.26 -28 of the Rural Environment – Volume 1 S42A report.

It may be helpful if the submitter could provide further basis for inclusion of such a policy, and an accompanying section 32AA assessment, for the Hearings Panel to consider. In the absence of this, my recommendation is to reject this submission.”

Resource management issue

- 3.3 The ability for highly productive land to have access to a reliable water source is an essential and critical resource management issue which is of particular concern to mana whenua and all rural landowners involved in rural production across Central Hawke’s Bay. The key issue of the Rural Environment states:

RLR-11 Incremental Loss of Highly Productive Land

- 3.4 The focus of the PDP is on land fragmentation however, with reducing access to water into the future, it is my opinion that the productive output from the rural land resource across the District over time will diminish if there are no infrastructure interventions to store rainfall in the future.
- 3.5 Objective 1 seeks to **maintain** the productive capacity of the District’s rural land resource but there is no consideration in the objectives or policies for how this is to be maintained other than through limiting fragmentation.
- 3.6 The introduction to the Strategic Direction² states:

“Providing for a range and flexibility of land use activities is important for the future in adding diversity and resilience to the rural economy, thereby providing additional employment and economic opportunities to the community. However, this needs to be consciously balanced against the need to protect and retain the rural land resource, in particular the concentration of highly productive land in the District, alongside the health and availability of water”.

- 3.7 HTST consider that the matters identified in the introduction to the Rural Environment Chapter are not adequately reflected in the objectives and

² Part 2 – District-Wide Matters Page RLR 1 & 2

policies of the PDP. As noted above there is a balance between the health and availability of water and resilience of the highly productive rural environment.

- 3.8 In particular, the National Policy Statement for Freshwater 2020 (“**NPSFM 2020**”) has highlighted that the health of water is of primary importance and provides direction on how freshwater should be managed under the RMA. Local authorities must give effect to the NPSFM 2020 “as soon as reasonably practicable”.
- 3.9 Te Mana o te Wai is the fundamental concept underpinning the NPSFM 2020, recognises that protecting the health of freshwater protects the health and well-being of the wider environment and protects the mauri of the wai. This is an important factor in considering the objectives and policies of the Rural Environment in terms of enabling highly productive land.
- 3.10 The NPSFM 2020 states that it is about protecting “the mauri of the wai” and “restoring and preserving the balance between the water, the wider environment and the community” [section 1.3(1)] and that it encompasses 6 principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater.
- 3.11 The 6 principles are:
- *Mana whakahaere*: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater;
 - *Kaitiakitanga*: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations;
 - *Manaakitanga*: the process by which tangata whenua show respect, generosity, and care for freshwater and for others;
 - *Governance*: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future;
 - *Stewardship*: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations; and

- *Care and respect*: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.

3.12 As I have noted above, Te Mana o te Wai prioritises first, the health and well-being of water bodies and freshwater ecosystems; second, the health needs of people (such as drinking water); and third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

3.13 The availability and use of water is a key *Stewardship* consideration in maintaining the highly productive capacity of the rural environment of the district and I consider that the principles set out above identify a resource management issue that needs to be considered, particularly in the way that the Rural Environment chapter ensures it sustains present and future generations in terms of both the health of water and highly productive landuses. Tukituki Water and Water Holdings both support the submission of HTST for the inclusion of a specific clear policy on this issue. After an extensive Board of Inquiry hearing in 2013-2014 a suite of regional and district council resource consents were granted for a major water storage project (The Ruataniwha Water Storage Scheme - RWSS). These resource consents were granted for 35 years and have a 10-year lapse period expiring in June 2025. They include an extensive array of resource consent conditions, including conditions relating to water quality and a \$10million environmental offset package. The RWSS applications were supported by Te Taiwhenua o Tamatea.

3.14 You have already heard from Mr Petersen and Mr Ritchie in Hearing 1 regarding their aspirations for utilising these resource consents. In 2021 I was engaged as part of a team of advisors to reassess the feasibility of what is now called the Tukituki Water Security Project and this work confirmed that large storage at the consented Makaroro site is the only viable and feasible solution for long term water storage to maintain rural production and offset climate change in the District³. Such a scheme is important in planning terms to ensure the strategic objective of maintaining the

³ Tukituki Water Security Limited Re Scoping Report, November 2021, Lewis Tucker & Co. (available if the Panel would like a copy)

productive potential of the rural land resource. Accordingly my view is it is critical that the Rural Environment section of the PDP includes a clear policy supporting and linking water storage activities to the maintenance of productive outputs from high quality land resources.

Linkages between the issue, objectives, policies and methods

- 3.15 As noted in paragraph 3.6 above, the strategic direction of the Rural Land Resource clearly identifies that Council is required to manage the rural land resource while safeguarding water and ecosystems. The strategic direction further identifies that highly productive land in New Zealand is rare⁴ and further states:

“The District’s highly productive land is a significant resource base for the District, and has been deemed to be of regional, if not national, significance warranting specific recognition in the District Plan for its finite characteristics and high value for primary production purposes.”

- 3.16 RLR – O1 seeks to maintain the productive capacity of the rural land resource. With restrictions on water takes implemented by the HBRC Plan Change 6 in combination with clear evidence of a drying climate on the East coast of the North Island, this “maintain” objective relies on the ability to have ongoing access to water for growing.
- 3.17 The effects of climate change on the East Coast will be dramatic and challenging. As noted in the draft National Adaptation Plan, New Zealand faces some of the greatest natural hazard risks of any country in the world and climate change will increase the severity and frequency of some natural hazards. In 2017 drought cost New Zealand \$720 million. The severe Hawke’s Bay drought in 2020/2021 is testament to this. Improving water efficiency, availability and security is a key priority of the draft National Adaptation Plan. Evidence was provided to the Tukituki Board of Inquiry by Dr James Renwick that outlines the future drying trend and I rely on this for my opinion on this matter.⁵

⁴ Part 2 – District Wide Matters Strategic Direction RLR -Rural Land Resource - Page RLR-1

⁵ Climate Change Review, March 2013 J A Renwick

- 3.18 The first anticipated environmental result RLR -AER1 included in the Rural Environment Chapter states *“The safeguarding of the District's rural land resource and its life supporting capacity for current and future generations.”*
- 3.19 The new policy recommended by HTST is appropriate if the Council wishes to safeguard the highly productive land capacity of the District given the challenges of the drying trend and limitation of access to “run of the river” and ground water resources that are codified in Plan Change 6 to the Hawke’s Bay Regional Resource Management Plan.
- 3.20 In conclusion, I am of the view that the additional policy has very clear linkages to both a resource management issue and the issues, objectives, policies and methods of the Rural Environment. I have also further considered the drafting of the policy as this is clearly a wider district plan policy issue than just an issue related to tangata whenua interests.
- 3.21 I have therefore suggested a reword of the proposed new policy so that it applies more generally to the Rural Environment and suggest the following minor amendment:

RLR-PX - To provide for an economically sustainable rural environment which has access to reliable stored water resources to ensure the productive capacity of the land is maintained.

4. SUBMISSION S120.023 – RURAL LIFESTYLE ZONE

- 4.1 The submission requests that SUB-S1(8) Rural Lifestyle zone be amended as follows:
- A 2,500m² minimum lot size where a 4,000m² average is achieved.'
- 4.2 In particular HTST note that within the proposed Lake Whatumā and Pukeora Concept Development Areas an ability for a minimum lot size of 2,500m² is appropriate. The s42A report recommends that there is some merit in considering a reduction in the minimum net site area requirement for the Rural Lifestyle Zone as this zone has been specifically developed to provide sustainable opportunities for rural living. Policy RPROZ-P2

- 4.3 I support the s42A recommendation to amend SUB-S1(8) to provide for 2,500m², with a minimum 4,000m² average in the Rural Lifestyle Zone.

5. SUBMISSION S120.025 PROVISION FOR “COMMUNITY FACILITIES”

- 5.1 The s42A report recommends rejecting HTST’s submission to amend GRUZ-R10(3) and RPROZ-R10(3) so that community facilities with buildings over 100m² are a controlled activity.
- 5.2 The focus of the submission of HTST was to enable the development of community facilities that support the rural environment without having a rigorous consenting pathway. I consider that community facilities are important components of the rural environment that add to the vibrancy of rural communities and provide essential facilities such as meeting places and access to much needed community facilities. Therefore, I do not agree with the s42A report conclusion, and I suggest that similar to the provision for educational facilities in the rural zones of up to 200m² it is appropriate to also provide for community facilities of up to 200m² as a controlled activity.

6. CONCLUSION

- 6.1 I appreciate the opportunity that the s42A report author has requested to clarify the important resource management linkages between the district’s highly productive rural land resource being maintained and a clear stored water policy. I consider that my analysis above has clarified this issue and one of the key policies for the Rural Environment is providing for future generations, the health of the District’s water resource and consideration of the District’s changing climate which has the potential to have a dramatic change on rural land uses into the future.
- 6.2 As such, it is my view that it is appropriate to include a policy in the Strategic Direction, Rural Environment chapter of the PDP that appropriately recognises the importance of stored water in relation to the ability to maintain highly productive land uses.
- 6.3 I have also commented on the other submissions of HTST to the provisions of the Rural Environment chapter which will ensure that the specific land uses of HTST can be enabled into the future.

Section 32AA Evaluation

Effectiveness and efficiency

- The recommended new policy RLR-PX fills a critical gap in the policy regime of the PDP associated with the active policy support for water storage activities to enable the maintenance of primary production from the District's land resource and is therefore its inclusion will be more effective than the notified PDP that has no reference to the important nexus between water storage activities and productive land use.
- Policy RLR-PX better promotes *the efficient use and development of natural and physical resources* as set out in Section 7b) of the RMA through actively acknowledging that, with future predicted climate change leading to a drier Central Hawke's Bay District in the future coupled with substantial restrictions in primary producers access to surface and groundwater to support growing food and other crops codified in HBRC Plan Change 6, than the notified PDP.

Costs/Benefits

- Through providing for an economically sustainable rural environment linking stored water with productive rural land use, Policy PLR-PX recognises the substantial economic costs that will accrue to the District if secure water supply can not be accessed for today's community and future generations to support their economic wellbeing. In comparison, the PDP as notified has no direct policy support for this critical issue.

Risk of acting or not acting

- If recommended Policy RLR-PX is not included in the PDP there is clearly a risk that existing and future resource consents seeking to capture and store rainwater, that would otherwise pass through the District, are not supported by a directive policy in the Central Hawke's Bay District Plan.

Decision about most appropriate option

- The hearings panel has a choice between no policy support linking stored water resources to the objective of the maintenance of the productive use of the District's land resource (in the notified PDP) and the inclusion of Policy PLR-PX as recommended in my client's submission. In planning terms, it is my opinion that the inclusion of Policy PLR-PX fills a significant policy void in the PDP as notified, and its inclusion in the PDP is the most appropriate option in terms of these two choices.

BEFORE THE HEARINGS PANEL

IN THE MATTER OF The Resource Management Act 1991

AND

IN THE MATTER OF Central Hawkes Bay Proposed District Plan Hearing
Stream 3 (Rural Environment)

STATEMENT OF EVIDENCE BY STEVEN JOHN TUCK

ON BEHALF OF SILVER FERN FARMS LIMITED

(SUBMITTER 116 & FURTHER SUBMITTER 8)

31 MAY 2022

1. INTRODUCTION

QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Steve Tuck. I am a senior consultant with the firm Mitchell Daysh Limited, which practices as a planning and environmental consultancy throughout New Zealand, with offices in Auckland, Hamilton, Tauranga, Napier and Dunedin.
- 1.2 I hold a Master of Social Science (Planning and Environment) from RMIT University, Melbourne. I am a member of the New Zealand Planning Institute and the Resource Management Law Association.
- 1.3 I have been engaged in private and public sector town planning and resource management roles in New Zealand and Australia for over ten years. My experience includes a mix of local authority and private consultancy resource management work. Most recently I have focused on providing consultancy advice relating to regional and district plans, resource consents and environmental effects assessments. This includes experience with large-scale projects in New Zealand and Victoria involving multi-disciplinary teams.
- 1.4 An outline of my recent relevant experience is included at **Appendix A**.
- 1.5 While this is not an Environment Court hearing, I confirm my obligations in terms of the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

SCOPE OF EVIDENCE

- 1.6 Mitchell Daysh Limited has been engaged by Silver Fern Farms Limited (“**Silver Fern Farms**”) to provide resource management advice about the Central Hawkes Bay Proposed District Plan (the “**PDP**”). I prepared Silver Fern Farms submission and further submission on the PDP.

- 1.7 In this statement of evidence, I will:
- 1.7.1 Summarise the background to Silver Fern Farms' submissions;
 - 1.7.2 Outline the main aspects of the relief sought by Silver Fern Farms' and address the recommendations of the Section 42A report;
 - 1.7.3 Where my recommendation differs to that of the Section 42A report, my suggested amendments to the provisions and reasons for those changes; and
 - 1.7.4 Provide a brief conclusion.
- 1.8 Silver Fern Farms' submission included numerous points not addressed in this statement of evidence. With respect to those submission points, I generally agree with the recommendations in the Section 42A report and so have not commented on them any further here.
- 1.9 In preparing this statement I have reviewed the following material:
- 1.9.1 Silver Fern Farms' submission and further submission on the PDP;
 - 1.9.2 Other relevant submissions and further submissions; and
 - 1.9.3 The Council's report and recommended provisions relating to the rural environment, prepared under RMA Section 42A (the "**s42A report**").

2. BACKGROUND TO SILVER FERN FARMS SUBMISSION

- 2.1 Silver Fern Farms is a meat processing and exporting business that on average, processes about 30% of New Zealand's lamb beef and venison each year. It operates 14 meat processing plants around New Zealand, including a meat processing plant east of Takapau (the "**Site**").
- 2.2 The Site comprises 485 hectares at no. 116 Fraser Road, Takapau. The meat processing plant is a large industrial-type complex located in the south-east of the Site. It employs about 800 people during seasonal peaks.

- 2.3 Under the Operative Central Hawkes Bay District Plan (“**Operative Plan**”) the Site and surroundings are in the Rural Zone¹. The Township Zone at Takapau is the nearest non-rural zone and is about 1.3 kilometres from the nearest Site boundary. The processing plant is about 2.3 kilometres from the Township Zone boundary. Land between the Site and the Township Zone is currently zoned Rural.
- 2.4 The PDP proposes to include the Site and surrounding land to the north, west and east in the Rural Production Zone (“**RPROZ**”). Land to the south of the Site and Oruawharo Road that is currently in the Rural Zone would be included in the General Rural Zone (“**GRUZ**”).
- 2.5 The land currently in the Township Zone would be rezoned to a Settlement Zone. This would continue to be the nearest urban zone to the Site. Land between the Site and the Settlement Zone would be in the RPROZ.

3. SILVER FERN FARMS SUBMISSION AND S42A RECOMMENDATIONS

- 3.1 With the Site’s spatial context in mind, the relief sought by Silver Fern Farms submission in relation to the Rural Land Resource (“**RLR**”) chapter of the PDP comprised the following key matters.
- 3.2 **Define ‘rural industry’** as per the National Planning Standards 2019: “*rural industry an industry or business undertaken in a rural environment that directly supports, services, or is dependent on primary production*”. This distinguishes ‘rural industry’ from general ‘industry’, as the latter includes urban activities and is proposed as a non-complying activity in rural zones. The s42A report recommends accepting this relief².
- 3.3 **Add references to ‘rural industry’** to some overarching RLR strategic provisions as well as to GRUZ and RPROZ objectives and policies. The s42A report recommends rejecting this relief, on the grounds that:
- 3.3.1 Broadening the RLR strategic objectives and policies to refer to rural industry would be too enabling and suggestive of a permitted

¹ Shown on District Plan Map no. 12.

² Paragraph 5.4 of the Rural Environment – Volume 3 S42A report.

or controlled activity status for rural industry, which the s42A author does not support³.

3.3.2 Referring directly to rural industry in the RPROZ objectives and policies would detract from “...a clear focus on providing for *primary production activities in the Rural Production Zone*” and would be inconsistent with policy deterrence of activities that might constrain primary production⁴.

3.3.3 Instead, the s42A report recommends amendments to refer to rural industry (or, to ‘non-primary production’ more widely, as in RLR-P4) in the rural environment provisions as below:

RLR-P4 *To provide for a wide range of activities to establish, which complement the resources of the rural area, provided that they do not unduly compromise the primary production role and associated rural character and amenity of the rural land resource, particularly in the Rural Production Zone, recognising that some non-primary production activities have an operational or functional need to locate in a rural area.*⁵

RLR-M3 *When requested, people wishing to establish in the rural area zones will be issued with a Land Information Memorandum advising them that they are establishing in a productive rural environment where amenity standards associated with the normal conduct of farming operations, and related activities such as established rural industry, in the Zone (that is, amenity standards that allow for fluctuating noise, odour and air quality levels resulting from accepted primary production management practices and rural industry activities) will be upheld by the Council. Provided that these activities are carried out within the provisions established by the District Plan or*

³ Paragraph 5.3.15 and -16 of the Rural Environment – Volume 3 S42A report.

⁴ Paragraphs 5.3.27, 5.3.33, 5.3.37 and 5.3. 42 to 5.3.45 of the Rural Environment – Volume 3 S42A report.

⁵ Paragraph 5.3.23 of the Rural Environment – Volume 1 S42A report.

in accordance with a resource consent(s), the effects of the activities on amenity standards will not be considered a nuisance.⁶

RPROZ Introduction (...) The Zone is generally sparsely settled and is characterised by a predominance of open space. There are a few small number of commercial or industrial activities within the Zone that are of a small scale, and a small number of larger established rural industries, largely servicing the primary production sector and rural communities.⁷

RPROZ-O4 The predominant character of the Rural Production Zone is maintained, which includes: [...] (3) the sounds, ~~and~~ smells, and traffic associated with legitimate primary production activities, and established rural industries, anticipated from a working rural environment; [...] ⁸

- 3.4 **A controlled activity resource consent application pathway** for rural industry proposals in the RPROZ or GRUZ. This relief was rejected on grounds that a controlled activity application pathway does not provide sufficient scope to assess rural industry proposals. The s42A report recommends a new discretionary activity application pathway for rural industry proposals in the GRUZ and RPROZ⁹.
- 3.5 **Stronger deterrence of non-rural activities** in the GRUZ and RPROZ, to minimise the potential for reverse sensitivity effects on rural activities, and in recognition that the Rural Lifestyle Zone and urban zones amply provide for residential and other non-rural activities not dependent on a rural location¹⁰.
- 3.6 Rejection of a submission seeking to enable a range of non-rural ‘service activities in the rural environment’¹¹.
- 3.7 I discuss these matters in sections 4 to 7 of this evidence, below.

⁶ Paragraph 5.3.18 of the Rural Environment – Volume 3 S42A report.

⁷ Paragraph 5.3.20 of the Rural Environment – Volume 3 S42A report.

⁸ Paragraph 5.3.29 of the Rural Environment – Volume 3 S42A report.

⁹ Paragraphs 6.3.17 to -19 of the Rural Environment – Volume 3 S42A report.

¹⁰ Such as “service activities” which term includes a wide range of non-rural land uses.

¹¹ Te Mata Mushrooms Limited, submitter no. 102.

4. POLICY RECOGNITION OF “RURAL INDUSTRY”

4.1 The s42A report recommends amendments (below) that I consider go some way towards recognising rural industry in the notified PDP. I support the following amendments recommended by the s42A report:

- 4.1.1 Amend RLR-P4 to recognise that “...*some non-primary production activities have an operational or functional need to locate in a rural area*”.
- 4.1.2 Amend RPROZ-O4(3) to incorporate certain features of rural industry as characteristics of the rural environment.
- 4.1.3 Amend RPROZ-P4 to clarify that expectations about built form in this zone must acknowledge that the zone is “... *a working rural environment*”.

Policy RPROZ-P2

4.2 I generally support the s42A report’s version of RPROZ-P2 below, noting that the amendments to RPROZ-P4 mentioned above appropriately qualify RPROZP2(1).

RPROZ-P2 *To provide for non-primary production related activities that have a functional need or operational need for a rural location, and where they are managed to ensure that:*

- 1. their scale, intensity and built form are in keeping with the rural character of the Rural Production Zone;*
- 2. they maintain a level of amenity in keeping with the rural character of the Rural Production Zone;*
- 3. they minimise reverse sensitivity effects on activities otherwise anticipated within the Rural Production Zone; and*
- 4. adverse effects are avoided, remedied or mitigated.¹²*

¹² Paragraphs 2.3.16 to 2.3.20 of the Rural Environment – Volume 2 S42A report.

- 4.3 However, in my opinion the first clause should be further refined to delete the term “related” from the phrase “...*non-primary production related activities*”. It seems to indicate an intent to only ‘provide for’ non-primary production activities that have no connection with primary production (e.g., a network utility). My concern in this regard is that in providing for “...*non-primary production related activities*”, the policy omits to provide for primary production **related** activities, such as rural industry. No other provisions provide for non-primary production activities that **do** relate to primary production.
- 4.4 I suggest that this be resolved by deleting the term “related” from RPROZ-P2 so that it provides for all non-primary production activities with a functional or operational need for a rural location - whether related to primary production or not.

Policy RLR-P5

- 4.5 The s42A report recommends rejecting Silver Fern Farms submission to amend RLR-P5 to refer to rural industry, on the grounds that doing so would inappropriately ‘enable’ rural industry as a permitted or controlled activity¹³. The s42A report recommends RLR-P5 as follows:

RLR-P5 *To enable primary production and related activities to operate in rural areas in accordance with accepted practices without being compromised by other activities demanding higher levels of amenity.*

- 4.6 The National Planning Standards definition of rural industry identifies that a rural location is a distinguishing characteristic of the activity:

Rural industry *means an industry or business undertaken in a rural environment that directly supports, services, or is dependent on primary production.*

- 4.7 I consider that the absence of reference to rural industry in the overarching Rural Land Resource policies is inappropriate. Rural industry is recognised in

¹³ Paragraph 5.3.15 of the Rural Environment – Volume 3 S42A report.

documents relevant to, and acknowledged in, the PDP. In my opinion, it is reasonable to carry that recognition forward into the PDP for clarity.

- 4.8 The Introduction section to the Rural Land Resource chapter of the PDP says that the PDP seeks to give effect to a pending National Policy Statement for Highly Productive Land (“**NPS-HPL**”). The August 2019 ministerial discussion document about the NPS-HPL directly references rural industry in the GRUZ and RPROZ zone descriptors¹⁴.
- 4.9 Those NPS-HPL zone descriptors were carried over into the National Planning Standards zone descriptors (below). These descriptors assist councils to decide which zones from the National Planning Standards to use in district plans.

*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.*

*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.*

- 4.10 However, the s42A report does not recommend any specific reference to rural industry in the PDP’s strategic policies for rural areas. In discussing the recommendation to reject direct policy recognition of rural industry, the s42A report says:

“...the National Planning Standards are guides for determining what zone titles, out of the fixed list provided, best reflect the choice of

¹⁴ 'Valuing highly productive land A discussion document on a proposed national policy statement for highly productive land'. Retrieved 25 May 2022 from <
<https://www.mpi.govt.nz/dmsdocument/36624-Discussion-document-on-a-proposed-National-Policy-Statement-for-Highly-Productive-Land>>.

zones adopted in a District Plan. It is my understanding that the National Planning Standards do not then translate this into mandatory direction as to the provisions that should then ultimately apply in that particular zone”.

- 4.11 In my view it is somewhat inconsistent to omit recognition of rural industry from the policy framework on grounds that the National Planning Standards zone descriptors are not mandatory directions, when the s42A report also says that because the National Planning Standards “... recognise ‘intensive primary production’ in the zone descriptions for General Rural and Rural Production Zones” references to ‘intensive primary production’ need to be added throughout the rural environment provisions¹⁵.
- 4.12 By definition, rural industry is situated in rural areas and associated with primary production activities. The activity’s operational needs preclude it from locating elsewhere. It is often part and parcel of the rural environment, in terms of built form, land area and operational intensity, but also in terms of economic and social importance to local (sometimes, sub-regional) communities. I consider that the RPROZ and GRUZ zone descriptors and ‘rural industry’ definition in the National Planning Standards reflect this.
- 4.13 Given the foregoing, I consider it is appropriate to include a specific reference to ‘rural industry’ in the strategic rural land resource provisions, as discussed above in relation to RLR-P5.

Objective GRUZ-O2

- 4.14 Objective GRUZ-O2 is the equivalent provision to RPROZ-O4 in guiding decision-making in the General Rural Zone. The s42A report recommends that RPROZ-O4(3) be amended to refer to “*established rural industries*” (see below/paragraph 3.3.3 above). That amendment means RPROZ-O4 anticipates the characteristics of the rural environment including sounds, smells and traffic associated with rural industry.

¹⁵ Paragraph 3.3.11 of the Rural Environment – Volume 3 S42A report.

- 4.15 However, the s42A report does not recommend amending GRUZ-O2(3) to reference rural industry in a similar fashion to RPROZ-O4(3). The s42A report does not discuss why this distinction arises.

GRUZ-O2(3) the sounds, ~~and smells, and traffic~~ associated with legitimate primary production activities anticipated from a working rural environment;

RPROZ-O4(3) the sounds, ~~and smells, and traffic~~ associated with legitimate primary production activities, **and established rural industries**, anticipated from a working rural environment; [...]

- 4.16 The s42A report recommends amending GRUZ-O2 “As for the equivalent objective in the Rural Production Zone...”, so the omission of reference to “established rural industries” in GRUZ-O2 may just be a clerical error. In any case, I recommend amending GRUZ-O2(3) similarly to RPROZ-O4(3). In the context of the wider PDP framework for the rural environment, I am of the view that it would be inconsistent for policy to recognise the effects of rural industry as characteristic of the RPROZ but not of the GRUZ.

5. RURAL INDUSTRY CONSENTING PATHWAY

- 5.1 The notified PDP did not provide a resource consent application pathway for rural industry. Silver Fern Farms submission sought¹⁶ a controlled activity resource consent application pathway with a restricted discretionary activity status for proposals not compliant with the conditions applying to the controlled activity rule¹⁷.
- 5.2 The definition of rural industry contemplates a variety of business and industrial activities ranging from modest to large scale, for example a contractors’ depot to a dairy factory. Silver Fern Farms submission recognised that given the preeminence of primary production in the GRUZ and RPROZ, a permitted activity status for rural industry would not be an appropriate starting point for rural industry resource consent applications.

¹⁶ Submission point S116.040.

¹⁷ Silver Fern Farms proposed rule is shown at paragraph 6.2.5 of the Rural Environment – Volume 3 S42A report.

5.3 However, modest rural industry activities (whether for new activities, or for additions/alterations to an existing activity) might comply with the performance standards set out in the GRUZ and RPROZ about:

- Setbacks from road, railway, gas transmission and electricity networks (including the National Grid) and the Waipukurau Aerodrome;
- Setbacks from sites of cultural or ecological significance;
- Compliance with amenity performance standards regarding building coverage, height and height in relation to boundaries, setbacks to side and rear boundaries, boundary planting, light and noise emissions.

5.4 Where activities could comply with this array of environmental performance standards it was suggest that a controlled activity status for rural industry would be an appropriate and efficient way to facilitate the assessment of small-scale and inoffensive rural industry proposals, which after all, would be situated (and anticipated) in a rural zone. Separate district plan rules regulate the effects of other land use matters like earthworks, heritage, biodiversity, and regional plan rules regulate discharges. Those are adequate to assess a proposal that presents a risk of adverse effects of a scale or type not typically anticipated in a rural environment.

5.5 Silver Fern Farms submitted that an application that does not comply with the controlled activity conditions would be assessed as a restricted discretionary activity. This approach would enable a resource consent application to be declined if necessary, but had the benefit of also recognising that rural industry is anticipated in the GRUZ and RPROZ. This approach was supported by a proposed new restricted discretionary assessment matter referencing the operational needs of rural industry for a rural location.

- 5.6 The s42A report recommends rejecting Silver Fern Farms submission^{18, 19} in favour of an unqualified discretionary application pathway for rural industry proposals in the GRUZ and the RPROZ²⁰, shown below.

GRUZ-RXX Rural industry (other than post-harvest facilities)

1. Activity Status: DIS

Where the following conditions are met: N/A

Subject to (but not limited to) the following assessment matter:

a. The necessity of a rural location.

2. Activity status where compliance is not achieved: N/A

- 5.7 I consider that a catch-all discretionary activity status for rural industry - regardless of a proposal's scale or effects - is too blunt and is not necessary. It generates uncertainty for applicants for minor rural industry resource consents, which in my view is unwarranted (given that the rule regime suggested in the submission means that to comprise a controlled activity, a proposal would need to meet all of the relevant environmental performance standards in the Plan). Rural industry can **only** locate in the RPROZ or GRUZ. A proposal could only comply with the controlled activity performance standards if it is modest and unlikely to entail adverse effects that could not be managed by consent conditions. An application of that type is not likely to have any adverse implications on the achievement of the PDP's strategic rural environment policy objectives.
- 5.8 As such I recommend that a controlled activity status apply to rural industry proposals, subject to the controlled activity conditions shown in **Appendix B**.
- 5.9 I acknowledge that it is appropriate for rural industry proposals larger than contemplated by the controlled activity conditions to be the subject of broader assessment. As such, I recommend that rural industry proposals

¹⁸ Paragraphs 6.2.5 and 6.3.17 of the Rural Environment – Volume 3 S42A report.

¹⁹ Paragraphs 6.2.17 and 6.3.21 – 6.3.22 of the Rural Environment – Volume 3 S42A report.

²⁰ Paragraphs 6.3.10 to 6.3.19 of the Rural Environment – Volume 3 S42A report.

unable to comply with the conditions for controlled activities be assessed as a discretionary activity, with reference to (but not limited to) the assessment matter recommended by the s42A report (*“The necessity of a rural location”*). The other assessment matters (RPROZ-AM1 to RPROZ-AM16) will also assist the assessment of any discretionary resource consent applications.

- 5.10 In my opinion the assessment matter will aid the distinction of rural industry proposals from more generic “industry” activities which may not be able to demonstrate a functional or operational need for a rural location.

6. NON-RURAL ACTIVITIES AND REVERSE SENSITIVITY EFFECTS

- 6.1 The s42A report recommends amendments, which I support, to clarify the policy settings regarding non-rural activities that are unrelated to primary production and have no operational or functional need for a rural location. The amended provisions include RPROZ-O4, RPROZ-P2, RPROZ-P4, RPROZ-P7, RPROZ-P8, as well as similar amendments to corresponding GRUZ objectives and policies.
- 6.2 SUB-AM12(3)(b) is an Assessment Matter relating to controlled or restricted discretionary applications to subdivide land to create lifestyle lot sites in the GRUZ or RPROZ under rules SUB-R5(2), -(5), -(6) or SUB-R7(3), as below.

SUB-AM12 Lifestyle Sites in the Rural Production Zone

[sub-clauses 1. and 2. not shown here]

3. Amalgamated sites not adjoining

In deciding whether a Rural Production Zone lifestyle site subdivision creating an amalgamation of titles not adjoining, the Council will have regard to whether any of the following factors apply:

- a. The titles are positioned in a manner that allows them to be effectively used together for sustained independent production in accordance with Rural Production Zone policy.*

b. The likelihood of a successful application being made to subdivide the titles in the future on the basis that they cannot effectively be used together is low.

- 6.3 In some cases, applicants will propose to amalgamate non-contiguous lots to satisfy the requirement that no additional lots be created (in the RPROZ) or that the balance lot be at least 20 hectares (in the GRUZ). It is foreseeable that landowners may subsequently propose further lifestyle site subdivision of the balance lot on grounds that as a non-contiguous parcel, it cannot be used effectively for rural activities. This would provide a method to carry out piecemeal lifestyle site subdivisions, fragmenting the rural land base.
- 6.4 As notified, SUB-AM12(3)(b) seeks to forestall any such proposal to further subdivide non-contiguous parcels, by requiring a proposal to amalgamate non-contiguous parcels to be considered in terms of *“The likelihood of a successful application being made to subdivide the titles in the future on the basis that they cannot effectively be used together is low”*.
- 6.5 Silver Fern Farms submission sought amendment of this provision to contemplate the registration of a covenant or consent notice precluding further lifestyle site subdivision of amalgamated non-contiguous lots created as a balance from an earlier lifestyle site subdivision. This would provide more surety about retention of the balance lot in whole, than the somewhat ambiguous “low” likelihood statement in the notified provision does.
- 6.6 The s42A report indicates uncertainty about the outcome sought by the relief requested and recommends rejecting the submission by Silver Fern Farms. It states that the registration of a covenant or consent notice precluding future re-subdivision of the balance lot *“...is par for the course”* in any application to create lifestyle sites in the RPROZ with a non-contiguous balance lot²¹.
- 6.7 I consider that a direct reference in SUB-AM12(3)(b) to registering a consent notice or covenant will clarify how a proponent could address any concerns about reverse sensitivity caused by ad-hoc piecemeal lifestyle site

²¹ Paragraph 9.3.36 of the Rural Environment – Volume 3 S42A report.

subdivision, and associated Plan integrity matters. This also makes the matter an explicit consideration, rather than reliance on an assumed course of action.

- 6.8 As such I recommend that SUB-AM12(3)(b) be amended as shown in Appendix B.

7. TE MATA MUSHROOMS LTD, SUBMISSION #102

- 7.1 Te Mata Mushrooms Land Company Limited (“**TMM**”) submission sought for land west of Fraser Road and east of the proposed Settlement Zone for Takapau, including land within the Site, be set aside for future commercial and industrial development and use. This outcome was sought by applying a Future Development Overlay, Industrial Zone, Commercial Zone or Settlement Zone, or a combination of these instruments, to the area. A number of associated amendments to RLR, RPROZ and GRUZ provisions were requested by TMM.
- 7.2 TMM proposed²² (and Silver Fern Farms further submission opposed) to enable ‘service activities’ in the GRUZ and RPROZ. This would form a component of the rural-to-urban conversion of the area that TMM sought. The s42A report recommended rejecting the submissions by TMM on this.
- 7.3 I consider the relief sought by TMM in this regard would facilitate the establishment in the rural zones of various non-rural activities unrelated to rural activities and with no functional or operational need for a rural location, as illustrated by the PDP definition of ‘service activity’ (below).

Service activity the use of land and buildings for the primary purpose of the transport, storage, warehousing, maintenance or repair of goods and materials, excluding relocatable building depots.

- 7.4 Given the various issues and considerations that influence the policy framework the PDP seeks to establish for the GRUZ and RPROZ, I consider that granting the relief sought by TMM would be inappropriate and

²² S102.036, S102.050, S102.051, S102.063, S102.074, S102.075 and S102.060

consequently support the recommendation of the s42A report to reject these submissions.

- 7.5 Given the foregoing I support the recommendation of the s42A report to reject the relief sought by TMM.

8. CONCLUSION

- 8.1 Overall, I consider that while the s42A report recommends useful amendments to objectives and policies of the Rural Land Resource chapter of the PDP, they do not go far enough in recognising the presence of rural industry activities in the rural environment. I also consider that the unqualified discretionary activity status that the s42A report recommends for rural industry is too onerous and I prefer the more nuanced approach that I suggest earlier in my evidence.
- 8.2 As such, it is my view that various provisions in the Rural Land Resource chapter of the PDP require revision and refinement to appropriately recognise and provide for rural industry activities. These revisions would, in my assessment, better achieve the requirements of section 32 of the Act and the Acts' overall purpose of achieving the sustainable management of natural and physical resources.

APPENDIX A: RECENT (2021-2022) PROFESSIONAL EXPERIENCE

- Manawa Energy Limited (formerly Trustpower Limited): Ongoing provision of planning advice and reporting about hydro-electricity generation projects located throughout New Zealand.
- OceanaGold (New Zealand) Limited: Prepared parts of the Assessment of Environmental Effects for a new underground gold and silver mine near Waihi.
- OceanaGold (New Zealand) Limited: Prepared the Assessment of Environmental Effects associated with the extension of mining activities on former road reserve at Waihi.
- Waiaua Bay Farm Limited: Prepared the Assessment of Environmental Effects for Kauri Cliffs Golf Course groundwater abstractions; Ongoing provision of planning advice regarding bulk water storage, site master planning and district plan review proceedings.
- Whakatāne District Council: Prepared parts of the Assessment of Environmental Effects for the Whakatāne Boat Harbour under the COVID-19 fast-track resource consenting legislation.
- Silver Fern Farms Limited: Prepared submissions and further submissions on the Proposed Otago Regional Policy Statement and an Assessment of Environmental Effects for stormwater discharges associated with the firm's Hāwera meat processing site.
- Ryman Healthcare Limited: Prepared due diligence, resource consenting and planning evidence documents associated with retirement village developments throughout New Zealand.
- Tauranga City Council: Completed the Welcome Bay Planning Study and various documentation in support of changes to the Tauranga City Plan.

APPENDIX B SUGGESTED AMENDMENTS

Deletions are shown with strikethrough and additions with underlining.

Notified PDP text	S42A recommended text	S Tuck recommended text
RLR-P5 To enable primary production and related activities to operate in rural areas in accordance with accepted practices without being compromised by other activities demanding higher levels of amenity.	<i>As notified.</i>	RLR-P5 To enable primary production and related activities (<u>including rural industry</u>) to operate in rural areas in accordance with accepted practices without being compromised by other activities demanding higher levels of amenity.
RPROZ-P2 To allow activities of a limited scale, which support the function and wellbeing of rural communities and/or enjoyment of the rural environment and contribute to the vitality and resilience of the District's economy, where adverse effects are avoided, remedied or mitigated.	<p>RPROZ-P2</p> <p>To allow activities of a limited scale, which support the function and wellbeing of rural communities and/or enjoyment of the rural environment and contribute to the vitality and resilience of the District's economy, where adverse effects are avoided, remedied or mitigated.</p> <p><u>To provide for non-primary production related activities that have a functional need or operational need for a rural location, and where they are managed to ensure that:</u></p> <p><u>1. their scale, intensity and built form are in keeping with the rural character of the Rural Production Zone;</u></p>	<p>RPROZ-P2 To provide for non-primary production related activities that have a functional need or operational need for a rural location, and where they are managed to ensure that:</p> <ol style="list-style-type: none"> 1. their scale, intensity and built form are in keeping with the rural character of the Rural Production Zone; 2. they maintain a level of amenity in keeping with the rural character of the Rural Production Zone; 3. they minimise reverse sensitivity effects on activities otherwise anticipated within the Rural Production Zone; and 4. adverse effects are avoided, remedied or mitigated.

Notified PDP text	S42A recommended text	S Tuck recommended text
	<p><u>2. they maintain a level of amenity in keeping with the rural character of the Rural Production Zone;</u></p> <p><u>3. they minimise reverse sensitivity effects on activities otherwise anticipated within the Rural Production Zone; and</u></p> <p><u>4. adverse effects are avoided, remedied or mitigated.</u></p>	
<p><i>No rule notified.</i></p>	<p><u>RPROZ-RXX Rural industry (other than post-harvest facilities)</u></p> <p><u>1. Activity Status: DIS</u></p> <p><u>Where the following conditions are met: N/A</u> <u>Subject to (but not limited to) the following assessment matter:</u></p> <p><u>a. The necessity of a rural location.</u></p> <p><u>2. Activity status where compliance not achieved: N/A</u></p>	<p><u>RPROZ-RXX Rural industry (other than post-harvest facilities)</u></p> <p><u>1. Activity Status: CON</u> <u>Where the following conditions are met:</u></p> <p><u>a. Compliance with:</u></p> <p><u>i. RPROZ-S2 Total Building Coverage;</u></p> <p><u>ii. RPROZ-S3 Height of Buildings;</u></p> <p><u>iii. RPROZ-S4 Height in Relation to Boundary;</u></p> <p><u>iv. RPROZ-S5 Setback from Roads and Rail Network;</u></p> <p><u>v. RPROZ-S6 Setback from Neighbours;</u></p> <p><u>vi. RPROZ-S7 Continuous Tree Planting along Boundaries;</u></p> <p><u>vii. RPROZ-S8 Electricity Safety Distances;</u></p> <p><u>viii. PPROZ-S9 Transport (Access, Parking, Loading);</u></p> <p><u>ix. RPROZ-S10 Light;</u></p> <p><u>x. RPROZ-S11 Noise.</u></p>

Notified PDP text	S42A recommended text	S Tuck recommended text
		<p>xi. <u>RPROZ-S13 Buildings and structures by Waipukurau Aerodrome</u></p> <p>xii. <u>RPROZ-S14 Setback from Gas Transmission Network</u></p> <p>xiii. <u>RPROZ-S15 Setback from National Grid Yard</u></p> <p>xiv. <u>RPROZ-S17 Water supply for firefighting Matters over which control is reserved:</u></p> <p><u>b. The method of storage and use of materials associated with the operation of the activity that may generate noxious, offensive, or objectionable odour beyond the site boundary.</u></p> <p><u>c. Setbacks from wāhi tapu, wāhi taonga and sites of significance identified in SASM-SCHED3 that are located within the site of the activity.</u></p> <p><u>2. Activity status where compliance with condition RPROZ-RXX(1) is not achieved: DIS</u></p> <p><u>Subject to (but not limited to) the following assessment matter:</u></p> <p><u>a. The necessity of a rural location.</u></p>

Notified PDP text	S42A recommended text	S Tuck recommended text
		2. Activity status where compliance with condition RPROZ-RXX(2) is not achieved: N/A.
<p>SUB-AM12 Lifestyle Sites in the Rural Production Zone <i>[sub-clauses 1. and 2. not shown here]</i></p> <p>3. Amalgamated sites not adjoining In deciding whether a Rural Production Zone lifestyle site subdivision creating an amalgamation of titles not adjoining, the Council will have regard to whether any of the following factors apply:</p> <p>a. The titles are positioned in a manner that allows them to be effectively used together for sustained independent production in accordance with Rural Production Zone policy.</p> <p>b. The likelihood of a successful application being made to subdivide the titles in the future on the basis that they cannot effectively be used together is low.</p>	<p><i>As notified.</i></p>	<p>SUB-AM12 Lifestyle Sites in the Rural Production Zone <i>[sub-clauses 1. and 2. not shown here]</i></p> <p>3. Amalgamated sites not adjoining In deciding whether <u>to grant a subdivision consent for a</u> Rural Production Zone lifestyle site subdivision creating an amalgamation of titles not adjoining, the Council will have regard to whether any of the following factors apply:</p> <p>a. The titles are positioned in a manner that allows them to be effectively used together for sustained independent production in accordance with Rural Production Zone policy.</p> <p>b. The likelihood of a successful application being made to subdivide the titles in the future on the basis that they cannot effectively be used together is <u>precluded by the registration of restrictive covenants and/or consent notices (where these are offered) against the certificate of title(s) for all sites being amalgamated</u> low.</p>

Section 32AA evaluation: new rule “*RPROZ-RXX Rural industry (other than post-harvest facilities)*”

Effectiveness and efficiency

The suggested new rule distinguishes minor ‘rural industry’ proposals that comply with conservative controlled activity conditions and larger proposals that may require greater scrutiny. This is considered more efficient than an unqualified discretionary activity status for rural industry. For minor proposals, the latter consenting pathway is likely to be disproportionate to the potential effects of modest proposals that comply with the controlled activity conditions.

Costs and benefits

Rural industry is, by definition, **only** anticipated in the rural environment, and the definition of “rural industry” covers a variety of business and industrial activities. Not all rural industry proposals will be large developments that cannot meet the controlled activity conditions, nor have effects that cannot be managed by standard consent conditions.

Providing a controlled activity status for minor rural industry proposals recognises the foregoing and in my view it is beneficial to refine the rule framework to reflect this. I consider it will provide benefits in minimising the transactional costs of routine, small-scale proposals that comply with the controlled activity conditions. Under the s42A report recommended provisions these would face the costs of a discretionary activity consenting pathway, with consequential costs to the economic sustainability of the rural environment.

Risk of acting or not acting

If a controlled activity pathway for minor rural industry proposals is not included in the PDP, all applications for rural industry will be subject to a discretionary activity status, regardless of their effects and compatibility with the surrounding rural environment. This risks undue constraints on the use and development of the rural environment for rural activities. In contrast, a controlled activity/discretionary activity rule framework presents few risks, because proposals that do not meet the controlled activity conditions will follow the discretionary activity consenting pathway.

Decision about most appropriate option

The Hearings Panel could choose between an unqualified discretionary activity status as recommended by the s42A report, the controlled activity/discretionary activity rule framework set out in this evidence, or another rule framework, such as a restricted discretionary/ discretionary activity status structure.

The drawbacks of applying an unqualified discretionary activity status are outlined above. I consider that a different rule framework (such as restricted discretionary/ discretionary) would not appropriately anticipate the presence and variety of rural industry activities. Nor, in my view, would this be as efficient and effective as a controlled activity/discretionary activity rule framework in dispensing with routine proposals quickly and focussing assessment on more significant proposals.

Overall, it is my opinion that a controlled/discretionary activity rule framework most appropriately balances the anticipated presence of (various) rural industry activities in the rural environment, enables assessment procedures that are commensurate with the scale and significance of a proposal, without detracting from the pre-eminence of permitted primary production activities.

CENTRAL HAWKES BAY DISTRICT COUNCIL

UNDER

the Resource Management Act 1991
(the Act)

IN THE MATTER

hearings on the Central Hawke's Bay
Proposed District Plan as publicly
notified on 28 May 2021

LEGAL SUBMISSIONS ON BEHALF OF JAMES BRIDGE

HEARING STEAM 3 (RURAL ENVIRONMENT)

Dated this 27th day of May 2022

**GASCOIGNE WICKS
LAWYERS
BLENHEIM**

Solicitors: Quentin A M Davies | Joshua Marshall
(qdavies@gwlaw.co.nz | jmarshall@gwlaw.co.nz)

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MAY IT PLEASE THE COUNCIL—

- 1 These legal submissions are filed on behalf of James Bridge in advance of Hearing Stream 3 on the proposed District Plan (“PDP”). Mr Bridge will be attending the hearing to speak in support of his submissions.
- 2 Mr Bridge has made submissions on many provisions of the PDP. Four of those provisions are relevant for this hearing stream: RLR-P3; RLR-P4; SUB-S2 and GRUZ-S5. Each of those provisions are addressed separately below.

RLR-P3

Amendment sought

- 3 Policy RLR-P3 currently reads:

To limit the amount of further fragmentation of the District’s rural land resource through limiting lifestyle subdivision, particularly in the Rural Production Zone.

- 4 Mr Bridge seeks to amend the policy to read:

To limit the amount of further fragmentation of the District’s highly productive rural land resource through limiting lifestyle subdivision, ~~particularly in~~ within the Rural Production Zone.

- 5 The thrust of this submission is to change reference from rural land generally to highly productive rural land.

Arguments in support

- 6 A plan contains a hierarchy or provisions. At the highest level, a plan sets out objectives which the plan seeks to achieve. It then sets out policies, rules and methods which implement or give effect to those policies.

- 7 Section 75(1) of the RMA states (emphasis added):

A district plan must state—

(a) the objectives for the district; and

*(b) the policies **to implement the objectives**; and*

*(c) the rules (if any) **to implement the policies**.*

- 8 The relevant objective in the PDP is RLR-O3:

The District’s highly productive land is protected from further fragmentation.

- 9 No submissions have been made on objective RLR-O3 except that it should be maintained.¹
- 10 Policy RLR-P3 must implement or give effect to RLR-O3: that is, the protection of “highly productive land”. However, the policy as drafted goes beyond this. This effectively means the policy exists in the plan without an objective justifying it. This is both unlawful and inconsistent with good planning practice.
- 11 Mr Bridge’s submission seeks only to limit the application of the policy to the scope of the relevant objective.

Response to 42A report and other submissions

- 12 The submissions in the s 42A report are legally problematic.
- 13 The author states “The key thing is that the wording used in the policy most accurately reflects the rules and standards that flow from it.”² With respect, this statement puts the cart before the horse. As noted above, when conducting a planning exercise, the Council must set objective and then set policies which implement or give effect to those objectives. The purpose of the rules is to determine activity status. The rules should reflect the objectives and policies in the plan. As a matter of law, the proposed rules in the plan are an irrelevant consideration when determining a policy since the rules need to reflect the policy, not the other way around.
- 14 The author has failed to make any reference to objective RLR-O3, the relevant objective for this policy. This, we submit is the ‘key thing’ which must be considered when determining the appropriate policy.
- 15 Horticulture NZ opposes the amendment on the basis that “the focus should be on all rural land, not just highly productive land’. However, this is not consistent with the objectives which the policy is supposed to give effect to.

¹ Submissions of Horticulture New Zealand, Hatuma Lime Co Ltd, Te Mata Mushrooms Land Company Limited; Silver Fern Farms Limited and Federated Farmers of New Zealand.

² 42A report, hearing 3, volume 1 at [5.3.17].

RLR-P4

Amendment Sought

16 Policy RLR-P3 currently reads:

To provide for a wide range of activities to establish, which complement the resources of the rural area, provided that they do not compromise the primary production role and associated amenity of the rural land resource, particularly in the Rural Production Zone.

17 Mr Bridge seeks to amend the policy to read:

To provide for a wide range of activities to establish, which complement the resources of the rural area, provided that they do not compromise the primary production role and associated amenity of the highly productive rural land resource, ~~particularly in~~ within the Rural Production Zone.

18 Again, the thrust of this submission is to change reference from rural land generally to highly productive rural land.

19 In hindsight, it is now apparent that the deletion of “of the rural area,” creates a grammatical error. The operative change sought is at the end of the policy so Mr Bridge no longer seeks that deletion.

Arguments in support

20 The issue the plan seeks to address is the “incremental loss of highly productive land” (RLR-I1). The proposed objectives are also directed to this issue. The policy, as proposed, goes beyond this issue. As such, it is a policy without justification. There is no reason for the policy to extend beyond the “highly productive rural land resource”.

Response to 42A report and other submissions

21 The s 42 report writer does not refer to the relevant issues or objectives.

22 The report asserts that the policy is relevant to “all rural land” but does not explain this assertion. Rather, than justifying the policy in terms of the issues to be addressed and objectives to be achieved, the report simply asserts a position.

23 The same comments apply to submissions in opposition to the proposed amendment.

SUB-S2

- 24 SUB-S2 is one of the controlled activity standards for subdivision in the General Rural Zone. Many subdivision activities that would otherwise be controlled in the General Rural Zone (and thus entitled to a resource consent) have a stricter activity status if they do not comply with SUB-S2.

Amendment Sought

- 25 The relevant part of standard SUB-S2 currently reads:

General Rural Zone	<ol style="list-style-type: none">1. Minimum net site area for Lifestyle Lot – 4000m².2. Maximum net site area for Lifestyle Lot – 2.5 hectares.
---------------------------	--

- 26 Mr Bridge seeks to amend the policy to read:

General Rural Zone	<ol style="list-style-type: none">1. Minimum net site area for Lifestyle Lot – 4000<u>2500</u>m².2. Maximum net site area for Lifestyle Lot – 2.5 hectares.
---------------------------	--

Arguments in support

- 27 The currently proposed minimum lots size is excessive. It exceeds the current minimum size for conservation lots of 2,500m². The existence of this minimum lot size for conservation lots demonstrates that a minimum size of 2,500m² is appropriate in this environment.
- 28 The proposed change is consistent with policy SUB-P8 (to encourage innovative subdivision design consistent with the maintenance of amenity values).

Response to 42A report and other submissions

- 29 The s 42A report supports the proposed amendment.³
- 30 There are no other relevant submissions

GRUZ-S5

- 31 GRUZ-S5 is one of the permitted activity standards for the General Rural Zone. Most activities that would otherwise be permitted in the General Rural Zone are not permitted if they do not comply with GRUZ-S5.

³ At [9.3.31] to [9.3.34].

Amendment Sought

32 Standard GRUZ-S5 currently reads:

Residential Activities adjacent to an existing plantation forest on an adjoining site	3. Minimum setback of buildings from an existing plantation forest on an adjoining site is 40m.
All Other Activities (excluding Accessory Buildings)	4. Minimum setback of buildings for an activity from internal boundaries is 15m. Domestic water storage tanks up to 2m in height are exempt from this standard.
Accessory Buildings	5. Minimum setback of buildings for an activity from internal boundaries is 5m. Domestic water storage tanks up to 2m in height are exempt from this standard.

33 Mr Bridge seeks to amend the policy to read:

Residential Activities adjacent to an existing plantation forest on an adjoining site	1. Minimum setback of buildings from an existing plantation forest on an adjoining site is 40m.
All Other Activities (excluding Accessory Buildings)	1. Minimum setback of buildings for an activity from internal boundaries is 15m <u>except as between sites of 2.5ha or less where the minimum setback is 5m</u> . Domestic water storage tanks up to 2m in height are exempt from this standard.
Accessory Buildings	2. Minimum setback of buildings for an activity from internal boundaries is 5m. Domestic water storage tanks up to 2m in height are exempt from this standard.

34 The effect of the amendment is to allow as a permitted activity a reduced setback of 5m from the boundary between relatively smaller lots in the General Rural Zone (i.e. lots 2.5ha or less).

Arguments in support

- 35 Many smaller lots in the General Rural Zone are clustered to minimise their impact on rural landscape values and natural character. Allowing smaller lots to cluster their dwellings will further facilitate this effort.
- 36 The standard as currently drafted when combined with the proposed reduced minimum lot size in SUB-S2 to 2,500m² (which is supported by the 42A report) is likely to leave permitted lots with no permitted building platform:
- (a) Suppose you have a lot at the proposed minimum permitted size of 2,500m² and suppose that lot is perfectly square. The side of each lot would be 50 m. Requiring a setback of 15 m from all sides would leave a potential building platform of only 20m by 20m.
 - (b) Most residential lots in the General Rural Zone are not square. The more irregular the smaller the permitted building platform will be. If the side of a lot is reduced to 40m, then the resulting permitted building platform will be only 10m wide which is unworkable.
- 37 The proposed amendment will be consistent with the following policies: GRUZ-P2 (allow activities of a limited scale supporting wellbeing of rural communities); GRUZ-P4 (manage the bulk, scale and location of buildings to maintain the character and amenity of the rural area).

Response to 42A report and other submissions

- 38 The 42A report recommends rejecting this submission.
- 39 The 42A report does not refer to the policies or objectives in the PDP when making recommendations.
- 40 The 42A reports principal reason for rejecting the submission is that “greater setbacks from primary production sites should be retained in order to ensure that reverse sensitivity issues adjacent to primary production sites are addressed”. I submit that this issue is not engaged by the amendment proposed:
- 41 The proposed amendment to the standard would only apply to internal boundaries “between sites of 2.5ha or less”. Such sites are unlikely to be primary production sites and, if they are, they are unlikely to be of significance. The edges of clusters of smaller residential lots which are adjacent to large lots

with primary production sites will continue to be subject to the 15m setback standard.

- 42 Since the proposed amendment would not actually give rise to the situation raised by the s 42A author, their concern should be disregarded.
- 43 The concerns raised by Horticulture NZ mirror those of the s 42A author and are addressed above.

Dated this 27th day of May 2022



.....
Quentin A M Davies and Joshua S Marshall
Counsel for Applicant

BEFORE THE CENTRAL HAWKE'S BAY DISTRICT COUNCIL
HEARINGS PANEL

IN THE MATTER OF of the Resource Management Act 1991

AND

IN THE MATTER OF Submissions on the Proposed Central Hawke's Bay
District Plan

AND

IN THE MATTER OF Submissions and further submissions on behalf of
Livingston Properties Limited

STATEMENT OF EVIDENCE BY PHILIP MCKAY

31 MAY 2022

EXECUTIVE SUMMARY

- 1 This evidence is in support of the submission of Livingston Properties Limited ('LPL') seeking an amendment to the Proposed Central Hawke's Bay District Plan ('PDP') Rural Lifestyle Zone subdivision standard in SUB-S1 to provide for a 2,500m² minimum net site area where an average net site area of 4,000m² is achieved (S127.03).
- 2 This evidence is also in reference to the following further submissions in support lodged by LPL, being:
 - S128.002 by Surveying the Bay seeking amendment to the PDP provisions applying to the various rule zones to provide for a 5m boundary setback for dwellings on sites created under the Operative District Plan (FS27.5).
 - S120.023 by Heretaunga Tamatea Settlement Trust also seeking an amendment to the Rural Lifestyle Zone subdivision standard in SUB-S1 to provide for a 2,500m² minimum net site area where an average net site area of 4,000m² is achieved (FS27.6).
- 3 The Stream 3 'Officer's Report: Rural Environment' ('the S42A Report') recommends that submission S127.03 and further submission 27.6 be accepted in part, although the intent of the submission appears to be fully accepted. I agree with the reasons in the S42A Report that a reduction in the minimum net site area requirement in the Rural Lifestyle Zone, with the introduction of an average, is an appropriate way to provide for rural living more efficiently. The S42A Report also recommends that submission S128.002 and further submission FS27.5 be accepted, and I also agree with that recommendation and associated reasoning.
- 4 This evidence is also in reference to the following further submissions in opposition lodged by LPL, being:
 - S42.049 by New Zealand Pork Industry Board seeking to delete rule GRUZ-R9 relating to 'Commercial Activities' in the General Rural Zone or to change the activity status (FS27.3).

- S81.118 by Horticulture New Zealand seeking to delete reference to 'Commercial Activities' and replace with 'Rural Industry' in rule GRUZ-R9 applying to the Rural Zone (FS27.4).
- S81.108 by Horticulture New Zealand seeking to amend policy GRUZ-P3 of the General Rural Zone by replacing the reference to 'Commercial Activities' with 'Rural Industry' (FS27.2).

- 5 The S42A Report has recommended that submissions S42.049, S81.118 and S81.108 all be rejected and that consequentially the LPL further submissions FS27.3, FS27.4 and FS27.2 be accepted. I agree with these recommendations and the reasons given that proposed policy GRUZ-P3 and Rule GRUZ-R9 apply an appropriate policy and rule structure for limited levels of commercial activity in General Rural Zone and require resource consent for more significant commercial activities.
- 6 Accordingly, LPL agree with all of the S42A Report recommendations for their submission point and further submissions relating to the Stream 3 Rural Environment Hearings.

INTRODUCTION AND QUALIFICATIONS

- 7 My full name is Philip Anthony McKay.
- 8 I hold a Bachelor of Regional Planning with Honours from Massey University. I am a Member of the New Zealand Planning Institute, currently holding the position of Secretary of the Central North Island Branch of the Institute. In total I have some 29 years' experience as a practicing planner and have a Making Good Decisions Chair's certification.
- 9 I am currently employed as an Associate at Mitchell Daysh Limited planning consultants, having held this role since April 2018, and have also been a Senior Consultant Planner at Environmental Management Services Limited from September 2015 to April 2018. Prior to this, I held the position of Environmental Policy Manager with the Hastings District Council from January 2009 to September 2015.
- 10 I held various consents and policy planning roles with Hastings District Council from February 1996 to January 2009 and prior to that was employed as a planner by Wairoa District Council.

EXPERT WITNESS CODE OF CONDUCT

- 11 I confirm I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. My evidence has been prepared in compliance with that Code and I agree to follow it when presenting evidence to the Hearing.
- 12 I confirm that my evidence is within my area of expertise except where I state that I am relying upon the specified evidence of another person and I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

SCOPE OF EVIDENCE

- 13 I prepared and lodged the submission and further submission to the PDP on behalf of LPL. In preparing this evidence I have reviewed the relevant portions of the S42A Reports (Volumes 2 and 3) to the LPL submission and further submissions addressed in the Stream 3 Rural Environment hearing.
- 14 The LPL site at 96 Mt Herbert Road, Waipukurau is zoned General Rural under the PDP, but a rezoning submission has been made requesting portions of the property be rezoned General Residential and Rural Lifestyle. Therefore, LPL has made a submission and further submissions in relation to both the PDP Rural Lifestyle Zone and the General Rural Zone provisions relevant to the Stream 3 Rural Environment hearing.
- 15 LPL's submission and further submissions addressed in the Stream 3 Hearings relate to the Rural Lifestyle Zone subdivision rules, residential building setbacks applying to the rural zones generally, and to policy GRUZ-P3 and rule GRUZ-R9 as they relate to providing for Commercial Activities in the General Rural Zone. This submission point and further submissions are summarized in Table 1 below.

Table 1 – Summary of Submission and Further Submission Points Covered in Evidence

Submission / Further Submission Reference	Summary of Submission / Further Submission (including submission being supported or opposed)	S42A Report Reference and Recommendation on LPL Sub. / Further Sub.
FS27.5 in support of Surveying the Bay Ltd (S128.002)	Include exceptions in the 'RURZ – Rural Zones' section of the Proposed Plan to allow small sites created under the previous (currently operative) District Plan to apply a side yard setback of 5 metres.	Volume 2, Key Issue 6, Accept
FS27.3 in opposition to New Zealand Pork Industry Board (S42.049)	Delete rule GRUZ-R9 (Commercial Activities) or change activity status.	Volume 2, Key Issue 7, Accept (FS)
FS27.6 in support of Heretaunga	Amend SUB-S1(8) as follows: 'Rural Lifestyle Zone:	Volume 2, Key Issue 11, Accept in Part

Tamatea Settlement Trust (S120.023)	8. A 2,500m ² minimum lot size where a 4,000m ² average is achieved.'	
S127.003	<p>Amend SUB-S1 as follows:</p> <p>'Minimum Net Site Area (excluding Lifestyle Sites and Conservation Lots)... Rural Lifestyle Zone 8. 4000m² 9. 2500m² where an average Net Site Area of 4,000m² is achieved per lot over the subdivision. ...'</p> <p>And make any consequential amendments to the Proposed Plan to support the provision of an average minimum net site area as for the Rural Lifestyle Zone as requested above.</p>	Volume 2, Key Issue 11, Accept in Part
FS27.2 in opposition to Horticulture New Zealand (S81.108)	<p>Amend GRUZ-P3 as follows:</p> <p>'To manage the scale of post-harvest facilities and rural commercial activities rural industry to ensure that they remain compatible with the primary productive purpose of the General Rural Zone, and potential adverse effects on the character and amenity of the rural area are avoided, remedied or mitigated.'</p>	Volume 3, Key Issue 15, Accept (FS)
FS27.4 in opposition to Horticulture New Zealand (S81.118)	<p>Amend GRUZ-R9 as follows:</p> <p>'Commercial activities not otherwise provided for Rural Industry 1. Activity Status: PER</p>	Volume 3, Key Issue 16, Accept (FS)

16 Accordingly, my evidence is set out under the following three topic headings:

- Minimum Boundary Setback
- Provision for Commercial Activities in the General Rural Zone
- Rural Lifestyle Zone Subdivision Provisions

MINIMUM BOUNDARY SETBACK

- 17 The reason for supporting Surveying the Bay Ltd submission S128.002 is that LPL has a recently approved subdivision under the current Operative District Plan which creates some 88 complying lifestyle sites (with the 4,000m² minimum site area) on its land at 96 Mt Herbert Road, Waipukurau. It is LPL's preference to not give effect to this subdivision consent and to rather develop their land under the General Residential and Rural Lifestyle zone rules if it's rezoning submission is accepted (to be heard in Stream 6). The approved subdivision however provides a fallback position for LPL. For the 4,000m² sites to be developed with a dwelling, a 5m minimum building setback from internal boundaries is required under the currently Operative District Plan, this would increase to 15m under the PDP. In most instances, on sloping 4,000m² sites at least (where it may not be practicable for the building platform to be in the center of the site), it would not be possible to comply with the 15m building setback required under the PDP triggering the need for resource consent.

I agree with paragraphs 4.3.44 – 4.3.47 of the S42A Report which sets out the reasons for recommending accepting submission point S128.002. I also note that if the Commissioners are concerned about potential reverse sensitivity effects arising from accepting this submission, that there could be an option of requiring a greater setback for the Rural Production Zone where rural production activities are likely to be more intensive. In my opinion however, enabling a 5m building setback to be retained for sites created before 28 May 2021 in the General Rural and Rural Lifestyle zones, will result in an appropriate rule for achieving the purpose of the Resource Management Act 1991 ('RMA') and the objectives of the PDP.

PROVISION FOR COMMERCIAL ACTIVITIES IN THE GENERAL RURAL ZONE

- 18 The reason for opposing the submissions from the New Zealand Pork Industry Board (S42.049) and Horticulture New Zealand (S81.108 & S81.118) on General Rural Zone policy GRUZ-P3 and rule GRUZ-R9 is that the LPL land at 96 Mt Herbert Road, Waipukurau is all within the General Rural Zone. Further to this, most of the property will remain with a General Rural zoning even if their General Residential and Rural Lifestyle rezoning requests are successful.

- 19 In accordance with the concept plan referenced as Appendix 1 to their submission (add attached to this evidence for convenience), LPL wish to add value to their development with commercial activities such as a concert venue, farmers market and a cafe. While such activities may not necessarily meet the permitted activity standards applying to rule GRUZ-R9, that rule and policy GRUZ-P3 provide an appropriate framework for resource consent applications for commercial activities to be assessed to ensure their benefits can be enabled in the General Rural Zone where adverse effects on the environment can be avoided, remedied or mitigated. In this way rule GRUZ-R9 and policy GRUZ-P3 achieve the sustainable management purpose of the RMA and in my opinion are appropriate to remain in place as per the recommendation of the S42A Report.
- 20 The S42A Report recommends rejecting the submissions from the New Zealand Pork Industry Board (S42.049) and Horticulture New Zealand (S81.108 & S81.118) and accepting LPL further submissions FS27.3, FS27.2 and FS27.4 respectively. I agree with these recommendations.

RURAL LIFESTYLE ZONE SUBDIVISION PROVISIONS

- 21 LPL submission point S127.003 and further submission FS27.6 in support of Heretaunga Tamatea Settlement Trust (S120.023) both seek a lowering of the minimum subdivision site size in the Rural Lifestyle Zone to 2,500m² provided a 4,000m² average site size is achieved for the subdivision.
- 22 As set out in the LPL submission, such an approach would encourage a greater variety of lot sizes and in the case of the concept in the attached Appendix 1, would provide for open space reserves in combination with sites smaller than 4,000m² as part of the Rural Lifestyle Zone. Providing for a variety of lot sizes greater than 2,500m² in area¹ would enable the concept of Large Lots increasing in size higher up the slope to Lifestyle Lots at the eastern extent of the rezoning area as per the attached concept plan. Such an approach best responds to the landform and provides for positive benefits to the community with public open space and walkways being created for the

¹ Being the minimum site size for a permitted on-site wastewater system under the Hawke's Bay Regional Resource Management Plan, Rule 37, standard (a).

benefit of all rather than being tied up in the privately owned balance areas of lifestyle sites.

- 23 This contrasts with the PDP as notified, which in the Rural Lifestyle Zone would have continued the 4,000m² minimum site size approach of the current Operative District Plan. In my recent experience of processing resource consents on behalf of the Central Hawke's Bay District Council I do not consider that such an approach leads to the best resource management outcomes, particularly when an entire property is subdivided at one time, which is likely to be a common scenario in the Rural Lifestyle Zone.
- 24 Mr Taylor, Registered Surveyor of Surveying the Bay is to provide examples at the hearing, of how a combined minimum and average subdivision site size approach can lead to enhanced resource management outcomes in the context of a Rural Lifestyle or equivalent zoning.
- 25 The S42A Report recommends accepting in part submission S127.003 from LPL and further submission FS27.6 in support of Heretaunga Tamatea Settlement Trust (S120.023). I assume the reason for recommending 'accepting in part' is due to the simplified wording recommended in the S42A Report (see Volume 2, Issue 11, page 102) compared to the wording in the submission. I agree with the wording as recommended and consider that it has the effect of accepting submission S127.003 in full by providing for a 2,500m² minimum net site area with a 4,000m² average net site area, as requested. Significantly the PDP definition of Net Site Area does not exclude proposed reserves as the provision of reserves and walkways would be an appropriate way of increasing the overall net site area to achieve a complying average area.²

2 PDP definition - Net Site Area: means the total area of the site, but excludes:

- a. any part of the site that provides legal access to another site;
- b. any part of a rear site that provides legal access to that site;
- c. any part of the site subject to a designation that may be taken or acquired under the Public Works Act 1981.

SUMMARY AND CONCLUSION

26 This evidence is in support of the LPL submission point and further submissions relating to the Rural Environment portion of the PDP as summarized in Table 1 above. This submission point and further submissions can be categorized under the following three topic headings:

- Minimum Boundary Setback
- Provision for Commercial Activities in the General Rural Zone
- Rural Lifestyle Zone Subdivision Provisions

27 The S42A Report recommends accepting in part the LPL submission and further submission relating to the Rural Lifestyle Zone Subdivision Provisions, and accepting all the LPL further submissions relating to minimum boundary setbacks in the rural zones and commercial activities in the General Rural Zone. I agree that these recommendations are appropriate to achieving the sustainable management purpose of the RMA.

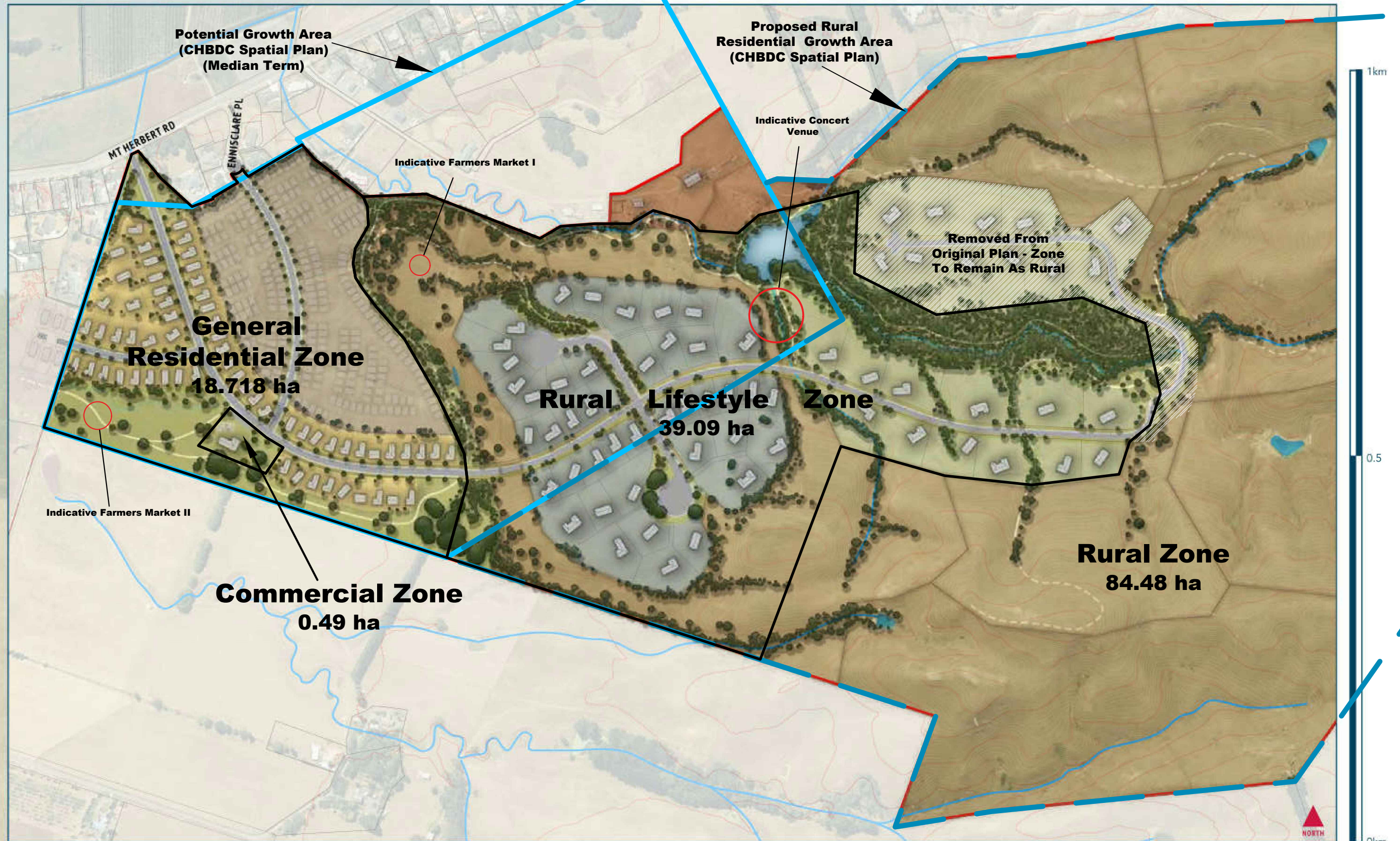
28 Accordingly, LPL is accepting of the recommendations relating to their submission and further submissions in the S42A Reports for the 'Rural Environment - Stream 3' hearings.

29 I am happy to answer any questions.



P A McKay

31 May 2022



PRELIMINARY CONCEPT

LEGEND

- | | |
|----------------------------------|--------------|
| Small lot residential | Trees |
| Retirement Lifestyle village | Roads |
| Large lot residential | Houses |
| Rural lifestyle | Fences |
| Farm | Contours 10m |
| Recreational and green corridors | |

**Appendix A : In Support Of
Submission Of
Livingston Properties Ltd
4703-20 - Scale 1: 5,000 @ A3**

UNDER THE RESOURCE MANAGEMENT ACT 1991
IN THE MATTER of SUBMISSIONS TO THE CENTRAL HAWKE'S BAY
DISTRICT COUNCIL PROPOSED DISTRICT PLAN

BETWEEN JOSHUA AND SUZIE CALDER

Submitters

A N D CENTRAL HAWKE'S BAY DISTRICT COUNCIL

Consent authority

**SYNOPSIS OF LEGAL SUBMISSIONS ON BEHALF OF JOSH AND SUZIE
CALDER.**

May it please the Commissioners

1. These submissions are made on behalf of Josh and Suzie Calder (the submitters) who made submissions on the proposed Central Hawke's Bay District plan under submitter number S58.
2. The submitters are the owners of Rural Air Ltd, a small family owned business operating throughout Hawke's Bay as an agricultural top dressing operation. Josh Calder is a top dressing pilot with nearly 30 years experience operating in Hawke's Bay. Suzie Calder is the business manager and undertakes all of the administration and Civil Aviation compliance requirements.
3. The submitters operate their business from their home in Otane where they have developed an airstrip, hangar and refuelling facility. The airstrip and the use of the airstrip by top dressing planes flying from that base to undertake top dressing work throughout Hawke's Bay was the subject of certificates of compliance issued by the Central Hawke's Bay District Council.
4. Those certificates of compliance were the subject of a challenge by Judicial Review, the result of which was the upholding of the certificate of compliance that allowed use of the airstrip Monday to Saturday inclusive.
5. The alternative certificate of compliance which provided for a seven day operation was quashed meaning that use of the airstrip on Sundays for the purposes of the top dressing business can only be undertaken if the submitters comply with the slightly lower permitted activity noise standards in the Operative Plan that apply on Sundays.
6. The operative District plan has adopted a New Zealand standard which, from an acoustic point of view, is not really suitable for measuring noise such as aircraft noise. This is a fact acknowledged by the noise experts for both Council and the submitters in the evidence presented to the High Court. It is, nonetheless, a standard that needs to be complied with under the operative plan for the purposes of ascertaining whether the activity is permitted.

7. The issues surrounding the use of New Zealand Standards for measuring noise and which Standard to use for what purpose is addressed in the proposed District plan with the requirement that aircraft noise be measured in accordance with the appropriate standard NZS 6805:1992 Airport Noise Management and Land Use Planning. The submitters support and endorse that approach as that is consistent with both good planning practice and with best practice in the field of acoustic and noise management.
8. The effect of the High Court decision upholding the Councils certificate of compliance issued to the submitters is that the submitters have a lawfully established airstrip that is able to be used Monday to Saturday inclusive for the purposes of their business. It is also able to be used on Sundays provided it does not exceed the current (inappropriately measured) noise standard.
9. By its nature, the submitters business is both seasonal and highly weather dependent. The peak times for top dressing are in Spring and Autumn and top dressing cannot be undertaken in the rain or during high winds. As a result, while the flexibility of being able to operate Monday to Saturday inclusive is required, it is not the case that top dressing is undertaken six days a week 365 days of the year.

The submissions

GRZ-R5 and RPROZ-R5

10. The submitters support the permitted activity status for the development of new or expansion of existing rural airstrips or helicopter landing areas.
11. However, the submitters oppose the conditions for permitted activity status conditions a-f in rule GRUZ-R5 and RPROZ-R5.
12. **Condition 1a** of these rules provide locational limits requiring a rural airstrip to be 2 km from specified zones, 500 m from the notional boundary of any building associated with a noise sensitive activity or 50m from a State highway. The rationale for these limits is completely arbitrary. They cannot be for Air safety reasons as Air safety is regulated by the Civil Aviation Authority.

13. These locational limits can also not be justified in terms of effects on the environment as the plan already provides adequate and appropriate controls for managing effects in the form of rules.
14. It is submitted that there is no valid Resource Management basis for imposing the restrictions proposed by condition 1a to these rules.
15. **Condition 1b** is completely unworkable. That condition provides an annual limit of 1000 aircraft movements. An aircraft movement is defined in the plan as meaning "***a single flight operation (landing or departure) of any aircraft, excluding helicopters***".
16. There are two problems with this condition. The first is that because the definition of an "***aircraft movement***" excludes movements by helicopters, the 1000 aircraft movement limit would not apply so as to limit helicopters taking off and landing. I'm sure that is not the intention given the focus that appears to have come onto helicopter landing pads in recent Environment Court decisions.
17. From a top dressing perspective, 1000 aircraft movements per year effectively limits the submitters use of a rural airstrip to 500 loads of fertiliser per annum. In an average day Mr Calder will take off and land 100 times a day (200 aircraft movements) meaning that the 1000 aircraft movements per day limits the use of a rural airstrip to 5 days per annum. This effectively means that there will be a proliferation of airstrips (which is undesirable) or vast tracts of Central Hawke's Bay will be unable to be fertilised by air. Most rural airstrips will exceed 1000 aircraft movements per annum and the alternative of requiring a resource consent for virtually every airstrip in Central Hawke's Bay is both unreasonable and unprecedented throughout the country.
18. As noted in the submitters written submission, once a rural airstrip is developed on a farm it is often used for multiple properties within the area. Limiting any rural airstrip to 1000 aircraft movements (and therefore 500 loads of fertiliser) would mean that virtually every property wishing to undertake aerial top dressing would require their own rural airstrip and some large farm properties may well require more than one airstrip in order to meet the fertiliser needs of their farm. This is not an

efficient use of resources and is not a cost-effective or sustainable use of natural land resources.

19. The top dressing industry has undertaken substantial amounts of work with Federated Farmer, Civil Aviation and the Department of Labour/Worksafe to ensure that rural airstrips are developed in appropriate locations that enable their safe and efficient operation. The restrictions imposed by the 1000 aircraft movement limit will mean that airstrips will be constructed in areas that are inappropriate and potentially unsafe.
20. It is submitted that the ability to top dress the land within the rural zones of Central Hawke's Bay is an integral and essential component of farming and Hawke's Bay and therefore an integral and essential component of the sustainable management of natural and physical resources within the district.
21. People with an affiliation and connection to the rural sector living within the rural zones understand the importance of the top dressing industry to primary production.
22. The people who choose to live within the rural zone for lifestyle or other non-rural reasons should accept the existing amenity effects and practices that occur in the rural zone. Condition 1b to rule GRUZ-R5 and RPROZ-R5 enshrines and legitimises the reverse sensitivity effects arising from people living in rural zones but expecting urban amenities. This should be resisted.
23. **Condition 1c** seeks to impose a 100 m² gross floor area for any building ancillary to a rural airstrip. This will mean that the size of fertiliser bins will have to be limited, barns and implement sheds will have to be limited and for the submitters purposes, their hangar in which they house their aeroplanes would require a resource consent. There is no Resource Management purpose served by the proposed gross floor area limitation.
24. **Condition 1d** requires compliance with standards S2-S11 inclusive in the respective Rural Production Zone and General Rural Zone. These standards relate to total building coverage of 35% or 1500 m² whichever

is the lesser¹, height of buildings², height in relation to boundary³, set back from roads and rail network⁴, set back from neighbours⁵, shading of land in roads⁶, electricity safety distances⁷, transport in relation to access, parking and loading,⁸ light,⁹ and noise.

25. Particular issue is taken with standards S2 and S11 and these will be dealt with separately. For the balance of the standards, there is unlikely to ever be any failure to comply with most of these standards. Indeed, the submitters cannot think of a single rural airstrip that would not comply with these standards.
26. Which really begs the question, What is the Resource Management issue that Council is attempting to address through this regulation. While on one hand there is an argument that if the standards can be readily met then there is no difficulty posed by the imposition of the standard. However the counter; and it is submitted stronger argument; is that if there is no Resource Management issue that is required to be addressed then what is the purpose of attempting to regulated through the imposition of these standards.
27. It is submitted that imposing these performance standards as are necessary.

Standard S2

28. Standard S2 imposes a maximum building coverage of 35% of the net site area or 1500 m² whichever is the lesser. Given that these rural airstrips are sited on rural farm properties, the effective limitation is 1500 m² per site.
29. The problem is that the building coverage is expressed to include "hardstand and sealed areas" which means that an airstrip, which is required to have a flattened and compacted surface to allow for the

1 Standard S2
2 Standard S3
3 Standard S4
4 Standard S5
5 Standard S6
6 Standard S7
7 Standard S8
8 Standard S9
9 Standard S10

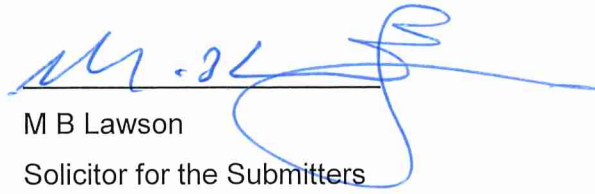
aircraft movements would be a hard stand which would never comply with the limitation of 1500 m². An average airstrip is 400m by 12m or 4800m². So irrespective of whether the airstrip was constructed as a compacted hard stand strip or as a sealed airstrip, it would never comply with the standard meaning that a resource consent would be required for all new or upgraded rural airstrips. This is an unnecessary regulation.

Noise

30. **Condition 1d** requires compliance with the noise provisions of the District Plan. Those provisions are contained in a standalone section of the Plan and all activities are permitted provided that they comply with the specific standards.
31. Specific noise standards for airstrips and agricultural aviation movements are contained in NOISE-S5 and these adopt the use of the appropriate standard NZS 6805:1992 Airport Noise Management and Land Use Planning. The use of this standard is supported as this is the New Zealand standard that has been specifically formulated to address the noise derived from aircraft using airports and airstrips. Adoption of the standard avoids the attempt to shoehorn noise standards into parameters for making standard noise assessments where those standards specifically state that the provisions of that New Zealand Standard should not be used for that purpose.
32. As an example of this, in the certificates of compliance which were the subject of the Judicial Review proceedings already referred to, the noise experts engaged by the Council and the submitters respectively agreed that the submitters' activity on their home airstrip would not comply with the Sunday noise standard in the Operative District Plan but would easily comply with the standards imposed by the appropriate use of NZS 6805:1992 Airport Noise Management and Land Use Planning.
33. However, for other rural airstrips that are used for multiple farming properties, it is possible that those airstrips will be used much more intensively over shorter periods. As already noted, the submitters say that a normal day of applying fertiliser might result in 100 takeoffs and landings (that is, 200 aircraft movements) per day. Should there be a

noise sensitive activities within a short distance this might mean that the noise limits were exceeded, albeit for a short period during daylight hours.

34. This would mean that a resource consent would be necessary to fly on fertiliser if the total number of days that the airstrip is used exceeded 14 days in any calendar year.
35. It is submitted that the 14 day exemption provided by standard S 5 (11) is arbitrary and unnecessary and will lead to agricultural pilots attempting to cram as much activity into a 14 day period as possible. This gives rise to safety concerns.
36. It is further submitted that the application of fertiliser is both a rural reality and necessity. While the use of rural airstrips may be concentrated in periods of appropriate weather, and largely within the spring and autumn seasons, the actual number of days used in any year is quite limited. It may be more than 14 days per year but it is not a 365 day per annum activity.
37. As a result, the effects of the use of rural airstrips are quite limited and the proposed plan provisions amount to unnecessary regulation. With that regulation comes a need for Council to monitor and enforce the provisions of the plan.
38. The rhetorical question is asked, to what end? What is the Resource Management issue that Council is seeking to address? Other than the judicial review proceedings relating to the submitters rural airstrip on their home property, what purpose is served by this limitation, where is the evidence of complaints regarding noise arising from the use of rural airstrips.
39. We seek the removal of standards S5 (11) and (12) with the effect that agricultural aviation movements are exempt activities with the consequential amendment to standard S5 (13) to remove the reference to "*up to 14 days in any calendar year*". Agricultural aviation movements should simply be exempt.



M B Lawson
Solicitor for the Submitters