IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2023] NZEnvC 59

IN THE MATTER	of the Resource Management Act 1991
AND	an appeal under clause 14 of the First Schedule of the Act in relation to the proposed Second Generation Dunedin City District Plan
BETWEEN	BALMORAL DEVELOPMENTS (OUTRAM) LIMITED
	(ENV-2018-CHC-265)
AND	BLUE GRASS LIMITED, SADDLE VIEWS ESTATE LIMITED & K J TAYLOR
	(ENV-2018-CHC-293)
AND	STEPHEN GREGORY JOHNSTON
	(ENV-2018-CHC-296)
	Appellants
AND	DUNEDIN CITY COUNCIL
	Respondent

Court:	Environment Judge P A Steven
Hearing:	On the papers
Submissions:	P Page & G Griffin for Balmoral Developments (Outram) Limited, Blue Grass Limited, Stephen Gregory Johnston and KJ Taylor

	T Sycamore for Highland Property Enterprises Limited (as agent for Saddle Views Estate Limited) M Garbett for Dunedin City Council A Logan for Otago Regional Council David Stewart and Trudi Stewart-Haverkort for themselves
Last case event:	16 March 2023
Date of Decision:	4 April 2023
Date of Issue:	4 April 2023

DECISION OF THE ENVIRONMENT COURT

A: The court finds that the NPS-HPL will apply to its consideration of the appeals filed by the appellants because in each case, the land that is the subject of the appeals does not come within the exemption under cl 3.5(7)(b) of the NPS-HPL.

REASONS

Introduction

[1] The proposed Second-Generation Dunedin City Plan ('2GP') results from a review of the operative plan carried out under s79 RMA. Appeals on the 2GP have been mostly resolved by mediation whereas others have been determined by this court. Almost all remaining appeals relate to site-specific rezoning proposals where the land was included in rural zone (of some type) in the notified 2GP.[1]

[2] This decision addresses a group of appeals in that category of unresolved appeals by Balmoral Developments (Outram) Ltd ('Balmoral'), Blue Grass Ltd ('Blue Grass'), and Stephen Gregory Johnston ('Johnston') – (collectively referred to as 'the appellants').

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[1] There are seven rural zones in the 2GP.

[3] Hearings were scheduled and evidence had been exchanged by the parties. However, on 12 September 2022 the National Policy Statement for Highly Productive Land 2022 ('NPS-HPL') was notified, and its provisions came into force on 17 October 2022 ('the commencement date').

[4] The NPS-HPL includes an overarching objective to protect highly productive land ('HPL') for use in land based primary production in New Zealand, both now and for future generations.[2]

[5] An issue arose as to whether in considering the appeals, the court should have regard to the provisions of the NPS-HPL. Evidence exchanged by the parties did not address the subject matter of the NPS-HPL, although the question was raised by some appellants as to whether the hearings should be vacated until it was determined whether further evidence may need to be called.

Preliminary issue

[6] The parties agreed that as a preliminary matter, the court should determine whether the NPS-HPL now applies to the court's consideration of the appeals. In particular, the question raised for the court is whether the sites under appeal meet the exemption under cl 3.5(7)(b) of the NPS-HPL.

[7] Scheduled hearings were vacated pending the court's resolution of that question.

[8] On 22 December 2022, a joint memorandum of counsel was filed setting out a statement of agreed facts and issues, and the following description of the appellants' land is drawn from that memorandum.

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[2] See Objective 2.1.

The appellants' land

[9] In each case, the land under appeal is within one of the seven rural zones provided for in the 2GP, being Coastal Rural, High Country Rural, Hill Country Rural, Hill Slopes Rural, Middlemarch Basin Rural, Peninsula Coast Rural Zone and Taieri Plain Rural Zone.

Balmoral

[10] In the notified 2GP, Balmoral's land is zoned Hill Slopes Rural, although Balmoral's original submission sought to rezone the land to Township and Settlement Zone, being a zone that would allow urban residential development.

[11] That submission was rejected by the Hearing Panel who retained the notified rural zone for the land. By its appeal, Balmoral seeks the zone sought in its original submission.

[12] The land subject to the appeal is mapped by the New Zealand Land Resource Inventory as LUC 1 land and under the 2GP has a high-class soils classification.

Blue Grass

[13] The Blue Grass appeal is filed by a number of appellants.[3] It comprises a number of different sites all held in the ownership of each of the appellants. The appellants' land is all within the Coastal Rural Zone in the notified 2GP. The original submissions each sought that the land be zoned (variously) Large Lot Residential 1, Rural Residential 1, and Rural Residential 2.

[14] The Blue Grass submissions were all rejected by the Hearing Panel and the decision was to retain the Coastal Rural Zone. By its appeal, Blue Grass seeks the

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[3] Blue Grass Ltd, Saddle Views Estate Ltd, K J Taylor, John Buchan, and Craig Horne – although John Buchan and Craig Horne withdrew their land from the appeal.

zones sought in the original submissions.[4]

[15] The Blue Grass land is all mapped by the New Zealand Land Resource Inventory as LUC 3 land.

SVEL/Highland Property Enterprises Limited ('Highland Property')

[16] Highland Property is the duly authorised agent for SVEL whose land is within the Coastal Rural Zone in the notified 2GP. In its original submission SVEL sought that its land be zoned Rural Residential.

[17] SVEL's original submission was rejected, although by its appeal, SVEL seeks the zone sought in its original submission.

[18] I note that SVEL is one of the appellants in the Blue Grass appeal discussed above, although on this preliminary issue, SVEL was separately represented by counsel for Highland Property, Mr Sycamore. An 'in-principle' agreement to rezone the SVEL land was reached with the Council at mediation, however not all matters were finally resolved.

[19] As noted above at [15], SVEL's land is mapped by the New Zealand Land Resource Inventory LUC 3 although it does not have a high-class soils classification in the 2GP.[5]

Johnston

[20] The Johnston land (at Karitane) is zoned Coastal Rural in the notified 2GP. The original submission sought that the land be zoned Township and Settlement,

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[4] Two of the original submitters/appellants (John Buchan and Craig Horne) withdrew their appeal before the hearing whereas one of the submitters, Saddle Views Estates Ltd, is now separately represented by Highland Property Enterprises Ltd as authorised agent.

[5] As Highland Property's submissions note, the land does not have 2GP high-class soils classification. See submission for Highland Property, dated 17 February 2023, at [14(c)].

being an urban zone which would provide for residential development.

[21] The original submission was also rejected, although by its appeal, Johnston seeks the zone sought in its original submission.

[22] Johnston's land is mapped by the New Zealand Land Resource Inventory as LUC 3.

Exchange of legal submissions

[23] Submissions were filed sequentially by the parties. This included submissions from Otago Regional Council ('ORC'), a s274 party to all appeals, whose submissions succinctly supported the Council's position.

[24] The Council's position was also supported by s274 parties to the Blue Grass appeal, David Stewart and Trudi Stewart-Haverkort, who reside at a property that shares a major part of the boundary with part of the land that is the subject of the Blue Grass appeal.

[25] Their position is that they support the position advanced by the Council and seek that the Rural Zone for the Blue Grass land be retained within a rural zoning.

[26] Accordingly, I start by summarising the Council's position.

The Council's overall position

[27] The Council's overall position is that the NPS-HPL applies to each of the appeals as a relevant matter for the court to consider because:

(a) the land under appeal meets the criteria and cl 3.5(7)(a) of the NPS-HPL; and
(b) the land under appeal does not meet the exemption criteria in

cl 3.5(7)(b) of the NPS-HPL, and therefore the NPS-HPL applies as a relevant matter for the court to consider.

Appellants' overall position

[28] The Council's position is opposed by all appellants, who mostly for the same reasons, contend that the HPS-HPL is not a relevant matter for the court to consider when determining the appeals.

[29] Before expanding on the competing arguments, it is useful to set out a summary of the relevant provisions of the NPS-HPL.

The NPS-HPL

[30] The NPS-HPL was approved by the Governor-General under s52(2) RMA on 12 September 2022, and NPS-HPL came into force on 17 October 2022 ('commencement date').[6]

[31] It is a national policy statement that seeks to improve the way HPL is managed under the RMA. All councils are directed on how to identify and map HPL, and how to manage the subdivision, use and development of this resource.

[32] Part 2 of the NPS-HPL contains the objectives and policies. The overarching objective I have referred to above in [4] of this decision.

[33] Nine policies give effect to this objective. These policies acknowledge that the identification and management of HPL will require consideration of the interaction between managing HPL with fresh water and the need to use some rural land for urban development in giving effect to the National Policy Statement on Urban Development 2020 ('NPS-UD').

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[6] By cl 1.2 Commencement.

[34] Policies all prioritise the use of HPL for land based primary production, particularly Policy 5 which provides that:

> The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement.

[35] Policy 6 is also relevant to the question put to the court and is that:

> The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this national policy statement.

[36] The policies require HPL to be mapped in regional policy statements and district plans and that the land be protected from inappropriate use and development.[7]

[37] Part 3 of the NPS-HPL sets out the steps to be taken by local authorities to give effect to the objectives and policies. This includes the criteria for identifying and mapping HPL.

[38] Part 3 also sets out the circumstances in which rezoning, subdivision and use and development of HPL may be appropriate by listing a number of exemptions.

[39] Under cl 3.4, every regional council must map as HPL any land in its region that:

> (a) is in a general rural zone or rural productive zone; and
> (b) is predominantly LUC 1, 2, or 3 land; and
> (c) forms a large and geographically cohesive area.

[40] 'Highly Productive Land' (HPS) is defined in cl 1.3(1) of the NPS-HPL and is:

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[7] Cl 2.2 Policies.

> … land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land).

[41] A definition of LUC 1, 2, or 3 is also included and is:

> … land identified as Land Use Capability Class 1, 2, or 3, as mapped by the New Zealand Land Resource Inventory or by any more detailed mapping that uses the Land Use Capability classification.

[42] Under cl 3.5, regional councils must map all HPL in the regions in the relevant regional policy statement ('RPS') within three years of the commencement date, that is by 17 October 2025.

[43] Policy 5 is implemented through cl 3.6 which states that Tier 1 and 2 territorial authorities may only allow urban rezoning of HPL in the circumstances set out in cl 3.6(1) and (2).

[44] These circumstances are connected to providing sufficient development capacity to meet demand for housing or business land in order to give effect to the NPS-UD.

[45] By cl 3.7 territorial authorities must avoid rezoning of HPL as rural lifestyle except as provided in cl 3.10, in order to implement Policy 6. The exemptions apply where the HPL is subjected to identified permanent or long-term constraints.

[46] Clause 4.1 addresses when the NPS-HPL takes effect and states:

> (1) Every local authority must give effect to this National Policy Statement on and from the commencement date (noting that, until an operative regional policy statement contains the maps of highly productive land required by clause 3.5(1), highly productive land in the region must be taken to have the

meaning in clause 3.5(7)).

(2) Every territorial authority must notify changes to objectives, policies, and rules in its district plan to give effect to this National Policy Statement (using a process in Schedule 1 of the Act) as soon as practicable, but no later than 2 years after maps of highly productive land in the relevant regional policy statement become operative.

[47] Of relevance, cl 3.5(7) sets out the position to be taken by all relevant territorial authorities and consent authorities until the mapping in the RPS has been undertaken. A transitional definition of HPL applies during this transitional period, by cl 3.5(7)(a) which states:

> Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:
>
> (a) is:
>
> (i) zoned general rural or rural production; and
>
> (ii) LUC 1, 2, or 3 land; but
>
> (b) is not:
>
> (i) identified for future urban development; or
>
> (ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

[48] The terms 'rural general' and 'rural production' used in this clause are not defined in the NPS-HPL, although by cl 1.3(4)(a) references to the 'rural general' and 'rural production' zones are references to the zoning as described in Standard 8 (Zone Framework Standard) of the National Planning Standards.

[49] These standards will eventually result in the standardisation of all rural zones in district plans throughout the country. Its provisions are not yet reflected in all district plans, including the 2GP which currently uses a suite of differently named rural zones.

[50] However, cl 1.3(4)(b) states that a reference in the national policy statement to a zone is (relevantly):

> …
> (b) for local authorities that have not yet implemented the Zone Framework Standard of the National Planning Standards, a reference to the nearest equivalent zone.

[51] I am told by counsel for ORC that each of the seven rural zones used in the 2GP is the equivalent to either the rural general or rural production zones referred to in the Zone Framework Standard.[8] No party contested that explanation, which is accepted by the court.

Exemptions to the transitional definition of highly productive land under cl 3.5(7)(b)

[52] As set out at [46], by cl 3.5(7)(b), land that meets either of the exemptions below is not to be treated as HPL during the transitional period applying until the mapping has occurred, as follows:

(a) land identified for urban development, per cl 3.5(7)(b)(i); or
(b) land that is subject to a council-initiated, or an adopted, notified plan change to rezoned it from general rural or rural production to urban or rural lifestyle, per cl 3.5(7)(b)(ii).

[53] The exemption under cl 3.5(7)(b)(i) is for land that has been identified:

(a) in a published future development strategy as land suitable for commencing urban development over the next 10 years; or
(b) in a strategic planning document as an area suitable for commencing urban development over the next 10 years; and at a level of detail that makes the boundaries of the area attend viable in practice.

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[8] Submission for ORC, dated 3 March 2023, at [38].

[54] Future development strategies are statutory strategies prepared under sub-Part 4 of the NPS-UD. A strategic planning document is defined in cl 1.3 of the NPS-HPL and means "any non-statutory growth plan or strategy adopted by local authority resolution".

[55] I am told that the future development strategy for Dunedin has not yet been developed and the only relevant strategic planning document is the spatial plan for Dunedin which was adopted in 2012. This document does not identify the land of any of the appellants for future urban development.

[56] I accept the Council's submission that this rules out operation of cl 3.5(7)(b)(i) in the case of all the appeals in issue.

Exemption cl 3.5 (7)(b)(ii)

[57] This exemption applies to land that is the subject of a council-initiated or adopted notified plan change to rezone to urban or rural residential, and is the more relevant exemption giving rise to the preliminary.

[58] There is no definition of a plan change in the NPS-HPL although reference can be made to the terms that are defined in the RMA as follows:

(a) 'Plan' is defined as meaning: "… a regional plan or a district plan";
(b) 'District plan' in turn is defined as: "… an operative plan approved by a territorial authority under Schedule 1 …";
(c) 'Change' is defined as meaning: "a change proposed by a local authority to a policy statement or plan under cl 2 of Schedule 1 …"; and
(d) 'Proposed plan' is defined as meaning: "… a proposed plan, a variation to a proposed plan or change, or a change to a proposed plan by a local authority that has been notified under cl 5 of Sch 1 or given limited notification under cl 5A of that schedule, but has not become operative in terms of cl 20 of that schedule; and …".

Opposing positions

[59] Legal submissions were filed by Mr Page on behalf of all appellants, excluding Highland Property on behalf of SVEL, whose position was advanced by Mr Sycamore, although the arguments were mostly overlapping. Highland Property raises a separate issue as to the status of the position reached with the Council at mediation earlier referred to.

[60] Mr Page's primary argument is that because the appellants' original submissions and appeals seek a form of urban zoning as relief, this means the appellants' land is subject to a council-initiated plan change bringing its land within the scope of this exemption. This is because (in summary):

(a) a 'qualifying council-initiated plan change' (the 2GP) was notified prior to the commencement of the NPS-HPL;
(b) the Sch 1 submission and appeal process being pursued by the appellants are important components of the council-initiated plan change process commenced by the Council;
(c) if the appeals succeed, the court will give a direction to rezone the land, which the council is obliged to follow, thereby constituting a proposal approved by the council to zone land urban or rural lifestyle;
(d) the absence of specific provisions or transitional provisions in the NPS-HPL for proceedings before the court means that there is no mandate to read this exemption as intending to direct that the exercise of first schedule rights are to be regarded as not part of a "plan change" as at the commencement date of the NPS-HPL.[9]

[61] However, the court accepts the Council's response that this submission is difficult, if not impossible, to reconcile with the language used in cl 3.5(7)(b)(i).

[9] Submissions for Balmoral Developments (Outram) Ltd, Blue Grass Ltd and Stephen Gregory Johnston, dated 16 February 2023, at [81].

[62] It is true that the appellants' submissions and ensuing appeals are part of the plan promulgation process involving a council-initiated plan change. Accordingly, in that broad sense, the appellants land is subject to a process involving a council-initiated plan change. However, that is not the same as being subject to a council-initiated plan change *that proposes* to rezone the land to urban or rural lifestyle.

[63] To come within the exemption, it is implicit that the rezoning to urban or rural lifestyle has to be reflected in the plan change initiated by the Council when it is initiated, that is, at the notification stage. The reference to "that proposes" in the exemption is a reference back to the council-initiated plan change and not to the submissions or appeals lodged in the course of the Sch 1 RMA process that follows notification.

[64] Moreover urban and/or rural lifestyle zones being sought for the land are only potential outcomes of the appeals. The zones by the appellants do not form any part of the plan change until (and only if) the court directs the council to rezone the land having held a hearing and considered all relevant matters, and decided the appeals in favour of the appellants.[10]

[65] It is illogical to suggest that because that zoning may result from the court's ultimate consideration of the appeals, that the NPS-HPL cannot be one of the relevant matters for the court to consider before coming to a decision on the appeals.

[66] It is highly relevant that the cl 3.5(7)(b) exemption applies where a plan change has been adopted by the council and not where a privately requested plan change has been sought.

[67] By s73(2) RMA, any person may request to change to an operative district plan. Such a request is to be processed in accordance with the manner set out in

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[10] By cl 15 Sch 1, RMA.

Part 2, Sch 1 RMA. However, upon receipt of a private request, by cl 25 Sch 1, the local authority must consider the same and may either "adopt the request, or part of the request as if it were a proposed policy statement or plan made by the local authority itself".

[68] Alternatively, it may accept the request in whole or in part and proceed to notify the same.

[69] If the local authority decides to adopt the request it is then processed as though it had been initiated by the authority itself, meaning that its provisions are to be treated as having been proposed by that council rather that the person who made the original request.

[70] A privately requested plan change does not have to be adopted by the council and is unlikely to be adopted it the outcome sought by the change is not supported by the council. A privately requested plan change that is not adopted by the council but which is accepted, and which proceeds through the Sch 1 process is not within the ambit of the exception in cl 3.5(7)(b)(ii).

[71] This omission in the cl 3.5(7) exemption further supports an interpretation of that provision that restricts its application to the notified version of the council-initiated or adopted plan change that proposes an urban or rural lifestyle zone for the land, while excluding the prospect of an urban or rural lifestyle zone applying to land notified as within a rural zone, once original submissions and/or appeals have been finally determined.

[72] This approach is further reinforced by the terms of cl 3.5(7)(b)(i) which applies where land has been identified:

(a) in a published future development strategy as land suitable for commencing urban development over the next 10 years; or
(b) in a strategic planning document is an area suitable for commencing urban development over the next 10 years; and at a level of detail that

makes the boundaries of the area identifiable in practice.

[73] As Mr Garbett comments in his legal submissions, future development strategies are statutory strategies prepared by the local authority that have been adopted by local authority resolution.

[74] I agree with the Council that the NPS-HPL distinguishes between plan changes initiated (or adopted) by the Council with the stated objective of zoning land for urban or rural lifestyle development, and submissions and appeals that have been lodged to the plan seeking that as an outcome where the land is within a rural zone.

[75] Accordingly, I agree with the Council and supporting s274 parties, that neither a submission nor an appeal seeking an urban zone for the land has the effect of making the land subject to a council-initiated plan that zones the land urban or rural lifestyle for the purposes of the exemption in cl 3.5(7)(i).

[76] For completeness, I refer to other arguments raised by the appellants. The first relates to the issue of timing.

The timing issue

[77] In advancing its argument, Balmoral seems to be submitting that the Council's position is that the 'point in time' when a plan change must be evaluated for coverage by the NPS-HPL is when the plan change was notified, which as counsel notes, predates the commencement date of the NPS-HPL. However, I accept Mr Garbett's response that is not the Council's position at all.

[78] The commencement date of the NPS-HPL is the relevant point in time for considering whether the cl 3.5(7)(b) exemption applies to the outstanding appeals. At that relevant time, the zone given to the appellants' land under the 2GP is the same as it was when the 2GP was notified, that is, when it was "initiated by the Council". At all times, the appellants' land has had a rural and not urban or lifestyle

zone.

The fairness issue

[79] Mr Page contends that it cannot have been the Minister's intention to "deliberately torpedo rezoning submissions" or that the appeal process be arrested by regulation.[11]

[80] However, that is not a consequence of the court's interpretation of the NPS-HPL. While the objectives and policies of the NPS-HPL will be a relevant consideration when the appellants' appeals are considered on their merits, that does not "arrest" the appeal process which will proceed to a hearing and ultimate decision of the court.

[81] Various decisions are referred to in the appellants' submissions, including the submissions for Highland Property, where the court has considered the implications of the coming into effect of other national policy statements mid-way through the process of resolving appeals, including *Horticulture New Zealand v Manawatu- Wanganui Regional Council.*[12]

[82] That case resulted from appeals to the decision of the Manawatu-Wanganui Regional Council on submissions to a plan change concerning nitrogen leaching associated with a range of farming operations. The National Policy Statement on Fresh Water Management ('NPS-FM') was gazetted after the appeals had been filed but before they had been heard and determined by the court.

[83] By s55 RMA, the Council had to amend its RPS and regional plans to give effect to the NPS-FM and that had to be done "as soon as possible" or within the time specified in the NPS.

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[11] Submissions for Balmoral Developments (Outram) Ltd, Blue Grass Ltd and Stephen Gregory Johnston, dated 16 February 2023, at [34].
[12] [2013] NZHC 2492.

[84] The NPS-FM did specify a timeframe within which it had to be given effect to, although at the time of the Environment Court hearing the Council had taken no decisions under those provisions.

[85] The High Court had been asked to consider whether the Environment Court had failed to consider the extent to which the proposed plan gave effect to the NPS-FM.

[86] However, the High Court held that the Environment Court had made no such error, observing that the process of implementing the NPS-FM had to be undertaken using the Sch 1 process which is to be initiated by the Council and not the court.

[87] The court held that this was not a process that should be "short-circuited through a hurried implementation exercise in the course of a partly-confined, and jurisdictionally confined, appellate process that commenced before the NPS-FM was gazetted."[13]

[88] The court further noted that the Environment Court does not have the "executive plan-making and plan-changing roles" of the councils.[14]

[89] Other decisions are discussed in the appellants' legal submissions, including cases where other national policy statements have been gazetted part-way through the Sch 1 plan-making and appeal process.

[90] However, what is clear to the court is that each NPS has its own implementation and transitional arrangements, and such is the case with the NPS-HPL before me. Reference to other decisions on other instruments is of little assistance to the question before this court.

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[13] *Horticulture New Zealand v Manawatu- Wanganui Regional Council* [2013] NZHC 2492, at [101].
[14] *Horticulture New Zealand v Manawatu- Wanganui Regional Council* [2013] NZHC 2492, at [99].

[91] The transitional position under the NPS-HPL is clear; by cl 4.1, until the NPS-HPL has been given effect to in the relevant regional policy statement, each territorial authority and all consent authorities, including the court, must apply the NPS-HPL to land within the scope of cl 3.5(7)(a) where it is not excluded by the exemptions in cl 3.5(7)(b).

[92] There is no retrospectivity in this approach and nor is it a breach of natural justice.

[93] The NPS-HPL applies prospectively to matters which the Council and/or the Environment Court are required to make decisions about, after the commencement date of the NPS-HPL. The appellants will be able to bring evidence to the court on those matters if they choose to do so.

Is it relevant that the land comprises small discrete areas?

[94] Highland's submissions note that the land that is the subject of the appeal comprises small discrete areas of LUC 1, 2, or 3 land such that their land may not make it into the maps when the regional council begins its mapping.

[95] Mr Sycamore refers to cl 3.4(5)(c), and cl 3.4(5)(d) which excludes small discrete areas of LUC 1, 2, or 3 land that is not part of "a large and geographically cohesive area" of LUC 1, 2 or 3 land in order to qualify as HPL to be mapped by the regional councils.

[96] However, these criteria for the mapping of HPL land are not included in the transitional provisions; it is sufficient that land has a general rural or rural production zone and that it is LUC 1, 2, or 3 land irrespective of the individual size of the land parcels and/or its proximity to other such land.

[97] I agree with the Council's submission that the transitional provisions can be assumed to take a deliberate holding position.

[98] The clear intention is that HPL is not to be given any kind of planning permission for development for urban or lifestyle purposes before the mapping exercises are completed by regional councils and given effect to by district councils in terms of their respective obligations under cl 3.5(1) and(3).

[99] During this transitional period, the court is obliged to have regard to the NPS-HPL in considering the appeals, at which point, the implications of the various policy directives in Part 2 of the NPS will have to be considered.

Relevance of position reached at mediation with Highland Property

[100] In reply submissions, the Council responded to the submissions from Highland on the position reached following mediation in respect of the SVEL land.

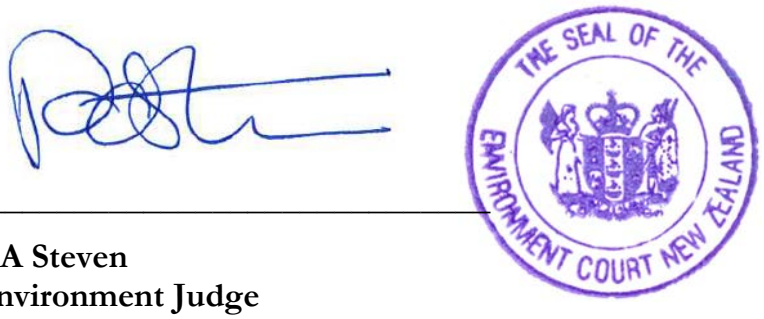
[101] Counsel notes that the mediation agreement was signed but was not converted into a signed consent memorandum due to unresolved issues that were left to be resolved following mediation.

[102] That ends the matter as far as the court is concerned and nothing more needs to be said about that beyond noting that the Council's signature to that agreement does not bring the land within the exception in cl 3.5(7)(b)(ii) for the reason that the agreement was reached at a mediation attended by an elected member of the Council.

Outcome

[103] For reasons explained in this decision, the court finds that the NPS-HPL will apply to its consideration of the appeals filed by the appellants because in the

case of all the land under appeal, it does not come within the exemptions in cl 3.5(7)(b) of the NPS-HPL.



P A Steven
Environment Judge