

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.

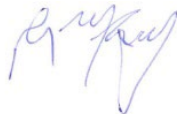
- 23 This contrasts with the PDP as notified, which in the Rural Lifestyle Zone would have continued the 4,000m² minimum site size approach of the current Operative District Plan. In my recent experience of processing resource consents on behalf of the Central Hawke's Bay District Council I do not consider 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.

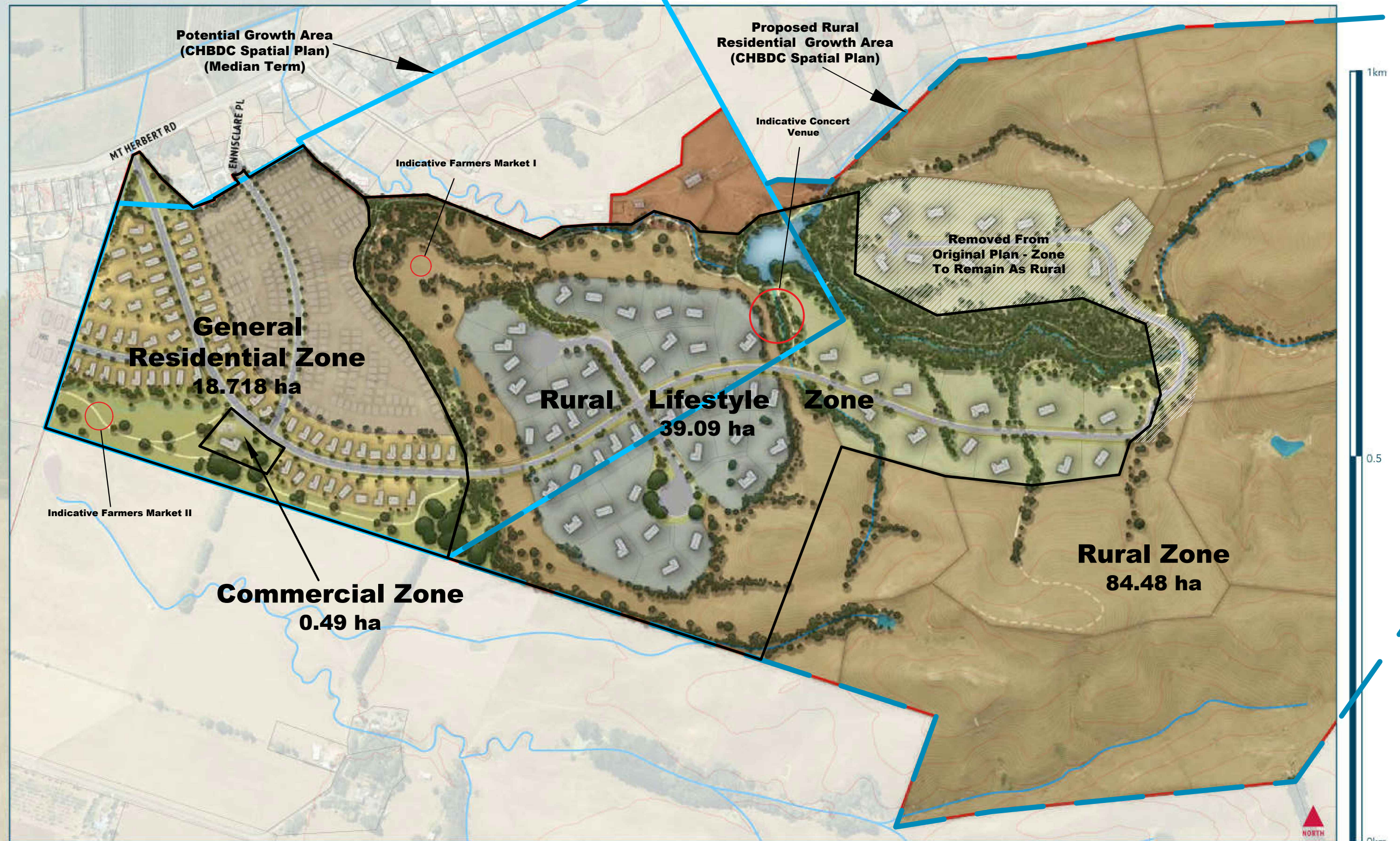
SUMMARY AND CONCLUSION

- 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**