

**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

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**LEGAL SUBMISSIONS ON BEHALF OF JAMES BRIDGE**

**HEARING STEAM 3 (RURAL ENVIRONMENT)**

**Dated this 27th day of May 2022**

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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.<sup>1</sup>
- 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.”<sup>2</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> 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:

<b>General Rural Zone</b>	<ol style="list-style-type: none"><li>1. Minimum net site area for Lifestyle Lot – 4000m<sup>2</sup>.</li><li>2. Maximum net site area for Lifestyle Lot – 2.5 hectares.</li></ol>
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- 26 Mr Bridge seeks to amend the policy to read:

<b>General Rural Zone</b>	<ol style="list-style-type: none"><li>1. Minimum net site area for Lifestyle Lot – <del>4000</del><u>2500</u>m<sup>2</sup>.</li><li>2. Maximum net site area for Lifestyle Lot – 2.5 hectares.</li></ol>
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### *Arguments in support*

- 27 The currently proposed minimum lots size is excessive. It exceeds the current minimum size for conservation lots of 2,500m<sup>2</sup>. The existence of this minimum lot size for conservation lots demonstrates that a minimum size of 2,500m<sup>2</sup> 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.<sup>3</sup>
- 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.

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<sup>3</sup> At [9.3.31] to [9.3.34].

*Amendment Sought*

32 Standard GRUZ-S5 currently reads:

<p><b>Residential Activities adjacent to an existing plantation forest on an adjoining site</b></p>	<p>3. Minimum setback of buildings from an existing plantation forest on an adjoining site is 40m.</p>
<p><b>All Other Activities (excluding Accessory Buildings)</b></p>	<p>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.</p>
<p><b>Accessory Buildings</b></p>	<p>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.</p>

33 Mr Bridge seeks to amend the policy to read:

<p><b>Residential Activities adjacent to an existing plantation forest on an adjoining site</b></p>	<p>1. Minimum setback of buildings from an existing plantation forest on an adjoining site is 40m.</p>
<p><b>All Other Activities (excluding Accessory Buildings)</b></p>	<p>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.</p>
<p><b>Accessory Buildings</b></p>	<p>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.</p>

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 2,500m<sup>2</sup> (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 2,500m<sup>2</sup> 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



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Quentin A M Davies and Joshua S Marshall  
Counsel for Applicant