

BEFORE THE HEARING PANEL OF INDEPENDENT COMMISSIONERS

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a request by Welhom Developments Limited to Masterton District Council for a private plan change to the combined Wairarapa District Plan

**SUPPLEMENTARY LEGAL SUBMISSIONS
ON BEHALF OF WELHOM DEVELOPMENTS LIMITED**

3 MAY 2023

1. INTRODUCTION

1.1 At the hearing on 27 April 2023, Welhom Developments Limited ("**Welhom**") confirmed that *Balmoral Developments (Outram) Limited v Dunedin City Council* [2023] NZEnvC 59 ("**Balmoral**") affirms the approach that Welhom has taken to applying matters in the National Policy Statement for Highly Productive Land ("**NPS-HPL**") through its private plan change request was correct.

1.2 In Minute 5, the Hearing Panel directed Welhom to provide advice on *Balmoral* as it relates to the NPS-HPL. We set out our advice below.

2. THE NPS-HPL

2.1 To briefly revisit the key aspects of the NPS-HPL relevant to the discussion in *Balmoral*:

- (a) The NPS-HPL requires regional councils to map all the region's highly productive land ("**HPL**") in a proposed regional policy statement ("**RPS**") as soon as practicable, and by 17 October 2025.¹
- (b) Until the mapping in the RPS has occurred, there is a transitional definition of HPL that applies under cl 3.5(7). Importantly, land that is 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 is exempt from the definition.²
- (c) Land that meets the criteria under cl 3.5(7)(a), and not any exemptions under cl 3.5(7)(b), is subject to interim protection under the NPS-HPL until the mapping has occurred. The pathway under clauses 3.6(4) and (5) applies to the rezoning of land subject to interim protection.

3. THE *BALMORAL* DECISION

3.1 *Balmoral* considered a group of appeals relating to site-specific rezoning proposals where the land was included in some type of rural zone in the Proposed Dunedin City Plan.

¹ National Policy Statement for Highly Productive Land, cl 3.5(1).

² Clause 3.5(7)(b)(ii).

3.2 The key issue in *Balmoral* was whether the sites under appeal met the exemption criteria in cl 3.5(7)(b) of the NPS-HPL, such that the NPS-HPL did not apply as a relevant matter for the Court to consider.³

3.3 The Court confirmed that the NPS-HPL distinguishes between a plan change adopted by the council with the stated objective of zoning land for urban or rural lifestyle development, and a privately requested plan change that seeks that as an outcome where the land is currently situated within a rural zone.⁴ The Court said:⁵

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).

3.4 On that basis, for land to be rezoned through Welhom's private plan change request, it must go through the pathway for Tier 3 urban environments and satisfy the criteria under clauses 3.6(4) and (5) (Masterton being a Tier 3 urban environment). Those criteria were addressed in detail through evidence, legal submissions and the hearing.

4. CONCLUSION

4.1 In our submission, the Hearing Panel should have comfort that the approach adopted by Welhom in relation to the private plan change request is consistent with the Environment Court decision in *Balmoral*.

Dated 3 May 2023

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³ *Balmoral Developments (Outram) Limited v Dunedin City Council* [2023] NZEnvC 59 at [6].

⁴ At [66].

⁵ At [70].